

## DEPARTMENT OF THE ARMY PERMIT

**Permittee:** Cranberry Marsh Operations Established Prior to 31 December 2004.

**Permit No.:** GP-014-WI

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

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

You are authorized to perform work in accordance with the terms and conditions specified below.

### **Project Description:**

Work for the following specified activities:

1. Expansion of existing cranberry beds.
2. "Squaring-off" of existing cranberry beds.
3. Construction of new cranberry beds adjacent to existing beds, (i.e., separated by a dike or ditch from existing beds)
4. Rehabilitation of abandoned beds (clearing, leveling, etc.) that does not fall under the 404(f) exemption of the Clean Water Act.
5. Construction of a dike for subdivision of an existing reservoir that does not fall under the 404(f) exemption of the Clean Water Act.
6. Construction/extension of dikes for reservoir expansion.
7. Construction of new water control structures.

### **Project Location:**

The project worksites are located in various waters of the United States within the State of Wisconsin, except those listed under Special Condition 4, below.

### **How to Apply:**

A. *Applicants must submit a completed joint application form to the Corps and to the Wisconsin Department of Natural Resources (WDNR) with additional pages, as needed, to include.*

1. Description of existing operation: acreage of cranberry beds, area of reservoir, etc.
2. Water source and receiving water for the operation; reservoir capacity and percentage of water recycled in a typical year.
3. Top view drawing (scale no less than 1 inch = 1000 feet), of entire existing operation (beds, dikes, ditches, roads, reservoir), proposed work, and property boundaries. Please show direction of water flow.
4. Describe other alternatives that were considered. Explain why they were not chosen. Growers who own or operate more than one marsh must include information about the other site(s).
5. Amount and type of fill material to be discharged and location of borrow area.

6. Area and type of wetlands affected by the proposed work. If more than one type of wetlands is affected, give acres in each category.
7. Names and addresses of adjacent property owners.
8. Mitigation plan to offset wetland values and functions lost due to cranberry bed and dike construction:
  - a. Top view plans or maps of the mitigation area to scale (1 inch = 100 feet with 2-foot contours) and typical cross-sections of any ponds, excavated areas, or diked areas. Describe existing vegetation.
  - b. State to within one-tenth of an acre the area of upland proposed to be converted to wetlands the area of degraded wetlands to be restored, and/or the amount of existing wetland that would be enhanced.
  - c. Information on any plantings or management practices proposed to improve water quality functions or wildlife habitat at the mitigation site.
  - d. State what wetland functions and values are goals of the restoration, enhancement or creation.
  - e. Plans for long-term management/ownership and 5-year monitoring plan of the mitigation area. Management shall meet the Corps' mitigation guidelines, which include control of invasive species such as purple loosestrife (*Lythrum salicaria*), reed canary grass (*Phalaris arundinacea*), and glossy buckthorn (*Rhamnus frangula*) should it appear within the mitigation site. Control of these species shall be removal by hand or use of an approved herbicide.
  - f. If the Corps does not believe that on-site mitigation is practicable, cost effective, or replaces the lost functions and values of the impacted wetlands, then the applicant has the option of purchasing credits from an approved commercial mitigation bank. Debit ratios will be established by the Corps, based on floristic province, drainage area, wetland type, and proximity to an established bank site.

*B. Complete the following section only if creation or change in design/capacity of reservoir is proposed.*

1. A map showing the area that would be flooded in relation to adjoining property lines (1 inch = 100 feet with 2-foot contours).
2. Type and amount of material to be used to construct the dam.
3. Control structure, type and size.
4. Description of emergency spillway.
5. Existing and proposed water depth in wetlands to be flooded (percent area at different depths); reservoir sideslopes. Illustrate with cross-sectional drawings if depth varies.
6. Nearest existing dams upstream and downstream from the site.
7. Description of benchmark to which elevations of dam and water levels have been referred.

**Water Quality Certification - Compliance With State Water Quality Standards:** (section 401 of the Clean Water Act and Chapter NR 103, Wisconsin Administrative Code):

Within 60 days of receipt of the information listed above, WDNR will notify the applicant and the Corps whether the project meets Section 401 state water quality standards. WDNR will determine if:

- A. there are no practicable alternatives to the project as proposed;
- B. the project will not result in significant adverse impacts to wetland functions and values, and;
- C. the proposed project complies with state water quality certification requirements.

NOTE: if additional information is needed, or if heavy snow or ice cover at the site prevents WDNR from completing its review, the 60 day time limit may be extended.

The U.S. Environmental Protection Agency has denied Section 401 Water Quality Certification for utilization of this general permit on Indian Reservations within the State of Wisconsin.

### **Coordination With Other Agencies:**

Within five days of receipt of a completed application, the Corps will forward a copy of the application materials to the U.S. Environmental Protection Agency, Region 5, Chicago (EPA); the U.S. Fish and Wildlife Service, Green Bay Field Office (FWS); the National Park Service, St. Croix National Scenic Riverway, and to the Wisconsin State Historic Preservation Officer (SHPO). Each will have 30 days within which to provide comments in accordance with coordination agreements signed between the Corps and each agency.

Within five days of receipt of a completed application, a copy of the application materials will be provided to the Bureau of Indian Affairs, Ashland Office (BIA); the Great Lakes Indian Fish and Wildlife Commission (GLIFWC).

Further, to ensure that tribes receive actual notice of each activity proposed for authorization under GP-014-WI, the Corps will send a copy of the application materials to each tribe within the State of Wisconsin. The tribes will have 30 days from the date the application is sent to them to review the proposed cranberry development and submit to the Corps any comments concerning the effect of the project on tribal resources.

### **Permit Conditions:**

#### **A. General Conditions:**

1. This general permit expires on December 31, 2013. The time limit for completing the work authorized ends three years from the date of your confirmation letter. 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 30 days prior to that date.
2. You must maintain the activity authorized by this permit 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 request to make a good faith transfer to a third party by submitting a written request to this office. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
4. You must allow representatives from this office and WDNR to inspect the authorized activity at any time during normal business hours to ensure that it is being or has been accomplished in accordance with the terms and conditions of this permit.
5. Construction practices shall include appropriate measures to minimize erosion, sedimentation, and turbidity, including, but not limited to: stabilization of exposed soils; mulching, use of filter fabric fencing; diversion berms

and bales; settling basins; and riprapping of steep slopes. These erosion control measures shall be consistent with the following WDNR technical standards for erosion control, and/or the following NRCS technical standards for erosion control:

WDNR-Channel erosion mat, Technical Standard 1053

Mulching for construction sites, Technical Standard 1058

Seeding for construction site erosion control, Technical Standard 1059

These technical standards can be found at the following link.

<http://dnr.wi.gov/org/water/wm/nps/stormwater/techstds.htm>

NRCS-Critical area planting, Technical Standard 342

Streambank and shoreline protection, Technical Standard 580

These technical standards can be found at the following link.

<http://efotg.nrcs.usda.gov/references/pulic/WI/342.pdf> and [580.pdf](http://efotg.nrcs.usda.gov/references/pulic/WI/580.pdf)

6. Construction may not occur during fish spawning periods or at times when fish nursery sites would be adversely impacted. You must contact the WDNR Water Management Specialist for a determination.

7. This permit is not valid unless you have obtained all other required permits or approvals from other LOCAL, STATE, and FEDERAL jurisdictions.

**B. Special Conditions:**

1. This general permit applies only to established cranberry operations, with each operation considered a separate site. An operation is defined as a group of (usually) contiguous beds and the water storage and handling system that serves them, all of which are managed as a unit.

2. Total acreage of disturbance (including areas flooded, or excavated by reservoir expansion) shall not exceed 10 acres of waters of the U.S., including wetlands.

3. The cumulative total of 10 acres will be measured over the 5-year period that this general permit is valid and includes any acreage disturbed under any nationwide general permit or any authorization issued by the St Paul District to replace nationwide general permits, such as GP-002-WI, and LOP-06-WI, during the same time period.

4. This general permit does not authorize any work in the following waters of the U.S.:

a. Calcareous fens.

b. Waters of the U.S. within the Natural and Scientific Areas.

c. Class I, II and III trout streams identified in WDNR publication 6-3600(80) titled Wisconsin Trout Streams, including wetlands within 1,000 feet of the centerline of the stream.

d. Trout lakes, including wetlands within 1,000 feet of the lake's edge.

e. State or Federal Wild and Scenic Rivers, including wetlands within 1,000 feet of the ordinary high watermark (OHWM) of the river.

f. Wetlands and other waters of the U.S. located within 1,000 feet of FWS refuges and FWS waterfowl production areas.

5. If a project would impact waters or wetlands adjacent to waters listed as impaired on the approved Wisconsin 303(d) list, the Corps will consult with EPA about special concerns and/or precautions that are applicable at that site.

6. Reservoir dikes and embankments shall have side slopes 3H: 1V or flatter.

7. Excess excavated material not used for construction shall be removed to an upland site, and not stockpiled in waters or wetlands.

8. The authorized work will not result in a net loss of wetland acreage. Compensatory mitigation will be used to offset losses.

The permittee shall assume all liability for accomplishing corrective work should the District Engineer determine that the compensatory mitigation has not been fully satisfactory. Remedial work may include, but is not limited to, regrading and/or replanting of the mitigation site. This responsibility shall extend for a period of five years beginning upon the completion of the mitigation work. If remedial work is necessary, the five-year monitoring requirement would start with completion of this remediation.

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

10. No activity is authorized under the general permit that is likely to adversely affect a federally-listed threatened or endangered species, or a species proposed for such designation, as identified under the Endangered Species Act (ESA) of 1973, as amended; or, which is likely to result in the destruction or adverse modification of critical habitat for such species; or, which would result in a "take of any listed species of fish or wildlife; or, which would result in any other violation of Section 9 of the ESA, including those provisions that protect listed species of plants.

11. No activity or its operation authorized under the general permit may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing, hunting, and gathering rights.

12. This general permit does not authorize any activities other than those listed under Project Description, above; the discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas is not authorized.

13. The Corps retains discretionary authority to require an individual permit review of any activity eligible for authorization under GP-014-WI based on concern for the aquatic environment for any other public interest factor.

Further Information:

A. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

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

(x) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

B. Limits of this Authorization.

1. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.

2. This permit does not grant any property rights or exclusive privileges.

3. This permit does not authorize any injury to the property or rights of others.

4. 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:

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.
5. 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 relies on the information you provided.

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

1. You fail to comply with the terms and conditions of this general permit.
2. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See D, above).
3. Significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of the permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and upon failure to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.

F. This office may also reevaluate its decision to issue General Permit 014-WI at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following: significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7.

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

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

  
Jon Christensen  
Colonel, Corps of Engineers  
District Engineer

Dec 10, 2008  
(date)