



US Army Corps  
of Engineers  
St Paul District

# Public Notice

ISSUED: April 13, 2015

EXPIRES: May 13, 2015

**PROPOSAL TO ISSUE A REGIONAL GENERAL PERMIT FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES ASSOCIATED WITH RECONSTRUCTION, EXPANSION, MODIFICATION, OR IMPROVEMENT OF EXISTING PUBLIC ROADS**

REFER TO: MVP-2015-00490

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## 1. PURPOSE AND BACKGROUND

The purpose of this notice is to request public comments on the St. Paul District's (District) proposal to issue a regional general permit (RGP-004-MN) authorizing the discharge of dredged and fill material into waters of the United States for certain activities associated with public road projects in Minnesota. RGP-04-MN is intended to streamline the review of permit applications for these activities, establish consistency in permit decisions, and provide more certainty for public road authorities seeking Department of the Army authorization under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

Activities authorized by RGP-004-MN would include those associated with the reconstruction, expansion, modification, or improvement of existing public road systems. The total permanent impacts to waters of the United States for a single and complete project would be limited to three acres. Additionally, permanent impacts to a tributary at any single crossing or location associated with a single and complete project would be limited to 500 feet of the stream channel. Permanent impacts to wetlands located in roadside ditches and temporary impacts to waters of the United States would not be counted toward the three acre permanent impact threshold, although these impacts would still need to be disclosed if the proposed project requires notification to the District (see Section 4 of the draft RGP-004-MN for information on the reporting requirements).

The authorized activities would be subject to several exclusions, limitations, and standard conditions to ensure the effects of the activities authorized by this general permit would be individually and cumulatively minor to the aquatic environment. Additionally, the Corps retains its authority under 33 CFR 325.2(e)(2) to require an individual permit review of any activity eligible for authorization under RGP-004-MN.

If a decision is made to issue RGP-004-MN, the District would also pursue modification of several transportation related categories in RGP-003-MN. The modifications would eliminate unnecessary redundancy for certain types of activities, improve clarity with respect to the appropriate category for authorization, and simplify the eligibility criteria for road authorities.

The anticipated modifications to RGP-003-MN are described in the following two paragraphs.

Category P. Maintenance of Existing Public Roads. This category would be revoked in its entirety.  
Category L. Linear Transportation Projects. The first paragraph of this category would be revised to read:

*“Discharges of dredged or fill material in waters of the United States 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 a water of the United States cannot exceed 0.5 acre of total impacts or 500 linear feet of 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. 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. This RGP category also cannot be used to authorize discharges associated with the reconstruction, expansion, modification, or improvement of existing public road systems undertaken by public road authorities.*

The District intends to pursue these modifications along a parallel track with the completion of RGP-004-MN so that, if authorized, the modifications to RGP-003-MN would be effective at the same time RGP-004-MN is issued. A separate public notice and opportunity for public comment will be issued regarding the proposed modifications to RGP-003-MN.

## 2. REPLIES/COMMENTS

Interested parties are invited to submit to this office written facts, arguments, or objections within 30 days of the date of this notice. These statements should bear upon the suitability and adequacy of the proposal and should, if appropriate, suggest any changes believed to be desirable.

Replies may be addressed to Regulatory Branch, ATTN: Sarah Wingert, St. Paul District, Corps of Engineers, 180 Fifth Street East, Suite 700, Saint Paul, MN 55101-1678.

Or, if you have questions about this project, contact Sarah Wingert in the St. Paul District office via email at Sarah.E.Wingert@usace.army.mil.

To receive Public Notices by e-mail, go to: [http://mvp-extstp/list\\_server/](http://mvp-extstp/list_server/) and add your information in the New Registration Box.

## 3. FEDERALLY-LISTED THREATENED OR ENDANGERED WILDLIFE OR PLANTS OR THEIR CRITICAL HABITAT

This proposal is being coordinated with the U.S. Fish and Wildlife Service. Any comments it may have concerning Federally-listed threatened or endangered wildlife or plants or their critical habitat will be considered in our final assessment of the described work.

#### 4. JURISDICTION

The proposed general permit would authorize the discharge of dredged and fill material in waters of the U.S. under Section 404 of the CWA.

#### 5. STATE SECTION 401 WATER QUALITY CERTIFICATION

Valid Section 404 permits cannot be issued for any activity unless state water quality certification is granted or waived pursuant to Section 401 of the CWA. The state Section 401 authority in Minnesota is the Minnesota Pollution Control Agency (MPCA). The MPCA has made a preliminary determination that MPCA will issue 401 certification for RGP-004-MN, with the inclusion of relevant conditions related to water quality. The MPCA has indicated that this public notice serves as their public notice of the application for Section 401 water quality certification under Minnesota Rules Part 7001. Any comments relative to MPCA's preliminary decision to certify the RGP described in this public notice may be sent to: Minnesota Pollution Control Agency, Regional Environmental Management Division, Attention: Jim Brist, 520 Lafayette Road North, 3<sup>rd</sup> Floor, St. Paul, Minnesota 55155-41946. If you have questions about the Section 401 water quality certification for this regional general permit, contact Jim Brist of the MPCA via email at [jim.brist@state.mn.us](mailto:jim.brist@state.mn.us).

#### 6. HISTORICAL/ARCHAEOLOGICAL

This public notice is being sent to the National Park Service, the State Archaeologist, and the State Historic Preservation Officer for comment. Implementation of this proposal would not affect the Corps' responsibility to insure that all Section 404 and Section 10 authorizations comply with Section 106 of the National Historic Preservation Act. Unknown archaeological, scientific, or historical data could be lost or destroyed by the work authorized by RGP-004-MN. However, the general permit does not authorize any work that would affect known resources, and projects are individually reviewed to minimize any potential for adverse impacts to resources.

#### 7. PUBLIC HEARING REQUESTS

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposal. Requests for public hearings shall state, in detail, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served.

#### 8. PUBLIC INTEREST REVIEW

The decision whether to issue this permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality,

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energy needs, safety, food and fiber production and, in general, the needs and welfare of the people. Environmental and other documents will be available for review in the St. Paul District Office.

FOR THE DISTRICT ENGINEER:

Tamara E. Cameron  
Chief, Regulatory Branch

Enclosure

**DEPARTMENT OF THE ARMY PERMIT**

**Permittee:** All Public Road Authorities in Minnesota

**Permit No.:** RGP-004-MN (Corps File No. MVP-2015-00490)

**Issuing Office:** St. Paul District, U.S. Army Corps of Engineers (Corps)

**Issuance Date:** XX-XX-XXXX

**Expiration Date:** 5 years from date of issuance

**Authorities:** 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)

1. **Project Location.** RGP-004-MN is eligible for use in waters of the United States (including navigable waters of the United States) within the State of Minnesota.
2. **Authorized Activities.** Public road authorities in the State of Minnesota are hereby authorized to discharge dredged or fill material into waters of the United States, and perform work in navigable waters of the United States, for activities associated with the reconstruction, expansion, modification, or improvement of existing public road systems. This authorization is subject to the enclosed terms, conditions, and limitations.
  - a. *Impact Thresholds:* RGP-004-MN authorizes temporary and permanent impacts to waters of the United States for a single and complete project subject to the following thresholds:
    - i. Permanent impacts to waters of the United States shall not exceed 3.0 acres.
    - ii. Permanent impacts to a tributary at any single crossing or location shall not exceed 500 linear feet of the stream channel.
    - iii. Permanent impacts to wetlands located in roadside ditches are not counted toward the permanent impact threshold, but are limited to the minimum necessary to complete the proposed project.
    - iv. Temporary impacts to waters of the United States are not counted towards the impact thresholds, but are limited to the minimum necessary to complete the proposed project.
  - b. *Examples of Eligible Activities:* RGP-004-MN authorizes the discharge of dredged or fill material into waters of the United States for the following activities: a) the repair, rehabilitation, reconstruction, or replacement of existing bridges, culverts, and roads, including road widening, lane addition, shoulder improvements, etc.; b) the maintenance or construction of non-motorized pedestrian, bicycle, or multi-use sidewalks and trails whose purpose is to enhance the safety and mobility of the existing public road system (see Exclusion f. below); d) minor realignments of existing transportation projects where there is a demonstrated need to improve safety, durability, or capacity, such as vertical and horizontal curve corrections or improvements to existing roadway intersections and interchanges; e) the placement of new or additional riprap, to the minimum extent necessary, to protect the roadway or ensure the safety of bridge and culvert structures; f) the removal of accumulated sediments and debris in the vicinity of bridges and culverts to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate

dimensions that existed when the structure was built, and; g) temporary structures, fills, and work necessary to construct the public road system project (see Standard Condition 15).

Other activities associated with the reconstruction, expansion, modification, or improvement of existing public road systems may be eligible for authorization under RGP-004-MN at the Corps discretion.

- c. *Calculation of Impacts:* All impacts, both permanent and temporary, to aquatic resources must be included in the pre-construction notification (see the state/federal Joint Application Form for Activities Affecting Water Resources in Minnesota or the most current application form, and the Transportation GP supplemental guidance document for additional information on how to report impacts. Links to these documents are provided in the References section). The measurement of impact to waters of the United States will be determined by calculating the area of all waters of the United States (including tributaries) where dredged or fill material would be discharged, plus the impacts to waters of the United States that would be excavated, inundated, drained, or converted to another aquatic resource type as part of a single and complete project. Tributary impacts must also be calculated in linear feet (this calculation should not double count both shorelines).
3. **Activities Specifically Excluded from RGP-004-MN.** The following activities are not eligible for authorization using RGP-004-MN.
- a. Discharges within the exterior boundaries of a federally recognized Indian Reservation.
  - b. Discharges in calcareous fens or in wetlands within 300 feet of a state designated calcareous fen, unless a management plan has been approved by the Minnesota Department of Natural Resources (MnDNR) or the need for a management plan has been waived by the MnDNR in lieu of project specific best management practices that would be implemented to avoid impacts to a state designated calcareous fen. Applicants must provide evidence of an approved fen management plan or waiver from the MnDNR. Information on the location of known calcareous fens can be obtained from the MnDNR at 651-259-5125 or found on their web page at [http://files.dnr.state.mn.us/publications/waters/calcareous\\_fen\\_list\\_nov\\_2009.pdf](http://files.dnr.state.mn.us/publications/waters/calcareous_fen_list_nov_2009.pdf).
  - c. Discharges for the construction of new roads, including frontage roads.
  - d. Discharges for the construction of non-linear features commonly associated with public road projects, such as vehicle maintenance or storage buildings, parking lots, rest stops, weigh stations, etc.
  - e. Discharges associated with road relocation that the Corps determines is more than a minor realignment, and discharges associated with permanent bypass construction.
  - f. Discharges for the construction or repair of “stand-alone” trails that have independent utility and are not directly associated with the reconstruction, expansion, modification, or improvement of an existing public road system, such as snowmobile, ATV, and other recreational trails that are only located along the roadway to maximize public right-of-way.
  - g. Discharges for culvert or bridge crossings that would serve as new water level control structures.

- h. Discharges for the construction of stormwater ponds, filtration basins, infiltration basins, or other water quality treatment or rate control ponds or basins constructed in waters of the United States located outside the roadway footprint.<sup>1</sup>

#### 4. Application Procedures.

- a. **Reporting Activities:** The prospective permittee must submit a pre-construction notification (PCN) to the Corps in accordance with the requirements below if any of the following are met:
  - i. The project's permanent impacts to waters of the United States would exceed 0.1 acre.
  - ii. The project's temporary impacts to waters of the United States would exceed 0.5 acre.
  - iii. The project involves culvert maintenance work (repair, rehabilitation, reconstruction or replacement) that would result in lowering the culvert's inverts, decreasing the cross-sectional area of the culvert, or widening the culvert's cross-sectional area beyond the bankfull cross-sectional area. This reporting requirement does not apply to culvert projects that are approved by the MnDNR.
  - iv. The project involves activities conducted in navigable waters of the United States.<sup>2</sup>
  - v. The project may affect a historic property listed in, determined to be eligible for listing in, or potentially eligible for listing in the National Register of Historic Places (see Standard Condition 19).
  - vi. The project may affect Federally-listed threatened or endangered species or designated critical habitat (see Standard Condition 22).

Pre-Construction Notification. Where required by the terms of RGP-004-MN, the prospective permittee must submit a written PCN that specifically requests authorization under RGP-004-MN. PCN requirements give the Corps the opportunity to evaluate general permit 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 may result in the addition of project-specific conditions to the authorization to ensure that RGP-004-MN 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.

The PCN must be submitted prior to beginning the proposed activity, and as far in advance of the proposed work as possible. The PCN shall consist of the following information:

- i. Name, address, email and telephone number of the prospective permittee.

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<sup>1</sup> For roads with roadside ditches, the roadway footprint includes the area between the top of the ditch backslope on one side of the road to the top of the ditch backslope on the other side of the road. For roads without roadside ditches, the roadway footprint includes the area between the toe of slope on one side of the road to the toe of slope on the other side of the road.

<sup>2</sup> "Navigable waters of the United States" means those waters regulated under Section 10 of the Rivers and Harbors Act.

- ii. A large-scale and small-scale location map and description of the proposed project's location (i.e. sect-twp-range, including all sections the project would cross, and latitude and longitude in decimal degrees).
- iii. A complete description of the proposed project and scope of work (including all project components and the project schedule), as well as: a) the project purpose and need (i.e. based on ADTs, crash history, etc); b) all impacts to waters of the United States and other adverse environmental impacts the project would cause, including the anticipated amount of loss of waters of the United States expected to result from the proposed activity, in acres, linear feet, or other appropriate unit of measure (see the impact table in the state/federal Joint Application Form for Activities Affecting Water Resources in Minnesota and Supplemental Guide for Calculating Impacts for Road Projects for more information); and c) any other permits used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the Corps to determine that the project would meet the terms and conditions of RGP-004-MN.
- iv. A delineation of aquatic resources on the project site conducted in accordance with current agency guidance including the 1987 *Corps of Engineers Wetland Delineation Manual*, or the most recent version of this manual, and the appropriate Regional Supplements (See the *Local Road Authority Reference Guide to U.S. Army Corps of Engineers (Corps)* for additional information on determining the level of delineation required for your project). Delineation reports should be prepared in accordance with the current St. Paul District guidance for the completion and submittal of delineation reports in the St. Paul District. Please note that prospective permittees do not have to re-submit delineation reports that have already been provided to the Corps.
- v. Drawings/plans showing delineated aquatic resources and aquatic resource impact areas, including plan-view drawings on an aerial photograph, cross-sectional drawings, and profile drawings. If not included in the above plans, please also provide a copy of the construction plan sheets.
- vi. A detailed discussion of how aquatic resource impacts were avoided and minimized, including on-site configurations, from the initial phase of the project plans to the project plan that is currently being proposed.
- vii. For projects that propose temporary fills and structures in aquatic resources: a description or plan showing how all temporary fills and structures would be removed and the affected areas restored to pre-project conditions. Include the length of time that the temporary fills or structures would remain in place.
- viii. If any Federally-listed species or designated critical habitat may be affected, non-Federal applicants must include in the PCN the name(s) of those threatened or endangered species that may be affected by the proposed work, or might utilize the designated critical habitat that may be affected by the proposed work. If applicable, non-Federal applicants are also encouraged to provide the results of any state or local reviews that have been conducted regarding threatened or endangered species. Federal applicants or applicants with federal funding must provide documentation demonstrating compliance with the Endangered Species Act.

- ix. For an activity that may affect a historic property listed in, determined to be eligible for listing in, or potentially eligible for listing in, the National Register of Historic Places, non-Federal applicants must include in the PCN a description of any historic properties that may be affected by the proposed work, and include a vicinity map indicating the location of the historic property. If applicable, non-Federal applicants are encouraged to provide the results of any state or local reviews and determinations of eligibility that have been conducted regarding historic properties. Federal applicants or applicants with federal funding must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.
- x. For the activities that require a PCN, the prospective permittee must submit a statement describing how the losses will be offset through compensatory mitigation (see Standard Condition 3 for additional information on compensatory mitigation).
- xi. In addition to the standard PCN requirements, prospective permittees are encouraged to provide the following items in their PCN. Providing these items with a PCN may shorten the permit review timeframe by avoiding a request for additional information. If these items are not provided, they may be requested by the Corps on a case-by-case basis, along with any other additional information determined to be necessary by the Corps.
  1. A statement regarding the source and type of fill material to be placed in aquatic resources; if the source(s) of the fill material are unknown at the time of the application, describe the restrictions that would be in place to avoid obtaining fill from aquatic resources and unknown cultural resource areas, and to ensure that the fill material would be free of contaminants.
  2. For projects that propose a tributary crossing:
    - a. Type and dimensions of the existing and proposed structures;
    - b. Depth that the culvert inlet and outlet would be embedded in the stream bottom, if applicable;
    - c. Elevation of the inlet and outlet of the existing culvert and proposed culverts, if applicable;
    - d. Plan-view, cross-section, and profile drawings of the proposed structure, that includes the stream dimensions
  3. Where the proposed work involves discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within 100-year floodplains (as identified on FEMA Flood Insurance Rate Maps or FEMA-approved local floodplain maps), provide documentation demonstrating that the proposed work complies with the appropriate FEMA or FEMA-approved state or local floodplain construction requirements.
  4. A copy of the proposed erosion control plans for the proposed project.
  5. A copy of any hydraulic analyses that were completed for proposed bridge or culvert crossings.

Form of PCN. The state/federal Joint Application Form for Activities Affecting Water Resources in Minnesota is the recommended form of the PCN. However, a letter or memorandum containing the required PCN information may also be used.

- b. **Non-Reporting Activities:** Projects that meet the terms and conditions of RGP-004-MN *and* do not require submittal of a PCN as outlined above under “Reporting Activities” are considered “non-reporting”. Non-reporting activities authorized by RGP-004-MN 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-004-MN. No PCN to the Corps is required; however, if requested, the Corps will confirm whether or not the proposed work is authorized by RGP-004-MN through the PCN process for reporting activities.

## **5. PCN Evaluation Process.**

- a. Timing. Upon receipt of a PCN, the Corps will determine if the PCN is complete within 30 calendar days of receipt. If incomplete, the Corps will notify the applicant requesting the information required to initiate the review process. As a general rule, the Corps will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information within 30 days of the date of the Corps written request, then the Corps will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the Corps.
- b. PCN Review and Processing. Upon receipt of a complete PCN, the Corps will initiate the permit review process to determine if the proposed activity complies with the terms and conditions of RGP-004-MN. The Corps will either notify the prospective permittee that: (1) the activity is authorized under RGP-004-MN; or, (2) that the proposed activity is not eligible for authorization under RGP-004-MN and will be reviewed under our individual permit procedures.
- c. Decision on the PCN. The prospective permittee shall not begin the activity until he or she is notified in writing by the Corps that the activity may proceed under RGP-004-MN, along with any special conditions imposed by the Corps.

- 6. **Jurisdictional Determinations.** A jurisdictional determination (JD) is a written determination made by the Corps that a wetland or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. 1344). The Corps issues two types of JDs: approved and preliminary. An approved JD is an official Corps determination that jurisdictional waters of the United States are either present or absent on a particular site. An approved JD identifies the limits of those waters on the project site determined to be jurisdictional under the Clean Water Act and may be appealed through the Corps administrative appeal process. Preliminary JDs are non-binding written indications that there may be waters of the United States, including wetlands, on a parcel or indications of the location(s) of waters of the United States or wetlands on a parcel. Preliminary JDs are advisory in nature and may not be appealed.

A landowner, permit applicant, or other “affected party” can request and obtain an approved JD prior to, or concurrent with, submission of a PCN under this RGP. He or she can also decline to request an approved JD, and instead obtain a Corps general permit authorization based on a preliminary JD. As a matter of practice, and for the purpose of expediting the permit review, the Corps will prepare a preliminary JD for all PCNs reviewed under this RGP unless the prospective permittee specifically requests an approved JD.

For a complete list of navigable waters of the United States in Minnesota that are regulated under Section 10 of the Rivers and Harbors Act of 1899, please refer to:

[http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/mn\\_nav\\_waters.pdf](http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/mn_nav_waters.pdf).

## 7. **Permit Conditions.**

- a. **Standard Conditions.** The activities authorized by RGP-004-MN are subject to the following Standard Conditions, unless otherwise noted.
  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-004-MN based on concern for the aquatic environment or for any other factor of the public interest.
  2. *Sequencing.* Discharges of dredged or fill material into waters of the United States must be avoided and minimized to the maximum extent practicable.
  3. *Compensatory Mitigation.* When necessary, compensatory mitigation will be required to reduce adverse effects of a project (either temporary or permanent) to the minimal level. The Corps will determine appropriate compensatory mitigation requirements on a case-by-case basis, and in accordance with Federal guidelines and established District Policy, in order to ensure that the activity results in minimal adverse effects on the aquatic environment. In general, compensatory mitigation will be required for projects that require a PCN. Compensatory mitigation requirements provided to offset losses of aquatic resources must comply with the application provisions of 33 CFR 332.

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

Use of Corps-approved mitigation banks and in-lieu fee programs are the preferred methods for providing compensatory mitigation if the mitigation site meets the sequencing requirements of the Federal mitigation rule (33 CFR 332). In cases where a Corps-approved bank is proposed to be used, a statement of intent to use the bank provided in the PCN is generally sufficient. Permittees who wish to pursue project-specific mitigation must submit a mitigation plan with their PCN, prepared in accordance with 33 CFR 332 and the *St. Paul District Policy for Wetland Compensatory Mitigation in Minnesota (January 2009)*, or the most current St. Paul District mitigation policy. Compensatory mitigation required by other Federal or state programs may, but will not necessarily, satisfy the compensatory mitigation requirement under the Clean Water Act. The Corps must approve any compensatory mitigation proposal before the permittee commences work.

4. *Decision.* In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by RGP-004-MN will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps will consider any proposed compensatory mitigation the applicant has included in the proposal

in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the Corps determines that the activity complies with the terms and conditions of RGP-004-MN and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the Corps will notify the permittee and include any conditions the Corps deems necessary. When compensatory mitigation is required, the verification letter will include a condition requiring that the mitigation be provided by a specific date. No discharges of dredged or fill material shall occur in waters of the United States until the Corps has approved the mitigation plan.

If the Corps determines that the adverse effects of the proposed work are more than minimal, then the Corps will notify the applicant either: (1) That the project does not qualify for authorization under RGP-004-MN and instruct the applicant regarding the procedures to seek authorization under an individual permit; (2) that the project is authorized under RGP-004-MN subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under RGP-004-MN with specific modifications or conditions.

5. *Use of Multiple General Permits.* An activity can be authorized by more than one general permit, if the activity is a single and complete project that will result in no more than minimal adverse environmental effects, and will satisfy the terms and conditions of the applicable general permits. The total acreage of loss of waters of the U.S. authorized by the general permits cannot exceed the acreage limit of the general permit with the highest specified acreage limit. For example, the reconstruction of an existing public road system could be authorized under RGP-004-MN, with associated "new construction" such as a new frontage road authorized under another existing and active general permit (such as Activity L of RGP-003-MN), as long as the permanent aquatic resource impact acreage for the new frontage road does not exceed the threshold of that general permit (i.e. RGP-003-MN, Activity L's threshold is 0.5 acre), and the total permanent aquatic resource impact acreage for the single and complete project doesn't exceed 3 acres.
6. *Aquatic Life Movements.* No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
7. *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.
8. *Migratory Bird Breeding Areas.* Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
9. *Suitable Fill Material.* No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). All fill material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

10. *Source of Fill Material.* Rock or fill material used for activities authorized by this permit must be either 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.
11. *Adverse Effects From Impoundments.* If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
12. *Management of Water Flows.* To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, or cause the relocation of water, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment or as necessary to protect the public road systems (e.g., stream relocation activities).
13. *Culvert Restrictions for Tributaries.* Bankfull flows shall be accommodated through maintenance of the existing bankfull cross-sectional area; the width of the baseflow culverts shall match the bankfull width and cross-section. Where practicable, the upstream and downstream invert of culverts (except bottomless culverts) installed in tributaries shall be buried/embedded to allow natural substrate to colonize the structure's bottom and fish movement.
14. *Proper Maintenance.* Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety, and maintenance to ensure compliance with applicable standard conditions, as well as any special conditions added by the Corps to a RGP-004-MN authorization.
15. *Soil Erosion and Sediment Controls.* Appropriate soil erosion and sediment 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.

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. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

16. *Temporary Impacts.* All appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials and be placed in a manner that will not be eroded by expected high flows. Temporary fills and structures are allowed to remain in place for up to three months. Upon request, the Corps may

extend this period where appropriate, and will provide written notification regarding this decision to the applicant. At the end of the specified timeframe, temporary fills must be removed in their entirety, and the affected areas restored. All wetlands temporarily impacted as a result of the authorized impacts shall be restored to preconstruction contours and elevations, and re-seeded with a native seed mix, where appropriate. Information on appropriate seed mixes can be found at [http://www.bwsr.state.mn.us/native\\_vegetation/index.html](http://www.bwsr.state.mn.us/native_vegetation/index.html).

17. *Fills Within 100-Year Floodplains.* The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
18. *Equipment.* Heavy equipment working in wetlands or mudflats 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. To the extent practicable and appropriate, measures should be taken to control and minimize the spread of invasive species via equipment transfer.
19. *Historic Properties and Cultural Resources.*
  - i. In cases where the Corps determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
  - ii. Federal agencies or federally-designated representatives should follow their own procedures for complying with the requirements of Section 106 of the NHPA. Federal permittees must provide the Corps with the appropriate documentation to demonstrate compliance with those requirements. The Corps will review the documentation and determine whether it is sufficient to address section 106 compliance for the activity, or whether additional section 106 consultation is necessary.
  - iii. Non-federal permittees must submit a pre-construction notification to the Corps if the authorized activity may have the potential to cause effects to any historic properties listed in, determined to be eligible for listing in, or potentially eligible for listing in the National Register of Historic Places, including previously unidentified properties. The pre-construction notification must state which historic properties may be affected by the proposed work and include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the Minnesota State Historic Preservation Office at 651-259-3450 or their web page at <http://www.mnhs.org/shpo/> and the Minnesota National Register of Historic Places web page at <http://nrhp.mnhs.org/>. When reviewing pre-construction notifications, the Corps will comply with the current procedures for addressing the requirements of Section 106 of the NHPA and will determine whether the proposed activity has the potential to cause an effect to historic properties. The Corps will notify the non-Federal applicant whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the Corps either that the

activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

- iv. Prospective permittees should be aware that Section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking affects historic properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.
20. *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.
  21. *Discovery of Previously Unknown Remains and Artifacts.* If any previously unknown historic, cultural or archeological remains and artifacts are discovered while accomplishing the activity authorized by this permit, the permittee must immediately notify the Corps of what was found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The Corps will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
  22. *Endangered Species.*
    - i. No activity is authorized by RGP-004-MN which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
    - ii. Federal agencies or federally-designated representatives should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the Corps with the appropriate documentation to demonstrate compliance with those requirements. The Corps will review the documentation and determine whether it is sufficient to address ESA compliance for the activity, or whether additional ESA consultation is necessary.
    - iii. Non-federal permittees must submit a pre-construction notification to the Corps if any listed species or designated critical habitat may be affected by the project and shall not begin work on the activity until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is authorized. The pre-construction notification must include the name(s) of the threatened or endangered species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work.

Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the Twin Cities Ecological Services Field Office of the U.S. Fish and Wildlife Service at 612-725-3548 or their web page at <http://www.fws.gov/midwest/TwinCities/>. When reviewing pre-construction notifications, the Corps will comply with the current procedures for addressing the requirements of the ESA and will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat. The Corps will notify the non-Federal applicant whether Section 7 consultation is required. In cases where the non-Federal applicant has identified listed species or critical habitat that may be affected by the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the activity will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.

- iv. Authorization of an activity by RGP-004-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, the ESA prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.
23. *Migratory Birds and Bald and Golden Eagles.* The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the Twin Cities Ecological Services Field Office (612-725-3548) of the U.S. Fish and Wildlife Service if the proposed project would disturb a bald eagle or a bald eagle nest, or to determine if a “take” permit is needed.
24. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information of Wild and Scenic Rivers may be obtained from the appropriate federal land management agency responsible for the designated Wild and Scenic River or study river (e.g. National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
25. *Water Quality.* 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.

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.

26. *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, if the project is in a Section 10 navigable water of the U.S., the U.S. Coast Guard at 1-800-424-8802.
  27. *Coastal Zone Management Consistency Determination.* The State of Minnesota has determined that the RGP-004-MN is consistent with the CZM program.
  28. *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.
  29. *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.
  30. *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-004-MN.
  31. *State Section 401 Water Quality Certification.* Placeholder for the Minnesota Pollution Control Agency's 401 certification for the RGP-004-MN.
  32. *Navigation.*
    - i. No activity may cause more than a minimal adverse effect on navigation.
    - ii. Any safety lights and signals prescribed by the United States Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
    - iii. 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 his 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, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
- b. Special Conditions. The Corps may impose additional conditions on a project authorized pursuant to RGP-004-MN that are determined necessary to avoid or minimize adverse effects on the environment to ensure that the project is not contrary to the public interest. Such conditions

will be specifically identified in any Corps confirmation letter. Failure to comply with all conditions and limitations of the authorization, including special conditions incorporated into the Corps confirmation letter, constitutes a permit violation and may subject the permittee to criminal, civil or administrative penalties, and appropriate environmental remediation (which could include restoration of the site to its pre-violation condition).

- 8. Duration of Authorization.** 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-004-MN ends upon the expiration date of this RGP-004-MN. Activities authorized under the RGP-004-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-004-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.
- 9. Further Information.**
- a. Congressional authorities: The permittee been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- b. Limits of this authorization:
- i. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law;
  - ii. This permit does not grant any property rights or exclusive privileges;
  - iii. This permit does not authorize any injury to the property or rights of others; and
  - iv. This permit does not authorize interference with any existing or proposed Federal project.
- c. Limits of federal liability: In issuing this permit, the Federal Government does not assume any liability for the following:
- i. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
  - ii. 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;
  - iii. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
  - iv. Design or construction deficiencies associated with the permitted work; or
  - v. Damage claims associated with any future modification, suspension, or revocation of this permit.
- d. Reliance on applicant's data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

- e. Reevaluation of permit decision: This office may reevaluate its decision for an individual authorization under this general permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- i. You fail to comply with the terms and conditions of this permit;
  - ii. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See d above); or
  - iii. 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 their permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and if the permittee fails to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.
- f. This office may also reevaluate its decision to issue RGP-004-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.

## 10. Definitions.

- a. Bankfull Stage: The bankfull stage corresponds to the discharge at which channel maintenance is the most effective, that is, the discharge at which moving sediment, forming or removing bars, forming or changing bends and meanders, and generally doing work that results in the average morphologic characteristics of channels. Bankfull discharge is associated with a momentary maximum flow which, on average, has a recurrence interval of 1.5 years as determined using a flood frequency analysis (Rosgen, D. (1996). *Applied River Morphology*).
- b. Conversion: 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.
- c. Discharges: The term “discharge” means any discharge of dredged or fill material, permanent or temporary.
- d. 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.

- e. Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).
- f. Perennial Tributary: A perennial watercourse has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is typically the primary source of water for stream flow and runoff from rainfall is a supplemental source of flow. A perennial watercourse is shown on U.S. Geological Survey topographic maps as a solid blue line.
- g. Permanent Impacts: Impacts that result in an enduring change to functions of waters of the United States. Permanent impacts include those that result in a permanent loss of waters or a decrease in certain functions of waters of the United States as a result of: (1) the direct effects of the discharge; and (2) the indirect effects of the discharge including excavation, drainage or permanent conversion of wetland plant community types. For example, conversion of a forested or shrub swamp wetland to an herbaceous wetland in a permanently maintained right-of-way (and associated with a discharge of dredged or fill material) would be considered a permanent impact.
- h. Practicable: Available and capable of being done after taking into consideration cost, existing technology and logistics in light of the overall project purpose.
- i. Pre-construction Notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by RGP-004-MN. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of the RGP-004-MN. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by RGP-004-MN; the time required to evaluate an activity where reporting is not required will be the same as if evaluating a project that requires a PCN.
- j. Section 10: Refers to Section 10 of the Rivers and Harbors Act of 1899. This act regulates structures or work in, over or under navigable waters of the United States (except as otherwise provided in 33 CFR Section 322.4), and structures or work outside the limits of navigable waters of the United States if these structures or work affect the course, location, or condition of the waterbody in such a manner as to impact its navigable capacity (33 CFR 322.3).
- k. Single and Complete Project: The term “single and complete project” for the purposes of RGP-004-MN is the total project proposed. A single and complete project must have independent utility (see definition of “independent utility”), connect logical termini, and must not restrict consideration of alternatives for other reasonably foreseeable projects. For example, if construction of a linear road project affects several different areas of waters/wetlands, the cumulative total of impacted waters of the U.S. is the basis for deciding the project's total aquatic resource impact. For "phased" projects, 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. Single and complete non-linear projects may not be “piecemealed” to avoid the limits in this General Permit authorization.

Individual culvert and bridge replacements are considered single and complete projects under this General Permit, unless they are a smaller component of a larger project, such as a road reconstruction, that includes other impacts to waters of the U.S.

- i. Temporary Impacts: Impacts that result in a temporary loss of function(s) of waters of the United States as a result of a regulated discharge. The loss of function is considered temporary when the affected area will be restored to preconstruction contours, elevations, and vegetative cover within a specified timeframe after the impact occurs. Examples of temporary impacts include temporary fills (i.e. cofferdams, topsoil storage, work pads, timber mats, temporary access roads, etc.) and temporary structures (i.e. docks, bridges, etc). A conversion of wetland type associated with a discharge of dredged or fill material (i.e. conversion of shrub swamp to herbaceous wetland) would be considered temporary if the wetland is restored to preconstruction contours and elevations and the same plant community type is re-established.
- m. Tributary: A channel that has definable beds and banks capable of conducting confined runoff, and has an ordinary high water mark.
- n. Wetland: The term wetland means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

## 11. References.

- a. *Joint Application Form for Activities Affecting Water Resources in Minnesota* (February 2014)  
<http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RegulatoryDocs/MN%20joint%20app%20form%202-18-14-fillable.docx>
- b. *St. Paul District Policy for Wetland Compensatory Mitigation in Minnesota* (January 2009)  
<http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/MN-Special/Final%20St.%20Paul%20District%20Policy%20for%20Wetland%20Compensatory%20Mitigation%20in%20MNs.pdf>
- c. *Guidelines for Submittal of Delineation Reports to the St. Paul District Army Corps of Engineers and Wetland Conservation Act Local Government Units in Minnesota, Version 2.0* (March 4, 2015)  
<http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/Special%20Notices/Minnesota%20Special%20Public%20Notice%20-%20203-4-2015.pdf>
- d. *Local Minnesota Local Road Authority Reference Guide to U.S. Army Corps of Engineers (Corps) Clean Water Act Section 404 & Rivers and Harbors Act Section 10 Permits* (February 1, 2014)  
<http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/section404-section10-permit-reference-guide.pdf>
- e. RGP-004-MN Supplemental Guidance: Application Guidance for Road Projects (including calculating impacts and determining compensatory mitigation requirements for road projects – upcoming companion document that is in progress)