US Army Corps of Engineers
St Paul District

Public Notice

ISSUED: October 28, 2015
EXPIRES: October 27, 2020

ISSUANCE OF REGIONAL GENERAL PERMIT RGP-004-MN IN THE STATE OF MINNESOTA EXCEPT FOR WITHIN THE EXTERIOR BOUNDARIES OF INDIAN RESERVATIONS

REFER TO: MVP-2015-00490

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1. PURPOSE AND BACKGROUND

The purpose of this notice is to announce the issuance of regional general permit RGP-004-MN for public road authorities in the State of Minnesota.

RGP-04-MN is intended to streamline the review of permit applications for a limited range of public road projects in Minnesota, 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.

A draft version of the general permit was noticed on April 13, 2015, for a 30-day public comment period. We received eight letters in response to the public notice and considered these comments, where applicable, in the further development and refinement of RGP-004-MN. The final version of RGP-004-MN has several notable changes from the version attached to the April 2015 public notice. A brief summary of these changes is provided below.

1. Section II (*Authorized Activities*) – Language was added to make it clear that "maintenance" of existing public road systems is included in the list of authorized activities, which was our original intent.

2. Section II.A (*Impact Thresholds*) – Language was added to thresholds 2 and 3 clarifying the types of aquatic resources that count towards each impact threshold.

3. Section II.B (*Examples of Eligible Activities*) – This section was reformatted and language was added to several of the examples clarifying the intended scope of RGP-004-MN. The following activities were added to the example list of eligible activities: replacement of an intersection with an interchange, conversion of a two-lane highway to a four-lane highway, construction of frontage roads to accommodate consolidation of highway access points, and the construction of stormwater ponds, filtration basins, infiltration basins, or other water quality treatment or rate control ponds or basins associated with impervious surfaces generated by a road project.

4. Section III.C – This exclusion was modified and no longer excludes discharges for the construction of frontage roads.

5. Section III.H – This exclusion was modified to exclude discharges for the construction or routine maintenance of stormwater ponds, filtration basins, infiltration basins, or other water

quality treatment or rate control ponds or basins that result in permanent impacts to greater than 0.5 acre of waters of the United States, including fill, excavation, inundation, drainage, or removal of accumulated sediments. Additional language was added to clarify that permanent impacts to wetlands located in roadside ditches, as described in Section II.A.3 of RGP-004-MN, are not counted toward this 0.5 acre limitation and that this 0.5 acre limitation is not in addition to RGP-004-MN's 3-acre permanent impact threshold.

6. Section IV.A.3 – Language was added to this reporting requirement clarifying the types of culvert projects that require submittal of a PCN. The term "bankfull cross-section area" has been replaced with "bankfull width" to provide consistency throughout RGP-004-MN and with the Minnesota Department of Natural Resource's public waters permit program.

7. Section IV.A.4 – A reporting requirement was added to clarify that discharges associated with culvert and bridge crossings that act as existing water level control structures require submittal of a PCN.

8. Section IV.C (*Pre-Construction Notification*) – This section was reformatted and language has been added to several of the PCN items clarifying the requirements.

9. Section IV.C.1 – This PCN item was modified to require specific contact information for the prospective permittee and any third party agent that may be authorized to act on behalf of the prospective permittee.

10. Section IV.C.3 and 4 – These PCN items were separated.

11. Section IV.C.6 and 7 – These PCN items were separated and language was added to PCN item 6 clarifying how aquatic resources and aquatic resource impact areas should be identified on project plans.

12. Section IV.C.8 – Language was added to this PCN item describing the sequencing analysis that needs to be provided for projects that propose to impact a water of the United States for the construction of stormwater ponds or other water quality treatment or rate control ponds or basins, as described in Section II of RGP-004-MN.

13. Section IV.C.11 – Language was added to this PCN item describing the required information that non-federal permittees need to submit for projects that might affect the northern long-eared bat.

14. Section VII (*Permit Conditions*) – Several of the general conditions included in the draft version of the general permit were modified to clarify the intended scope of RGP-004-MN. The following general conditions were removed from RGP-004-MN: *Use of Multiple General Permits* and *Source of Fill Material*. The *Compliance* general condition was added.

15. Section VII.A.2 (*Sequencing*) – A reference providing additional information on avoidance and minimization was added to this general condition.

16. Section VII.A.11 (*Culvert and Bridge Restrictions for Tributaries*) – This general condition was modified to reflect use of the term "bankfull width" and to be more consistent with the Minnesota Department of Natural Resource public waters permit program.

17. Section VII.A.13 (*Soil Erosion and Sediment Controls*) –Two references providing additional information on state-approved, published practices, were added to this general condition.

18. Section VII.A.29 (*State Section 401 Water Quality Certification*) – The Minnesota Pollution Control Agency issued a water quality certification for RGP-004-MN on October 21, 2015. Permittees must comply with all conditions of the water quality certification as stated in this general condition. A copy of the certification is attached to RGP-004-MN.

19. Section X (*Definitions*) – Several of the terms included in the draft version of the general permit were modified to provide additional explanation or, where appropriate, reflect recent guidance.

20. Section X.A (*Bankfull Width*) – This definition was modified from 'bankfull stage" to "bankfull width" and the recurrence interval for "bankfull discharge" was changed to 1.5 to 2 years.

21. Section X.E (*Ordinary High Water Mark*) – This definition was modified to reflect recent Corps guidance.

22. Section X.I (*Roadside Ditch*) – Language was added to this definition clarifying the basic purpose of roadside ditches subject to the threshold in Section II.A.3 of RGP-004-MN.

23. Section X.M (*Tributary*) – This definition was modified to reflect recent Corps guidance.

24. Section XI (*Reference Materials*) – Several references were added to this list of reference documents for prospective permittees as a result of the revisions to the permit.

2. APPLICATION PROCEDURES

Prospective permittees seeking authorization for the activities described in RGP-004-MN must follow the notification procedures in Section IV and Section V of the general permit and submit the required information to the appropriate Corps office. Pre-construction notifications should be sent to the Regulatory office covering the county where the proposed project is located. Pre-construction notifications sent directly to the St. Paul office will be forwarded to the appropriate office for processing. Prospective permittees may visit the Corps website at http://www.mvp.usace.army.mil/Missions/Regulatory.aspx to obtain contact information for a specific county.

3. ADDITIONAL INFORMATION

RGP-004-MN may be viewed on the District Internet web site at:
http://www.mvp.usace.army.mil/Missions/Regulatory/PermittingProcessProcedures.aspx.

Operations - Regulatory (MVP-2015-00490)

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: All Public Road Authorities in Minnesota

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

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

Issuance Date: October 28, 2015

Expiration Date: October 27, 2020

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)

I. Project Location: RGP-004-MN is eligible for use in waters of the United States[1] (including navigable waters of the United States[2]) within the State of Minnesota.

II. 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 maintenance, 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:

1. Permanent impacts to waters of the United States shall not exceed 3.0 acres.

2. Permanent impacts to a natural tributary, relocated natural tributary, or a modified natural tributary at any single crossing or location shall not exceed 500 linear feet of the tributary channel.

3. Permanent impacts to wetlands that are confined to the bed and banks of roadside ditches are not counted toward the permanent impact threshold, provided the ditch does not drain a wetland.

4. Temporary impacts to waters of the United States are not counted towards the impact thresholds, but must be 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 and work in navigable waters of the United States for the following activities:

[1] 33 CFR 328.3
[2] "Navigable waters of the United States" means those waters regulated under Section 10 of the Rivers and Harbors Act.

1. Infrastructure, geometric, safety, and capacity improvements such as road widening, lane addition, shoulder improvements, replacement of an intersection with an interchange, conversion of a two-lane highway to a four-lane highway, construction of frontage roads to accommodate consolidation of highway access points, etc.

2. 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.

3. The repair, rehabilitation, reconstruction, or replacement of existing culverts and bridges, including culverts or bridges that act as existing water level control structures (see Exclusion G in Section III).

4. The maintenance, reconstruction, 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 in Section III).

5. The placement of new or additional riprap, to the minimum extent necessary, to protect the roadway or ensure the safety of culvert and bridge structures.

6. The removal of accumulated sediments and debris along roadways and in the vicinity of culverts and bridges, to the minimum extent necessary, to restore the waterway to previously authorized dimensions.

7. The construction and routine maintenance of stormwater ponds, filtration basins, infiltration basins, or other water quality treatment or rate control ponds or basins associated with impervious surfaces generated by a road project (see Exclusion H in Section III).

8. The placement of temporary structures or fills, including the installation of stormwater best management practices (BMPs) and other work necessary to construct the public road system project (see General Condition 14 in Section VII).

Specific activities not listed above that are associated with the maintenance, reconstruction, expansion, modification, or improvement of existing public road systems may be eligible for authorization under RGP-004-MN at the discretion of the Corps.

C. *Calculating Impacts to Determine Eligibility and Reporting Requirements for RGP-004-MN*: 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 area of 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. In addition to area, tributary impacts must also be calculated in linear feet. This calculation should be based on the reach of tributary subject to construction activities, regardless of whether the activity is occurring on one or both shorelines.

III. 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 light 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://dnr.state.mn.us/publications/waters/index.html.

C. Discharges for the construction of new roads and associated infrastructure.

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, such as realignment of a highway around a city.

F. Discharges for the construction or repair of "stand-alone" trails that have independent utility and are not directly associated with the maintenance, reconstruction, expansion, modification, or improvement of an existing public road system, such as snowmobile, ATV, and other recreational trails, regardless of their proximity to a roadway.

G. Discharges for culvert or bridge crossings that would serve as new water level control structures, such as structures intended to impound water in addition to providing a road crossing.

H. Discharges for the construction or routine maintenance of stormwater ponds, filtration basins, infiltration basins, or other water quality treatment or rate control ponds or basins that result in permanent impacts to greater than 0.5 acre of waters of the United States, including fill, excavation, inundation, drainage, or removal of accumulated sediments. NOTE: Permanent impacts to wetlands located in roadside ditches, as described in Section II.A.3., are not counted toward this 0.5 acre limitation. Furthermore, this 0.5 acre limitation is not in addition to RGP-004-MN's 3-acre permanent impact threshold.

IV. 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:

1. The project's permanent impacts to waters of the United States would exceed 0.1 acre.

2. The project's temporary impacts to waters of the United States would exceed 0.5 acre[3].

[3] Note: As with all of the RGP-004-MN General Conditions, the terms of General Condition 14 (*Temporary Impacts*) apply regardless of whether or not the project is reporting or non-reporting.

3. The project involves discharges for culvert work (repair, rehabilitation, reconstruction, or replacement) that would result in lowering the culvert's inverts, decreasing the cross-sectional area of the culvert, or increasing the cross-sectional area of the culvert beyond the tributary's bankfull width. This reporting requirement does not apply to culvert projects that are permitted by the MnDNR.

4. The project involves discharges for the repair, rehabilitation, reconstruction, or replacement of culvert or bridge crossings that act as existing water level control structures.

5. The project involves work conducted in, over, or under navigable waters of the United States (see Section VI).[4]

6. The project might 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 General Condition 17 in Section VII).

7. The project might affect any federally-listed threatened or endangered species or designated critical habitat (see General Condition 20 in Section VII).

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.

C. Pre-Construction Notification: Where required by the terms of RGP-004-MN outlined above under "Reporting Activities", 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 review through use of our individual permit procedures (see General Condition 1 in Section VII).

The state/federal Joint Application Form for Activities Affecting Water Resources in Minnesota is the recommended form of the PCN. However, a letter containing the required information may also be used. The PCN must be submitted prior to beginning the proposed activity, and as far in advance of the proposed work as possible. In general, the level of detail provided in the PCN should be commensurate with the scope and degree of adverse effects to waters of the United States and the complexity of the project. A complete PCN must consist of the following information:

[4] "Navigable waters of the United States" means those waters regulated under Section 10 of the Rivers and Harbors Act.

1. Name and address of the prospective permittee (typically the agency or government unit), and the name, email and telephone number of the point of contact with the agency. If a third party agent is used, the name, address, email and telephone number of the agent must be provided, as well as a signed statement by the agency point of contact authorizing the agent to act on behalf of the prospective permittee.

2. A large-scale and small-scale location map and description of the proposed project's location (i.e. section-township-range, including all sections the project would cross, and latitude and longitude in decimal degrees).

3. A complete description of the proposed project (including all project components and the project schedule), the project's purpose and need (e.g. based on ADTs, crash history, etc.), all impacts to waters of the United States (see PCN item 4 below), and any other adverse environmental impacts the project would cause. The description should also include any other nationwide permits, regional general permits, or individual 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.

4. A tabulation of all impacts to waters of the United States, both permanent and temporary, including the anticipated amount of loss of waters of the United States expected to result from the proposed activity. Impacts to all waters of the United States must be reported in area (acres or square feet). In addition to area, tributary impacts must also be reported in linear feet. See the impact table in the state/federal Joint Application Form for Activities Affecting Water Resources in Minnesota, or the most current application form, for more information on how to report impacts; a link to this document is provided in Section XI.

5. 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) Clean Water Act Section 404 and Rivers and Harbors Act Section 10 Permits* for additional information on determining the level of delineation required for your project). Delineation reports must be prepared in accordance with the current St. Paul District guidance for the completion and submittal of delineation reports in the St. Paul District (a link is provided in Section XI). Please note that prospective permittees do not have to re-submit delineation reports that have already been provided to the Corps.

6. Drawings/plans depicting delineated aquatic resources and aquatic resource impact areas, including plan-view drawings on a recent aerial photograph, cross-section drawings, and, where appropriate, profile drawings. Aquatic resources shall be identified by type (e.g. wetland, tributary, etc.) and impacts shall be identified by type and permanence (e.g. fill, excavation, etc.; permanent or temporary).

7. If not included in the material submitted for PCN item 6, provide a copy of the applicable construction plan sheets showing the work proposed in waters of the United States.

8. A detailed discussion of how aquatic resource impacts were avoided and minimized, including through on-site project configurations, from the initial phase of project planning to the project plan that is currently being proposed. For projects that propose impacting a water(s) of the United States for the construction of stormwater ponds or other water quality treatment or rate control ponds or basins as described in Section II, an analysis pertaining to the method and siting of the stormwater ponds proposed for the project must be provided in the PCN. The analysis must clearly demonstrate the need for the proposed stormwater pond or basin, the area being served by the proposed stormwater pond or basin, and why upland locations, alternative methods, or other less environmentally damaging alternatives are not practicable.

9. For projects that propose temporary fills and structures in waters of the United States, a description or plan documenting how all of the proposed 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.

10. For an activity that might 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 known historic properties that might 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 (or whose project otherwise involves a lead federal agency that is not the Corps) must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act. See General Condition 17 in Section VII for additional information.

11. If any federally-listed species or designated critical habitat might be affected by the project, non-federal applicants must include in the PCN the name(s) of those threatened or endangered species or the designated critical habitat that might 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 that have federal funding (or whose project otherwise involves a lead federal agency that is not the Corps) must provide documentation demonstrating compliance with the Endangered Species Act. See General Condition 20 in Section VII for additional information. Additionally, the following PCN requirements are specific to the northern long-eared bat (NLEB) and only apply to non-federal applicants:

    a. For projects that would involve removal of trees in or adjacent to proposed aquatic resource impact areas during the roosting period (April 1 to September 30) of the NLEB, where the trees have a diameter at breast height (dbh) of at least 3 inches and are located within 1,000 feet of a contiguous forested area 15 acres or greater in extent:

        (1) A map or plan sheet showing the locations where trees would be removed.

(2) The acreage of the tree removal area.
(3) The approximate size (dbh) of trees to be removed.
(4) The time period when the trees would be removed.

b. For projects that would involve bridge demolition work in or adjacent to proposed aquatic resource impact areas that would be initiated during the roosting period (April 1 to September 30) of the NLEB, where the bridge sites are located within 1,000 feet of a contiguous forested area 15 acres or greater in extent and have evidence of bat activity:

(1) The timing of the proposed bridge work.
(2) Photographs of the underside of the bridge and whether or not any evidence of bat activity was found.[5]

12. For projects that propose a tributary crossing(s):

a. Type and dimensions of the existing and proposed structures.
b. Depth that the culvert inlet and outlet would be recessed into the tributary bottom, if applicable.
c. Inlet and outlet elevations of the existing and proposed culverts, if applicable.
d. Plan-view, cross-section, and profile drawings of the proposed structure that include the tributary dimensions.

13. A statement describing how the aquatic resource functions lost as a result of the proposed project would be replaced through compensatory mitigation (see General Condition 3 in Section VII), or otherwise explaining why compensatory mitigation should not be required.

In addition to PCN items 1 through 13, prospective permittees may be required to provide the following items in their PCN on a case-by-case basis. 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.

14. 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 applicable FEMA-approved state or local floodplain management requirements.

15. A description of the erosion control BMPs that would be used or, if available, a copy of the erosion control plans for the proposed project.

16. A copy of any hydraulic analyses that were completed for proposed culvert or bridge crossings.

[5] See Reference G in Section XI, *Range-Wide Biological Assessment for Transportation Projects for Indiana Bat and Northern Long-Eared Bat, Appendix B: Bridge Inspection Guidance.*

V. 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 prospective permittee 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 either be reviewed for eligibility under another general permit or through our individual permit procedures, which include letters of permission and standard permits.

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.

VI. 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) and Section 10 of the Rivers and Harbors Act (33 U.S.C. 403). 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 or navigable 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 or Rivers and Harbors Act and may be appealed through the Corps administrative appeal process. Preliminary JDs are non-binding written indications that there may be navigable waters of the United States or waters of the United States, including wetlands, on a parcel or indications of the location(s) of navigable waters of the United States and 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, submittal 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/Missions/Regulatory.aspx.

VII. Permit Conditions:

A. General Conditions: The activities authorized by RGP-004-MN are subject to the following General 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 (i.e. letter of permission or standard permit) for 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. See the *Minnesota Local Road Authority Reference Guide to U.S. Army Corps of Engineers (Corps) Clean Water Act Section 404 and Rivers and Harbors Act Section 10 Permits* for additional information on avoidance and minimization, including an example list (not exhaustive) of design features that could be used to minimize impacts to waters of the United States.

3. *Compensatory Mitigation*: When necessary, compensatory mitigation will be required to reduce the 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 Corps 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 applicable 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 permittee-responsible 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 or the project does not otherwise meet the terms and conditions of RGP-004-MN, 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 another general permit or an individual permit; (2) that the project is authorized under RGP-004-MN subject to the applicant's submittal 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. *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, or impede rough fish movement or aquatic invasive species movement. 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.

6. *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.

7. *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.

8. *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).

9. *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.

10. *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.

11. *Culvert and Bridge Restrictions for Tributaries*: Replacement of culverts or crossings are to follow (or be restored to) the natural alignment and profile of the tributary. The culvert(s) or bridges must accommodate the natural bankfull width, and where practicable, a single culvert or bridge shall span the natural bankfull width adequate to allow for debris and sediment transport rates to closely resemble those of upstream and downstream conditions. Where practicable, a single culvert shall be recessed in order to pass bedload and sediment load, and if used, additional culvert inverts shall be set at a higher elevation.

12. *Proper Maintenance*: Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety, and maintenance to ensure compliance with applicable general conditions, as well as any special conditions added by the Corps to a RGP-004-MN authorization.

13. *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 shall be done in accordance with state-approved, published practices, such as the Minnesota Pollution Control Agency's "*Stormwater Best Management Practices – Protecting Water Quality in Urban Areas"* and the "*Minnesota Stormwater Manual*".

    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. Where practicable, permittees shall perform work within waters of the United States during periods of low-flow or no-flow.

14. *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.

15. *Fills Within 100-Year Floodplains:* The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

16. *Equipment:* Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. Equipment shall be clean and free of greases, oils, fuels, and sediments, prior to working within aquatic habitats. To the extent practicable and appropriate, measures shall be taken to control and minimize the spread of invasive species via equipment transfer.

17. *Historic Properties and Cultural Resources:*

    a. 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.

    b. Federal permittees or permittees with federal funding (or whose project otherwise involves a lead federal agency that is not the Corps) should follow their own procedures for complying with the requirements of Section 106 of the NHPA. For those projects requiring submittal of a PCN, 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.

    c. Non-federal permittees must submit a PCN 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 PCN 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 PCNs, 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.

d. 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.

18. *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, or affect Indian lands or protected tribal resources.

19. *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.

20. *Endangered Species*:

    a. 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.

    b. Federal permittees or permittees with federal funding (or whose project otherwise involves a lead federal agency that is not the Corps) should follow their own procedures for complying with the requirements of the ESA. For those projects requiring submittal of a PCN, 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.

    c. Non-federal permittees must submit a PCN to the Corps if any listed species or designated critical habitat might 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 PCN must include the name(s) of the threatened or endangered species that might be affected by the proposed work or the designated critical habitat that might 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/endangered/lists/minnesot-spp.html. When reviewing PCNs, 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 might 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.

Non-federal permittees are also encouraged to use the Information for Planning and Conservation (IPaC) web page at https://ecos.fws.gov/ipac/. IPaC can be used as an additional tool to identify federally-listed threatened or endangered species or designated critical habitat that might be affected by a proposed project. The information generated in IPaC can also be sent to the U.S. Fish and Wildlife Service as a first step in the process of requesting their technical assistance.

d. Authorization of an activity by RGP-004-MN does not authorize the "take" of a threatened or endangered species as defined under the ESA. "Take" is prohibited even if it is incidental to an otherwise lawful activity. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion issued to a federal agency 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.

21. *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.

22. *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).

23. *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.

24. *Spill Contingency Plan:* A contingency plan must be formulated that would be effective in the event of a spill. This requirement is particularly applicable in operations involving the handling of petroleum products. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, to minimize any contamination resulting from this spill, and to immediately notify the 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.

25. *Coastal Zone Management Consistency Determination:* The Corps has determined that RGP-004-MN is consistent with Minnesota's Lake Superior Coastal Program.

26. *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.

27. *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.

28. *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.

29. *State Section 401 Water Quality Certification:* The Minnesota Pollution Control Agency issued a water quality certification for RGP-004-MN on October 21, 2015.

Permittees must comply with all conditions of the water quality certification. A copy of the certification is attached to this permit.

30. *Navigation*:

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

    b. 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.

    c. 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.

31. *Compliance:* The permittee is responsible for ensuring that whoever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of, is familiar with, and complies with all the terms and conditions of RGP-004-MN and any special conditions included on the written verification letter from the Corps.

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 verification letter. Failure to comply with all conditions and limitations of the authorization, including special conditions incorporated into the Corps verification 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).

VIII. Duration of Authorization: Unless otherwise specified in the Corps 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.

IX. Further Information:

A. Congressional authorities: The permittee has 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:

1. RGP-004-MN does not obviate the need to obtain other federal, state, or local authorizations required by law;

2. RGP-004-MN does not grant any property rights or exclusive privileges;

3. RGP-004-MN does not authorize any injury to the property or rights of others; and

4. RGP-004-MN 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:

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

2. 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;

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

4. Design or construction deficiencies associated with the permitted work; or

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

D. Reliance on permittee's data: The determination of 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.

E. Reevaluation of decision: This office may reevaluate its decision for an individual verification under this general permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

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

2. The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate (See D above); or

3. Significant new information surfaces which this office did not consider in reaching the original 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.

X. Definitions:

A. Bankfull Width: The bankfull width is the cross-sectional width of the channel at the 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 to 2 years as determined using a flood frequency analysis (modified from 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 tributary 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: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a 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.

F. 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, inundation, 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.

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

H. 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.

I. Roadside Ditch: A defined channel constructed adjacent to a road to convey runoff from the road and from areas which drain toward the road.

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 Unites 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.

L. 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 water that contributes flow, either directly or through another water to a traditionally navigable water or interstate water (including wetlands) and that is characterized by the presence of the physical indicators or a bed and banks and ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if, for any length, there are one or more constructed breaks (such as bridges, culverts, pipes, or dams), or one or more natural breaks (such as wetlands along the run of a stream, debris piles, boulder fields, or a stream that flows underground) so long as a bed and banks and an ordinary high water mark can be identified upstream of the break. A water that otherwise qualifies as a tributary under this definition does not lose its status as a tributary if it contributes flow through a water of the United States that does not meet the definition of tributary or through a non-jurisdictional water to a traditionally navigable water or interstate water.

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.

XI. Reference Materials:

A. *Joint Application Form for Activities Affecting Water Resources in Minnesota* (February 2014)
http://www.mvp.usace.army.mil/Missions/Regulatory.aspx

B. *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/Missions/Regulatory.aspx

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/Missions/Regulatory.aspx

D. *St. Paul District Policy for Wetland Compensatory Mitigation in Minnesota* (January 2009)
http://www.mvp.usace.army.mil/Missions/Regulatory.aspx

E. *Minnesota Stormwater Manual,* Minnesota Pollution Control Agency,
http://www.pca.state.mn.us/index.php?option=com_k2&view=item&id=993

F. *Stormwater Best Management Practices – Protecting Water Quality in Urban Areas,* Minnesota Pollution Control Agency,
http://www.pca.state.mn.us/index.php?option=com_k2&view=item&id=728

G. *Range-Wide Biological Assessment for Transportation Projects for Indiana Bat and Northern Long-Eared Bat, Appendix B: Bridge Inspection Guidance* (April 17, 2015). Federal Highway Administration and Federal Railroad Administration. Pages 121-129.
http://www.fws.gov/midwest/endangered/section7/fhwa/index.html

H. *User's Guide for the Range-wide Programmatic Informal Consultation for Indiana Bat and Northern Long-eared Bat, Version 1.1* (June 4, 2015). Federal Highway Administration, Federal Railroad Administration, and U.S. Fish and Wildlife Service.
http://www.fws.gov/midwest/endangered/section7/fhwa/index.html

Minnesota Pollution Control Agency

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October 21, 2015

Ms. Tamara Cameron
U.S. Army Corps of Engineers
Branch Chief
Regulatory Branch, St. Paul District
180 Fifth Street East, Suite 700
Saint Paul, MN 55101-1678

RE: Regional General Permit: RGP-004-MN – MPCA 401 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 U.S.C. § 1251, et seq.), Minn. Stat. chs. 115 and 116 and Minn. R. 7001.1400-7001.1470, 7050, 7052, and 7053. The MPCA has examined the information furnished by the United States Army Corps of Engineers (USACE) about the proposed Regional General Permit (RGP-004-MN), and bases its certification decision upon this and other such information relevant to water quality considerations.

The proposed RGP-004-MN, which would be valid for five years, would authorize the discharge of dredged and fill material into waters of the United States for certain activities associated with public road projects in Minnesota.

The MPCA certifies the referenced general permit (RGP-004-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, provided that the permittees comply with the following conditions:

1. Before any land disturbance at the site, the permittee must ensure that all aquatic resources (wetlands, lakes, or streams) in the vicinity of the construction area that are not authorized to be impacted by the project are clearly identified. This may be done through demarcation of those resources on plan sheets or through typical methods of marking boundaries in the field, for example construction staking or the use of silt fences along boundaries. This condition does not apply to projects that impact less than 0.5 acres of wetlands.
2. The permittee must install, to the extent practical and feasible, in-water Best Management Practices (BMPs) to minimize turbidity and/or sedimentation for any work conducted below the ordinary high water level (OHWL) of any surface water. This includes lakes, streams, intermittent streams, rivers, wetlands, or ditches within which water is standing or flowing at the time that the permittee is performing the authorized work.

   The permittee must document the in-water BMPs that will be used during the authorized work prior to beginning any land disturbance at the site; this documentation may be stand-alone or part of an Erosion Control Plan, Construction Plan, or other relevant construction document. BMPs must be properly installed before conducting the authorized in-water activities and must be maintained throughout the duration of the project's in-water work.

While conducting the authorized work, the permittee must visually monitor the BMPs to ensure that the BMPs are working as intended to reduce turbidity and/or sedimentation. If the project causes an observable increase in turbidity and/or sedimentation outside and/or downstream of the defined working area (the area authorized to be filled/impacted by the project), then any malfunctioning BMPs must be repaired, or alternative BMPs must be implemented. This certification does not authorize the violation of applicable water quality standards outside and/or downstream of the defined work area.

Information on the types of BMPs that may be suitable for in-water work can be found in the Minnesota Department of Natural Resources Manual titled *Best Practices for Meeting DNR General Public Waters Work Permit GP 2004*-0001, located at: http://www.dnr.state.mn.us/waters/watermgmt_section/pwpermits/gp_2004_0001_manual.html.

3. The permittee must ensure that any authorized dewatering activities do not violate the applicable state water quality standards. The permittee must use BMPs that minimize turbidity and/or sedimentation by removing solids in the water before discharging the water into the waterbody. The permittee must document the in-water BMPs prior to beginning any dewatering; this documentation may be stand-alone or part of an Erosion Control Plan, Construction Plan, or other relevant construction document. The permittee must ensure that the BMPs are properly installed before conducting the authorized activities and are maintained throughout the duration of the dewatering work.

4. Bridge maintenance, construction, or demolition activities: In addition to following all other applicable certification conditions, permittees conducting authorized activities that involve bridge maintenance, construction, or demolition must comply with the following conditions:
   a. Prohibited activities: The permittee may not conduct bridge demolition activities that use explosive devices to implode or collapse a bridge, or any portion of a bridge, into a river or stream, including intermittent streams.
   b. During any painting, cleaning, or restoration of bridges, the permittee must use best management practices, for example curtains or other reliable containment methods designed to prevent the discharge of paint, chemicals, grouting or other contaminants to any waters. BMPs must be properly installed before conducting the authorized activities and must be maintained throughout the duration of the project's painting, cleaning, or restoration of bridges.
   c. Any riprap placed in water must be clean and reasonably free from soil, fines, and contain no refuse.
   d. The permittee may not use broken concrete from any existing bridge (defined as demolition debris in Minn. R. 7035.0300, Subp. 30) as riprap bank protection unless: a) it is crushed to the size appropriate for rip rap application; b) all steel reinforcement bars and asphalt have been removed; and c) it does not contain contaminants of concern (see Minn. R. 7035.2860, Subp. 4).
   e. If the permittee plans to place riprap grouted with concrete under a bridge for permanent stabilization, then plywood sheeting, sheet piling, sand bags, or other suitable material must be placed at the base of the riprap prior to conducting the grouting activity to ensure no uncured cement will reach the waterbody. The material must remain in place until all concrete grouting has cured.

5. Impaired waters: It is the permittee's responsibility to ensure that the authorized activities do not exacerbate any existing impairments of a CWA 303 (d) listed (impaired) 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/lupg1125 and http://www.pca.state.mn.us/mvri1126.
6. The permittee must provide: 1) a copy of this certification; 2) documentation of any required BMPs under conditions 2, 3, and 4b; and 3) any written demarcation of aquatic resources under condition 1; to any prime contractor responsible for completing the project's authorized activities. The permittee must also ensure that there is a mechanism in place requiring the prime contractor to provide the same information to any subcontractors responsible for completing the project's authorized activities. In addition, copies of these documents and any other relevant regulatory authorizations related to aquatic resource impacts must be available at or near the project site for use by contractors or staff responsible for completing the project work and must be available within 72 hours when requested by any agency staff.

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. This action does not exempt the RGP-004-MN permittee from the responsibility of complying with all applicable local, state, and federal requirements, including any required MPCA authorizations not specifically identified in the certification, nor does it grant any right to violate personal or property rights. This certification includes and incorporates by reference the general conditions of Minn. R. 7001.0150, subp. 3.

NOTIFICATIONS: The following notifications are not conditions of the MPCA CWA 401 Certification of RGP-004-MN. They 1) provide information on some water quality concerns and 2) notify the public and prospective permittees that certain discharges in waters, or activities associated with discharges into waters, are also regulated under other rules administered by the MPCA:

1. Chloride from winter road salt impacts water quality. MPCA encourages public road authorities pursuing projects under the general permit to consider the use of BMPs to reduce the use of chloride. General information about chloride and water quality, including the Draft Twin Cities Metropolitan Area Chloride Management Plan, can be found at http://www.pca.state.mn.us/r0pgb86.
2. The permittee must ensure that any asbestos, lead paint, or lead plates on existing bridges authorized to be demolished is removed and disposed of in accordance with MPCA rules and regulations.
3. Minnesota Rules (Minn. R. chs. 7001 and 7090) require certain projects to obtain a National Pollutant Discharge Elimination System Permit (NPDES)/State Disposal System (SDS) General Stormwater Permit. The permittee is responsible for applying to the MPCA for any required construction stormwater permit, obtaining said permit prior to commencing any construction activities, and for complying with its conditions during construction.

   An NPDES/SDS permit is required for any construction activity that disturbs one acre or more of soil or activities that disturb a lesser amount of soil but are part of a larger common plan of development. Minn. R. 7090.2040 also requires the owner of a construction activity to complete a Stormwater Pollution Prevention Plan (SWPPP) prior to submitting the permit application. Further information can be found at: http://www.pca.state.mn.us/wfhya5b.
4. It is the permittee's responsibility to fully comply with all MPCA rules governing waters of the State (Minn. R. ch. 7050). This includes MPCA rules governing wetlands (Minn. R. 7050.0185, Subp. 9 and

Minn. R. 7050.0186), which require a permittee or project owner to provide compensatory mitigation for a project's unavoidable permanent impacts to wetlands, including those that are not subject to Federal jurisdiction under Section 404 of the Clean Water Act. The permittee is responsible for complying with these rules. For more information, see the MPCA's fact sheet titled *Minnesota Water Quality Standards: Physical Alterations to Wetlands* at: http://www.pca.state.mn.us/index.php/view-document.html?gid=7253.

5. This certification does not replace or satisfy any environmental review requirements, including those under the Minnesota Environmental Policy Act (MEPA) or the National Environmental Policy Act (NEPA). In accordance with MEPA, Minn. Stat. § 116D.04, subd. 2b, and related rules, projects that are required to complete an Environmental Assessment Worksheet (EAW) or an Environmental Impact Statement (EIS) may not be started until:
   - A petition for an EAW is dismissed
   - A negative declaration on the need for an EIS has been made
   - An EIS has been determined to be adequate
   - A variance has been granted by the state Environmental Quality Board

   The permittee must verify that any environmental review required by law is complete for state certification of the project to be valid.

If you have any questions on this certification please contact me at 651-757-2607.

Sincerely,

Cat Neuschler

Catherine Neuschler
Supervisor, Agency Rules Unit
Environment and Energy Section
Resource Management and Assistance Division

CN:je

cc: Chad Konickson, USACE
Sarah Wingert, USACE
Ben Orne, USACE
Peter Swenson, EPA
Wendy Melgin, EPA