



US Army Corps
of Engineers®
St. Paul District

Public Notice

20 December 2017

NEW REGIONAL GENERAL PERMITS IN THE STATES OF MINNESOTA AND WISCONSIN, AND FEDERALLY-RECOGNIZED AMERICAN INDIAN RESERVATIONS

Authorities:
Section 404 Clean Water Act and
Section 10 Rivers and Harbors Act

2017-03310	Beach Creation & Nourishment	2017-02361	Transportation
2017-02362	Beach Raking	2017-02360	Utilities
2017-03309	Minor Discharges	2017-03314	Wildlife Ponds
2017-03312	Piers and Docks		

This notice announces seven regional general permits (RGPs) for use in Minnesota, Wisconsin, and within the exterior boundaries of Federally-recognized American Indian reservations. The seven RGPs will be available to authorize regulated activities which meet the terms and conditions of the RGP beginning on February 17, 2018. Regulated activities are described in each RGP pursuant to Section 404 of the Clean Water Act (Section 404) and Section 10 of the Rivers and Harbors Act.

The effective date of the RGPs has been established to allow the appropriate Section 401, Clean Water Act authorities 60 days to process their decisions to issue, deny, or waive Water Quality Certification (Section 401) for Section 404 regulated activities indicated in each RGP. Upon the effective date of the RGPs, we will publish the RGPs with any Section 401 conditions added to Section H of each RGP as appropriate. More information on Section 401 is provided below.

BACKGROUND AND RESPONSE TO COMMENTS

The RGPs provide streamlined authorization for regulated activities in waters of the United States (US) generally ineligible for nationwide permit (NWP) authorization. The RGPs are for regulated activities determined to result in no more than minor individual and cumulative adverse environmental effects.

On October 13, 2017, draft versions of eight RGPs were published to solicit public comments. We received several letters in response to the public notice and considered these comments prior to issuance of the final RGPs attached to this notice. One RGP was not pursued further, and the remaining seven RGPs have been modified in response to comments received, with the following notable changes implemented to all RGPs. Additional language was incorporated into Section C of all seven RGPs to clarify the term Special Area Management Plan (SAMP). Language was added to Section E (pre-construction notification, or PCN) and Section H (general conditions) of the RGPs to clarify when waivers are available and the information needed to request a waiver. A description of 'suitable material' was added as a general condition under Section H. A general condition was added to Section H to address the protection of burial sites and inadvertent discovery sites identified during regulated work.

In addition to the changes implemented across all seven RGPs, RGP-specific changes have been implemented in five of the RGPs attached. Please see enclosures A through G to review the full content of each RGP. A brief summary of these changes is provided below.

1. Previously Filled Navigable Waters RGP: This RGP was originally proposed to authorize regulated activities in navigable waters of the US previously converted to dry land (also referred to as "fast land"). The St. Paul District (Corps) determined that this RGP would be redundant with existing NWPs, and development of this RGP was discontinued.
2. Utilities RGP: Three additional restrictions about regulated activities for surveys were added to Section B.3 to clarify that these activities may not result in a loss of waters of the US, bore holes must be properly sealed, and regulated activities for the recovery of historic resources are not eligible for

authorization. A PCN requirement to report all overall projects with regulated losses at or in excess of 0.5 acre of waters of the US was added. The PCN requirement for regulated activities in excess of 500 linear feet as a single and complete project location was modified to exclude construction matting. Finally, the description of mechanized land clearing in Section E (PCN) was modified and a resource citation was added.

3. Transportation RGP: Railways and runways were added to the eligible activities described under Category 1 for Minor Maintenance activities. The activity restrictions for this category were re-organized to clarify that all dredged or excavated material must be deposited and retained in areas that are not a water of the US. The exemptions under the second footnote were modified to describe maintenance exemptions and drainage ditch maintenance exemptions. The PCN requirement for regulated work in bog and fens for Category 1 activities was removed. The tributary impact threshold for requesting a waiver for Category 2 (Modification) and Category 3 (New Construction) was changed from 300 linear feet to 500 linear feet. The 'overall project' definition was further clarified under Section I Definitions.
4. Piers and Docks RGP: The following portions of Section B.3 (Activity Restrictions) have been modified: the width restriction in B.3.b. has been increased to 8 feet, and waivers were incorporated for the width (B.3.b.), terminal section (B.3.c), and discharge restrictions (B.3.d).
5. Wildlife Ponds RGP: Section B.3.g was added to clarify that regulated activities which would result in the conversion of waters of the US to uplands is not authorized by the RGP. An additional exclusion was added to Section C to prohibit eligibility for wildlife ponds proposed near existing airports which do not meet the requirements of the Federal Aviation Administration's Advisory Circular regarding wildlife hazards on or near airports (AC150/5200-33B).

The full text of each RGP has been attached to this notice as enclosures A through G, and incorporates all changes implemented as a result of the Corps October public notice.

Several comments were received which suggested changes which the Corps did not adopt. The major themes are as follows:

Several commenters objected to the proposed definition of single and complete linear project (SCLP), or indicated that they were not confident that adoption of the definition would result in authorization of activities which would be individually and cumulatively minor in adverse environmental effect. The definition of SCLP is used nationally, and was proposed in our draft RGPs for Utility and Transportation projects. In advance of developing our draft Utility and Transportation RGPs, the Corps evaluated data from the last four years, and determined that approximately the same percentage of overall projects would be eligible for general permit review. The new definition of SCLP, in combination with other restrictions in the Utility and Transportation RGPs, would require individual permit review for projects with greater losses of waters of the US. The Corps has adopted the definition of SCLP because it is consistent with the national definition, will result in streamlined review of projects with minimal losses of waters of the US, and will increase scrutiny for projects with greater losses of waters of the US.

Several commenters requested more detail about compensatory mitigation requirements. While some additional information was added to Section F (Mitigation), specific information regarding compensatory mitigation is more appropriately located in the Corps mitigation policy, rather than the RGPs.

Finally, several comments were received which requested additional restrictions based on concerns for water quality. All RGP activities verified by the Corps pursuant to Section 404 require that permittees obtain Section 401 certification or waiver to be valid. The Section 401 certification process appropriately ensures compliance with state or tribal water quality standards. The Corps may add special conditions to any verification issued to ensure no more than minimal degradation of water quality.

WATER QUALITY CERTIFICATION

From the date of this public notice begins the 60-day period for the Wisconsin Department of Natural Resources, Minnesota Pollution Control Agency, Bad River Band of Lake Superior Chippewa, Lac du Flambeau Band of Lake Superior Chippewa, Fond du Lac Band of Lake Superior Chippewa, Grand Portage Band of Chippewa, Sokaogon Chippewa Community, and the United States Environmental Protection Agency to complete their Section 401 water quality certification processes. This 60-day period for WQC will end on February 17, 2018. If a Section 401 authority does not provide certification for a Section 404 RGP, the Corps will issue provisional verifications and the permittee will be directed to the appropriate authority to obtain a project-specific Section 401 certification or waiver. The Corps will issue a public notice to incorporate the finalized Section 401 conditions into the RGPs.

COASTAL MANAGEMENT PROGRAM CONSISTENCY CERTIFICATION

From the date of this public notice also begins the 60-day period for the Minnesota Department of Natural Resources' Coastal Program and the Wisconsin Department of Administration's Coastal Management Program to complete their Coastal Zone Management Act (CZMA) consistency determination processes. The 60-day period for CZMA consistency determinations will also end on February 17, 2018. The Corps will issue a public notice to announce the finalized CZMA determinations.

ADDITIONAL INFORMATION

Persons may obtain additional information by calling Rebecca Graser in our Brookfield, Wisconsin office at (651) 290-5728. Alternatively, Mrs. Graser may be contacted via email at rebecca.m.graser@usace.army.mil.

Chad Konickson
Chief, Regulatory Branch

Enclosures:

- A - Beach Creation and Nourishment RGP;
- B – Beach Raking RGP;
- C – Minor Discharges RGP;
- D – Piers and Docks RGP;
- E – Transportation RGP;
- F – Utility RGP; and
- G – Wildlife Ponds RGP.



US Army Corps
of Engineers®
St. Paul District

DEPARTMENT OF THE ARMY

BEACH CREATION AND NOURISHMENT REGIONAL GENERAL PERMIT

PERMIT: Beach Creation and Nourishment Regional General Permit

ISSUING OFFICE: St. Paul District U.S. Army Corps of Engineers

EFFECTIVE DATE: February 17, 2018

EXPIRATION DATE: February 16, 2023

A. AUTHORIZATION

Regulated activities conducted in accordance with the terms and conditions of the Beach Creation and Nourishment Regional General Permit (RGP or permit) are authorized in the States of Wisconsin and Minnesota and on Federally-recognized American Indian Reservations in Wisconsin and Minnesota. Certain regulated activities require an applicant to submit pre-construction notification (PCN) and receive written St. Paul District Corps of Engineers Regulatory Branch (Corps) verification prior to commencing work. Refer to the appropriate sections of this permit for a description of RGP procedures, eligible activities, conditions, exclusions and application instructions.

Unless otherwise specified in the Corps letter verifying a project complies with the terms and conditions of this RGP, the time limit for completing work authorized by the permit ends upon the expiration date of the RGP. Activities authorized under this RGP that have commenced construction or are under contract to commence construction in reliance upon this RGP, will remain authorized provided the activity is completed within 12 months of the date of the RGP expiration, suspension, or revocation; whichever is sooner.

Some RGP authorizations are not valid until a project proponent obtains a Clean Water Act Section 401 water quality certification (401 certification) or waiver from the appropriate water quality certifying agency; see general condition 24 in Section H below. Section 404, Clean Water Act regulated activities excluded from 401 certification in general condition 24 require a project-specific 401 certification or waiver from the appropriate agency. In addition, some RGP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This RGP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

B. BEACH CREATION AND NOURISHMENT REGIONAL GENERAL PERMIT APPLICABILITY

The Beach Creation and Nourishment RGP applies to certain activities in waters of the United States (US), including wetlands, as described below, in the States of Wisconsin and Minnesota, including within the exterior boundaries of Indian Reservations.

1. Authorities: Section 404 of the Clean Water Act (33 U.S.C. 1344, Section 404) for discharges of dredged and fill material into waters of the US, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, Section 10) for work and structures that are located in, under, or over any navigable water of the US. Activities subject to Section 404 and Section 10 authorization requirements are hereafter referred to as regulated activities.

2. Eligible Activities: Regulated activities associated with the placement of sand or pea gravel for the creation of new recreational beaches or nourishment of established beaches, including temporary impacts necessary to complete beach creation and nourishment. This RGP may not be used to authorize the installation of plant barriers or liners.

3. Activity Restrictions (the regulated activity must meet the following terms):

- a) Regulated beach creation activities may not exceed 50 feet parallel to the shoreline and 50 feet perpendicular to the shoreline.
- b) Regulated beach nourishment activities may not result in the loss of more than 300 linear feet of a tributary, unless otherwise authorized via a waiver in a Corps verification letter.

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- c) Regulated beach nourishment activities may not exceed 0.50 acre at established beaches. A written request to waive the 0.50 acre requirement may be submitted to the Corps for projects at public beaches. The Corps may waive the 0.50 acre threshold for public beaches if the Corps determines that the activity will result in no more than minimal adverse environmental effects.
- d) Sand and pea gravel blanket discharges may not exceed 6 inches in depth.
- e) Regulated activities may not occur in wetlands, unless the Corps waives this requirement by making a written determination concluding that the regulated activity will result in no more than minimal adverse environmental effects.

4. Pre-Construction Notification (PCN): All activities eligible for authorization by the Beach Creation and Nourishment RGP require submittal of a PCN and written Corps verification of coverage prior to starting work. Please refer to Section E, below, for additional information regarding PCN requirements.

C. BEACH CREATION AND NOURISHMENT REGIONAL GENERAL PERMIT EXCLUSIONS

The following activities are INELIGIBLE for Beach Creation and Nourishment RGP authorization:

1. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
2. Regulated activities eligible for authorization under a valid Corps Special Area Management plan (SAMP) general permit, see <http://www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures> for more information on SAMPs
3. Regulated activities that would occur in a calcareous fen.
4. Regulated activities that would occur in or affect designated portions of a National Wild and Scenic River, including parts of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin, or 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.
5. Regulated activities which are likely to directly or indirectly jeopardize the continued existence of a federally 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 regulated activity is authorized which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed.
6. Regulated activities which may result in disturbance or removal of human remains unless disposition of the remains has been determined by the appropriate authority under applicable laws, and the work is authorized by the Corps. See Section H, Condition 10 for more information.
7. Regulated activities which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, unless the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
8. Regulated activities which require permission from the Corps pursuant to 33 U.S.C. 408 (Section 408) because they will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues the Section 408 permission to alter, occupy, or use the Corps federally authorized civil works project.
9. Regulated activities which would adversely affect public water supplies.

D. CALCULATING IMPACTS TO WATERS OF THE UNITED STATES

1. **Waters of the US** may include waterbodies such as streams, rivers, lakes, ponds, and wetlands (see Definitions, Section I).
2. **Loss of waters of the US** is the sum of all permanently adversely affected jurisdictional waterbodies for a single and complete project. Temporary impacts to waters of the US, discussed below, are calculated separately from losses of waters of the US, and do not contribute to loss thresholds. Permanent adverse effects include filling, flooding, excavation, or drainage in waters of the US as a result of the regulated activity. Permanent adverse effects to waters of the US include regulated activities that change a waterbody to dry land, increase the bottom elevation of a waterbody, or decrease the bottom elevation of a waterbody (e.g. excavation of a sedge meadow wetland to shallow marsh), or change the use of a waterbody.
 - a) Losses of wetland must be reported in either acres or square feet, as appropriate.
 - b) Losses of tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks (e.g. bank stabilization along both banks of a tributary) or at multiple locations (e.g. construction of bridge abutments and piers), they are added together to determine the total amount of linear loss to waters of the US.
 - c) Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B, or in Pre-Construction Notification Information, Section E.
3. **Temporary impacts to waters of the US** include the sum of all regulated impacts to waters of the US for a single and complete project which are restored to pre-construction conditions after construction. Examples of temporary impacts in waters of the US include the placement of timber matting, installation of coffer dams, trenching and backfilling, and in many cases, mechanized land-clearing.
 - a) Temporary impacts to wetlands must be reported in either acres or square feet, as appropriate.
 - b) Temporary impacts to tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks or at multiple locations, temporary impacts must be added together to determine the total amount of temporary linear impact.
 - c) Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B, or in Pre-Construction Notification Information, Section E.
4. **Losses and temporary impacts to waters of the US do not include** activities that do not require Department of the Army authorization, such as activities eligible for exemptions under Section 404(f) of the Clean Water Act.
5. The measurements of loss and temporary impact to waters of the US are for determining whether a project may qualify for the RGP, and are not reduced by compensatory mitigation.

E. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

All Beach Creation and Nourishment RGP activities require PCN. The PCN must include all other nationwide permits, programmatic general permits, RGPs, or individual permits used or intended to be used to authorize any part of the overall project, including other regulated activities that require Corps authorization but do not require PCN. **Before starting regulated work, project proponents must obtain written Corps verification of Beach Creation and Nourishment RGP coverage for all activities.**

1. Timing of PCN: The prospective permittee must notify the Corps by submitting a PCN as early as possible. The Corps will determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. 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, then the

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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. The prospective permittee shall not begin the activity until they are notified in writing by the Corps that the activity may proceed under the RGP with any special conditions imposed by the Corps.

2. Form and Content of PCN: The PCN must be in writing and should utilize the Minnesota Joint Waters Wetlands Application, WI DNR application or the Corps standard individual permit application Form ENG 4345. A letter containing the required information may also be used. A complete PCN must include:

- a. Contact information including the name, mailing address, email address, and telephone numbers of the prospective permittee and any third party agents.
- b. Location of the proposed activity (i.e. section-township-range and latitude and longitude in decimal degrees).
- c. A description of the proposed activity and its purpose; a description of any avoidance and minimization mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any and all other general or individual permits used or intended to be used to authorize any part of the overall project, including activities that require Corps authorization but do not require PCN.
- d. A tabulation of all impacts to waters of the US, including the anticipated amount of loss and temporary impact to waters of the US expected to result from the proposed activity. Impacts to all waters of the US must be reported in acres or square feet. In addition, tributary, pond, and lake impacts must also be reported in linear feet. A table may be used to clearly and succinctly disclose this information (see Calculating Impacts to Water of the United States, Section D).
- e. Sketches, maps, drawings and plans must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale bar included, and depict all identified aquatic resources and aquatic resource impact areas, including plan-view drawings on a recent aerial photograph, and cross-section and profile drawings where appropriate.
- f. Identification of all aquatic resources on the project site and the acreage of each aquatic resource present. Aquatic resources shall be identified by type (e.g. wetland, tributary, lake, man-made ditch, pond, etc.) and impacts shall be identified by type (e.g. fill, excavation, etc.) and permanence (permanent or temporary). A wetland delineation may be required.
- g. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section F for more information.
- h. If the proposed project would impact a calcareous fen, the PCN must include a copy of the WI DNR authorization for the proposed regulated activity, or a copy of the approved MN DNR calcareous fen management plan specific to the project.
- i. If any federally-listed proposed, threatened or endangered species or proposed or designated critical habitat might be affected or is in the vicinity of the activity, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with ESA Section 7.
- j. If the activity might have the potential to cause effects to an historic property listed on, eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity and include a vicinity map indicating the location of the historic property. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with Section 106 of the NHPA.
- k. If an activity is proposed in a component of the National Wild and Scenic River System (including designated portions St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin) or in a river officially designated by

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Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river.”

- l. The PCN must specify how long temporary impacts and structures will remain in place and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- m. If a waiver from for a specific condition of the permit is proposed (e.g. for regulated activities within wetlands, general condition 13. Restoration of Temporary Impacts or 14. Duration of Temporary Impacts), the PCN must include an explanation of the need for a waiver(s) and why the applicant believes the impacts would result in no more than minimal individual and cumulative adverse environmental effects.
- n. For an activity that requires permission from the Corps pursuant to Section 408 because it will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, the PCN must include a statement confirming if the project proponent has submitted a written request for Section 408 permission from the Corps office having jurisdiction over the Corps civil works project.

F. MITIGATION

In accordance with the Federal Mitigation Rule (33 CFR part 332), the Section 404(b)(1) guidelines (40 CFR part 230), and current Corps policies and guidelines for compensatory mitigation, regulated activities must be designed and constructed to avoid and minimize (mitigate) adverse effects, both temporary and permanent, to waters of the US to the maximum extent practicable at the project site (i.e., on site). Mitigation includes actions which may avoid, minimize, rectify, reduce, or compensate for adverse environmental effects or activities which may otherwise be contrary to the public interest. Regulated activities which the Corps believes do not mitigate adverse environmental effects or are contrary to the public interest are ineligible for authorization by the Transportation RGP, and will be evaluated by the Corps using individual permit procedures.

After all practicable steps to avoid and minimize adverse effects to waters of the US have been considered, the Corps may require compensatory mitigation to ensure that the regulated activity results in no more than minimal adverse environmental effects, or will not be contrary to the public interest. In reviewing the complete PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps will issue the RGP verification for that activity if it meets the terms and conditions of the RGP, unless the Corps determines, after considering compensatory mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest. When this occurs, the Corps will exercise discretionary authority to require an individual permit evaluation for the proposed regulated activity.

Regulated activities eligible for this RGP which require submittal of a PCN must include a statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required for proposed impacts to waters of the US. Project proponents may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the project proponent must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of the current Corps policies, guidelines, and 33 CFR 332 (the Mitigation Rule).

Information regarding current Corps policies and guidelines about compensatory mitigation in Minnesota and Wisconsin may be viewed online at www.mvp.usace.army.mil/Missions/Regulatory/Mitigation. Information regarding existing banks and in-lieu fee programs is available online at www.ribits.usace.army.mil. Nationally applicable information, including the Mitigation Rule, may be read online at http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/.

G. USE OF MULTIPLE GENERAL PERMITS (STACKING)

Single and complete non-linear projects may not be “piecemealed” to avoid the limits in a general permit (nationwide, programmatic, or regional general permit) authorization. When general permit limits are exceeded, single and complete projects may be eligible for review and authorization by an individual permit.

Unless otherwise indicated by a specific general permit or general permit category, the use of more than one general permit (nationwide, programmatic, or regional general permit) for a single and complete project is prohibited, except when the acreage or linear foot loss of waters of the US authorized by the general permits does not exceed the loss limit of the general permit with the *highest* specified acreage limit.

H. GENERAL CONDITIONS

To qualify for Beach Creation and Nourishment RGP authorization, the prospective permittee must comply with the following conditions, as applicable, in addition to all applicable Beach Creation and Nourishment RGP terms and requirements and all project-specific conditions imposed by the Corps.

1. **Compliance:** The permittee is responsible for ensuring that whomever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP and any special (permit-specific) conditions included in any written verification letter from the Corps. The activity must also comply with any special conditions added by the state, tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the RGP. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the Corps to an RGP authorization.
2. **Compliance Certification:** Each permittee who receives an RGP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The Corps will provide the permittee the certification document with the RGP verification letter. The completed certification document must be submitted to the Corps within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.
3. **Site Inspection:** The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the RGP authorization.
4. **Migratory Birds and Bald and Golden Eagles:** The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service (FWS) to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
5. **Endangered Species:**
 - a. No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a federally threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), 50 CFR 402, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under the Beach Creation and Nourishment RGP which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed, and a Corps RGP verification letter is issued. Direct effects are the immediate effects on listed species and critical habitat caused by the RGP activity. Indirect effects are those

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effects on listed species and critical habitat that are caused by the RGP activity and are later in time, but still are reasonably certain to occur.

- b. As a result of formal or informal consultation with the FWS the Corps may add species-specific permit condition to the RGP verification.
 - c. Information on the location of federally threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS on their web page at www.fws.gov/ipac.
6. **Calcareous Fens:** The permittee may not complete regulated activities in a calcareous fen, unless the Wisconsin Department of Natural Resources has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.
7. **Wild and Scenic Rivers:** The permittee may not complete regulated activities which may affect or are located in a designated portions 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.
8. **Historic Properties, Cultural Resources:**
- a. No activity which may affect historic properties listed or potentially eligible for listing on the National Register of Historic Places is authorized until the requirements of Section 106 of the National Historic Preservation Act (Section 106) have been satisfied. Federal project proponents should follow their own procedures for complying with the requirements of Section 106 and provide documentation of compliance with those requirements.
 - b. Information on the location and existence of historic and cultural resources can be obtained from the State Historic Preservation Office, Tribal Historic Preservation Offices, and the National Register of Historic Places.
 - c. Rock or fill material used for activities authorized by this permit must either be obtained from existing quarries or, if a new borrow site is excavated to obtain fill material, the Corps must be notified prior to the use of the new site to determine whether a cultural resources survey of the site is necessary.
9. **Discovery of Previously Unknown Remains and Artifacts:** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the Corps of what you have 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.
10. **Burial Sites:** Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70 and Minnesota Statutes 306 and 307.08). Native American burial sites on federal or tribal land are subject to the provisions of Native American Graves Protection and Repatriation Act (NAGPRA). Regulated activities may not result in disturbance or removal of human remains until disposition of the remains has been determined by the appropriate authority under these laws, and the work is authorized by the Corps. Regulated activities which result in an inadvertent discovery of human remains must stop immediately, and the Corps, as well as the appropriate state and Tribal authority, must be notified. Regulated work at inadvertent discovery sites requires compliance with state law and NAGPRA, as appropriate, prior to re-starting work.
11. **Federally Authorized Corps Civil Works projects:** A permittee is not authorized to begin any regulated activities described in this RGP if activities will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues Section 408 permission to alter, occupy, or use the Corps civil works project (pursuant to 33 U.S.C. 408), and the Corps issues written a Beach Creation and Nourishment RGP verification. Examples of federal projects include but are not limited to works that were built by the Corps and are locally maintained (such as local flood control projects) or operated and maintained by the Corps (such as locks and dams).

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12. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
13. **Restoration of Temporary Impacts:** All temporary impacts in waters of the US, including discharges resulting from side casting material excavated from trenching, that occur as a result of the regulated activity must be fully contained with appropriate erosion control or containment methods, be restored to preconstruction contours and elevations, and revegetated with native, non-invasive vegetation. A project proponent may request, in writing, a waiver from this condition from the Corps. An acceptable reason for a waiver to this condition may include, but is not limited to, the Corps allowing natural restoration of the site when the resulting grade and existing seed bank are sufficient for the site to restore to pre-construction conditions. In temporarily excavated wetlands, the top 6 to 12 inches of the excavation should normally be backfilled with topsoil originating from the wetland. No temporary excavation area, including, but not limited to trenches, may be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect).
14. **Duration of Temporary Impacts:** Temporary impacts in waters of the U.S., including wetlands, must be avoided and limited to the smallest area and the shortest duration required to accomplish the project purpose.
 - a. Unless otherwise conditioned in a Corps RGP verification, temporary impacts may not remain in place longer than 90 days between May 15 and November 15. Before those 90 days have elapsed all temporary discharges must be removed in their entirety.
 - b. If the temporary impacts would remain in place for longer than 90 days between May 15 and November 15, the PCN must request a waiver from this condition and specify how long temporary impacts will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. The permittee must remove the temporary impacts in their entirety in accordance with the activity authorized their permit verification.
15. **Best Management Practices (BMPs):** To minimize adverse effects from soil loss and sediment transport that may occur as a result of the authorized work, appropriate best management practices (BMPs) shall be maintained and remain in place until the affected area is stabilized with vegetation or ground cover. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. BMPs shall be inspected and properly maintained following storm events to ensure they are operational. All exposed slopes and stream banks must be stabilized within 24 hours after completion of all tributary crossings.
16. **Culverts and Crossings:** Unless an RGP verification authorizes otherwise, replacement and installation of culverts or crossings authorized by a RGP are to follow (or be restored to) the natural alignment and profile of the tributary. The culverts or bridges must adequately pass low flow and bankfull events, bedload, sediment load, and provide site-appropriate fish and wildlife passage. Example design elements include recessing single culverts to accommodate natural bankfull width and adjusting additional culvert inverts at an elevation higher than the bankfull elevation.
17. **Aquatic Life Movements:** No regulated 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.
18. **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 sedimentation) of a designated or known spawning area are not authorized.
19. **Pollutant or Hazardous Waste Spills:** The permittee is responsible for removing pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with state and federal laws. In accordance with applicable state, tribal and federal laws and regulations, if a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or www.nrc.uscg.mil AND
 - IN WISCONSIN: the WI DNR Spills Team at 1-800-943-0003, or
 - IN MINNESOTA: the Minnesota State Duty Officer at 1-800-422-0798.

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20. **Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
21. **Navigation:** No activity may cause more than a minimal adverse effect on navigation. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the US. 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.
22. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
23. **Access Roads:** Access roads must be sized appropriately and must be constructed in such a way to minimize adverse effects on waters of the US and elevations must be as near as practicable to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). All access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows.
24. **Section 401 Clean Water Act Water Quality Certification:** forthcoming
25. **Transfer of Regional General Permit Verifications:** If the permittee sells the property associated with a regional general permit verification, the permittee may transfer the regional general permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the regional general permit verification must be attached to the letter, and the letter must contain the following statement and signature "When the structures or work authorized by this regional general permit are still in existence at the time the property is transferred, the terms and conditions of this regional general permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional general permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

I. DEFINITIONS

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term discharge of dredged material is defined at 33 CFR 323.2(d) and the term discharge of fill material is defined at 33 CFR 323.2(f).

Historic property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria (36 CFR part 60).

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Independent utility: A test to determine what constitutes a single and complete **non-linear** 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.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Navigable waters: Waters subject to Section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Ordinary high water mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

Overall project: The aggregate of all single and complete projects related to the same purpose, including both linear and non-linear activities with regulated losses and temporary impacts to waters of the US.

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

Pre-construction notification (PCN): A request submitted by the project proponent to the Corps for confirmation that a particular activity is verified by a general permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. PCN may be required by the terms and conditions of this regional general permit. A PCN may be voluntarily submitted in cases where PCN is not required and the project proponent wants verification that the activity is authorized by general permit.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the overall linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the US (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of this general permit authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately. The definition of "single and complete linear project" does not include the term "independent utility" because each crossing of waters of the US is needed for the single and complete linear project to fulfill its purpose of transporting people, goods, and services from the point of origin to the terminal point.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the overall project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility. Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an RGP authorization. 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.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

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Tribal lands: Any lands which are either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Tributary: For purposes of this RGP, 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 of bed and banks and ordinary high water mark. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches.

Waiver: An approval from the Corps which allows an applicant to exceed the activity restrictions or conditions described in an RGP. Waivers may only be considered when expressly indicated as available in an RGP and will only be granted once the Corps has made a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects. When a waiver is required, an applicant cannot start work until they have received a RGP verification letter with waiver approval.

Waterbody: For purposes of this RGP, a waterbody is a jurisdictional water of the US. Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

J. FURTHER INFORMATION

1. 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).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by an RGP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this authorization:
 - a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
 - b. This RGP does not grant any property rights or exclusive privileges;
 - c. This RGP does not authorize any injury to the property or rights of others; and
 - d. This RGP does not authorize interference with any existing or proposed federal project.
4. Limits of federal liability: In issuing this permit, the Federal Government does not assume liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
 - d. Design or construction deficiencies associated with the permitted work; or
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
5. 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.
6. Re-evaluation 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:
 - a. The permittee fails to comply with the terms and conditions of this permit;
 - b. The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate (See 5 above); or
 - c. 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

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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.

7. This office may also reevaluate its decision to issue this Beach Creation and Nourishment RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, 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.

K. CORPS DECISION

In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific RGP, the Corps should issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the US to determine whether they individually satisfy the terms and conditions of the RGPs, as well as the cumulative effects caused by all of the crossings authorized by RGP.

If an applicant requests a waiver for any limit where waivers are indicated as available, the Corps will only grant the waiver upon a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects. When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the RGP activity. The Corps will also consider the cumulative adverse environmental effects caused by activities authorized by the RGP and whether those cumulative adverse environmental effects are no more than minimal. The Corps will consider site specific factors, such as the environmental setting in the vicinity of the RGP activity, the type of resource that will be affected by the RGP activity, the functions provided by the aquatic resources that will be affected by the RGP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the RGP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the Corps. The Corps may add case-specific special conditions to the RGP authorization to address site-specific environmental concerns.

The Corps will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal to inform decisions regarding whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the Corps determines that the activity complies with the terms and conditions of the RGP and that the adverse environmental effects are no more than minimal, after considering mitigation, the Corps will notify the permittee and include any activity specific conditions in the RGP verification the Corps deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). When compensatory mitigation is required, the Corps must approve the final mitigation plan before the permittee commences work in waters of the US, unless the Corps determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant of next steps as described in 33 CFR 325.



US Army Corps
of Engineers®
St. Paul District

DEPARTMENT OF THE ARMY

BEACH RAKING REGIONAL GENERAL PERMIT

PERMIT: Beach Raking Regional General Permit

ISSUING OFFICE: St. Paul District U.S. Army Corps of Engineers

EFFECTIVE DATE: February 17, 2018

EXPIRATION DATE: February 16, 2023

A. AUTHORIZATION

Regulated activities conducted in accordance with the terms and conditions of the Beach Raking Regional General Permit (RGP or permit) are authorized in the States of Wisconsin and Minnesota and on Federally-recognized American Indian Reservations in Wisconsin and Minnesota. Certain regulated activities require an applicant to submit pre-construction notification (PCN) and receive written St. Paul District Corps of Engineers Regulatory Branch (Corps) verification prior to commencing work. Refer to the appropriate sections of this permit for a description of RGP procedures, eligible activities, conditions, exclusions and application instructions.

Unless otherwise specified in the Corps letter verifying a project complies with the terms and conditions of this RGP, the time limit for completing work authorized by the permit ends upon the expiration date of the RGP. Activities authorized under this RGP that have commenced construction or are under contract to commence construction in reliance upon this RGP, will remain authorized provided the activity is completed within 12 months of the date of the RGP expiration, suspension, or revocation; whichever is sooner.

Some RGP authorizations are not valid until a project proponent obtains a Clean Water Act Section 401 water quality certification (401 certification) or waiver from the appropriate water quality certifying agency; see general condition 20 in Section H below. Section 404, Clean Water Act regulated activities excluded from 401 certification in general condition 20 require a project-specific 401 certification or waiver from the appropriate agency. In addition, some RGP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This RGP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

B. BEACH RAKING REGIONAL GENERAL PERMIT APPLICABILITY

The Beach Raking RGP applies to certain activities in waters of the United States (US), including wetlands, as described below, in the States of Wisconsin and Minnesota, including within the exterior boundaries of Indian Reservations.

1. Authorities: Section 404 of the Clean Water Act (33 U.S.C. 1344, Section 404) for discharges of dredged and fill material into waters of the US, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, Section 10) for work and structures that are located in, under, or over any navigable water of the US. Activities subject to Section 404 and Section 10 authorization requirements are hereafter referred to as regulated activities.

2. Eligible Activities: Regulated activities in waters of the US associated with mechanical beach raking activities for the purpose of removing accumulated debris below the ordinary high water mark of a beach, including but not limited to, woody debris, algae, and dead aquatic plants and shellfish.

3. Activity Restrictions:

- a. Regulated beach raking activities in currently inundated portions of waters of the US is **not** authorized.
- b. Regulated work to remove living vegetation from waters of the US is **not** authorized.
- c. Regulated activities associated with mechanical beach raking may not exceed 2.0 acres below the plane of the ordinary high water mark or the mean high water mark in waters of the US. The Corps may waive the 2.0 acre threshold for public beaches by making a written determination concluding that the activity will result in no

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more than minimal adverse environmental effects. An applicant may request a waiver from the District. Any waiver requested must include the information in Section E, Pre-Construction Notification.

4. Pre-Construction Notification (PCN): Some activities eligible for the Beach Raking RGP authorization require PCN. Please refer to Section E below for additional information regarding PCN requirements.

C. BEACH RAKING REGIONAL GENERAL PERMIT EXCLUSIONS

The following activities are INELIGIBLE for Beach Raking RGP authorization:

1. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
2. Regulated activities eligible for authorization under a valid Corps Special Area Management plan (SAMP) general permit, see <http://www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures> for more information on SAMPs.
3. Regulated activities that would occur in a calcareous fen, unless the Wisconsin Department of Natural Resources (WI DNR) has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources (MN DNR) has approved a calcareous fen management plan specific to a project. A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.
4. Regulated activities that would occur in or affect designated portions of the National Wild and Scenic River System (this includes parts of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin), or 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 regulated activity will not adversely affect the Wild and Scenic River designation or study status.
5. Any regulated activity which is likely to directly or indirectly jeopardize the continued existence of a federally 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 under any RGP which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed.
6. Any regulated activity which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, unless the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
7. Regulated activities which may result in disturbance or removal of human remains unless disposition of the remains has been determined by the appropriate authority under applicable law, and the work is authorized by the Corps. See Section H, Condition 10 for more information.
8. Regulated activities which require permission from the Corps pursuant to 33 U.S.C. 408 because they will alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project, unless the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, AND the Corps issues written RGP verification.
9. Regulated activities which would adversely affect public water supplies.

D. CALCULATING IMPACTS TO WATERS OF THE UNITED STATES

This section describes the impact calculations the Corps generally uses to verify that an RGP meets the stated restrictions in Section B above. Some components described in this section may not be applicable to the Beach Raking RGP. However, projects where Beach Raking RGP activities are one component of a larger project requiring Corps authorization may require a tabulation of more varied impacts than required by the Beach Raking RGP alone. See Section G below for more information regarding the use of multiple general permits.

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1. **Waters of the US may include waterbodies such as streams, rivers, lakes, ponds, and wetlands** (see Definitions, Section I).
2. **Loss of waters of the US** is the sum of all **permanently** adversely affected jurisdictional waterbodies for a single and complete project. Temporary impacts to waters of the US, discussed below, are calculated separately from losses of waters of the US and do not contribute to loss thresholds. Permanent adverse effects include filling, flooding, excavation, or drainage in waters of the US as a result of the regulated activity. Permanent adverse effects to waters of the US include regulated activities that change a waterbody to dry land, increase the bottom elevation of a waterbody, decrease the bottom elevation of a waterbody (e.g. excavation of a sedge meadow wetland to shallow marsh), or change the use of a waterbody.
 - a) Losses of wetland must be reported in either acres or square feet, as appropriate.
 - b) Losses of tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks (e.g. bank stabilization along both banks of a tributary) or at multiple locations (e.g. construction of bridge abutments and piers), they are added together to determine the overall amount of linear loss to waters of the US.
 - c) Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B or in Pre-Construction Notification Information, Section E.
3. **Temporary impacts to waters of the US** include the sum of all regulated impacts to waters of the US for a single and complete project which are restored to preconstruction conditions after construction. Examples of temporary impacts to waters of the US may include the placement of timber matting, installation of coffer dams, trenching and backfilling, and in many cases, mechanized land-clearing.
 - a) Temporary impacts to wetlands must be reported in either acres or square feet, as appropriate.
 - b) Temporary impacts to tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks or at multiple locations, temporary impacts must be added together to determine the overall amount of temporary linear impact.
 - c) Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B or in Pre-Construction Notification Information, Section E.
4. **Losses and temporary impacts to waters of the US do not include** activities that do not require Department of the Army authorization, such as activities eligible for exemptions under Section 404(f) of the Clean Water Act.
5. The measurements of loss and temporary impact to waters of the US are for determining whether a project may qualify for the RGP, and are not reduced by compensatory mitigation.

E. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

Projects that meet the terms and conditions of the Beach Raking RGP and do not require submittal of a PCN, as outlined in the below, may commence work after project proponents have carefully confirmed that the activity will be conducted in compliance with all applicable terms and conditions of the RGP.

For all activities which require PCN, project proponents must obtain written Corps verification of Beach Raking RGP coverage before starting regulated work. For RGP activities that require PCN, the PCN must include all other nationwide permits, programmatic general permits, RGPs, or individual permits used or intended to be used to authorize any part of the overall linear and non-linear project (including all single and complete projects), including regulated activities that require authorization but do not require PCN.

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1. When PCN is required: A PCN is required for the locations, impact thresholds, and activities listed below.

<p>PCN is required for regulated activities proposed in these Aquatic Resources¹:</p>	<p><u>WISCONSIN:</u></p> <ol style="list-style-type: none"> 1. The Apostle Islands National Lakeshore; 2. Madeline Island; 3. State-designated wild rice waters (https://data.glifwc.org/manoomin.harvest.info); 4. Coastal plain marshes; 5. Bog wetland plant communities; 6. Interdunal wetlands; 7. Great Lakes ridge and swale complexes; 8. Fens; and 9. Wetland sites designated by the Ramsar Convention (as of the date of publication, these include: the Horicon Marsh, Upper Mississippi River Floodplain wetlands, Kakagon and Bad River Sloughs, Door County Peninsula Coastal wetlands, and the Chiwaukee Illinois Beach Lake Plain), see https://rsis Ramsar.org/. 	<p><u>MINNESOTA:</u></p> <ol style="list-style-type: none"> 1. Wild rice waters identified in Minn. R. 7050.0470, subpart 1 (or as amended by the Minnesota Pollution Control Agency); 2. Bog wetland plant communities; and 3. Fens.
<p>PCN is required for the following activities to comply with other federal laws:</p>	<ol style="list-style-type: none"> 1. Regulated activities which might affect any Federally-listed threatened, endangered, or proposed threatened and endangered species, designated critical habitat, or proposed critical habitat. 2. Regulated activities which might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. 3. Regulated activities which might result in disturbance or removal of human remains. 4. Regulated activities which require permission from the Corps pursuant to Section 408 because it will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project. 5. Regulated activities in or which may affect the National Wild and Scenic River System, including designated portions of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin, 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. 	
<p>Other activities which require PCN include:</p>	<ol style="list-style-type: none"> 1. Regulated activities in areas of suspected sediment or soil contamination, including but not limited to Superfund sites. Superfund sites in Minnesota or Wisconsin can be located by searching the EPA's website: https://www.epa.gov/superfund/search-superfund-sites-where-you-live. 2. Regulated activities which require a waiver. The Beach Raking RGP includes a waiver for regulated activities which exceed two acres in area for public beaches. 	

2. Timing of PCN: Where required by the terms of this RGP, the prospective permittee must notify the Corps by submitting a PCN as early as possible. The Corps will determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. As a general rule, the Corps will request additional information necessary to make the PCN complete only once. However, if the prospective permittee

¹ Additional information about the plant communities listed can be found at www.mvp.usace.army.mil/Missions/Regulatory.aspx, the Wisconsin Department of Natural Resources’ (WI DNR) website: www.dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland, or at the Minnesota Department of Natural Resources’ (MN DNR) Native Plant Community Classification’s website: www.dnr.state.mn.us/npc/classification.html.

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does not provide all of the requested information, 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. The prospective permittee shall not begin the activity until they are notified in writing by the Corps that the activity may proceed under the RGP with any special conditions imposed by the Corps.

3. Form and Content of PCN: The PCN must be in writing and should utilize the Minnesota Joint Waters Wetlands Application, WI DNR application or the Corps standard individual permit application Form ENG 4345. A letter containing the required information may also be used. A complete PCN must include:

- a. Contact information including the name, mailing address, email address, and telephone numbers of the prospective permittee and any third party agents.
- b. Location of the proposed activity (i.e. section-township-range and latitude and longitude in decimal degrees);
- c. A description of the proposed activity and its purpose; a description of any avoidance and minimization mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any and all other general or individual permits used or intended to be used to authorize any part of the overall proposed project including activities that require Corps authorization but do not require PCN.
- d. A tabulation of all impacts to waters of the US, including the anticipated amount of loss of waters and temporary impacts expected to result from the proposed activity. Impacts to all waters of the US must be reported in acres or square feet. In addition, tributary, pond, and lake impacts must also be reported in linear feet. A table may be used to clearly and succinctly disclose this information (see Calculating Impacts to Waters of the United States, Section D).
- e. Sketches, maps, drawings and plans must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale included, and depict all identified aquatic resources and aquatic resource impact areas, including plan-view drawings on a recent aerial photograph, and cross-section and profile drawings where appropriate.
- f. Identification of all aquatic resources on the project site and the acreage of each aquatic resource present. Aquatic resources must be identified by type (e.g. wetland, tributary, lake, man-made ditch, pond, etc.) and impacts must be identified by type (e.g. fill, excavation, etc.) and permanence (permanent or temporary). A wetland delineation may be required.
- g. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section F for more information.
- h. If the proposed project would impact a calcareous fen, the PCN must include a copy of the WI DNR authorization for the proposed regulated activity, or a copy of the approved MN DNR calcareous fen management plan specific to the project.
- i. If any federally-listed proposed, threatened or endangered species or proposed or designated critical habitat might be affected by the regulated activity, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with Section 7.
- j. If the activity might have the potential to cause effects to an historic property listed on, eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity and include a vicinity map indicating the location of the historic property. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with Section 106 of the NHPA.
- k. If an activity is proposed in or may affect a component of the National Wild and Scenic River System (including designated portions of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin) 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, the PCN must identify the Wild and Scenic River or the "study river."

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- l. The PCN must specify how long temporary impacts and structures will remain in place and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- m. If a waiver for a specific category or condition of the permit is proposed (e.g. for acreage on public beaches), the PCN must include an explanation of the need for a waiver and why the applicant believes the impacts would result in minimal individual and cumulative adverse environmental effects.
- n. For an activity that requires permission from the Corps pursuant to Section 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the PCN must include a statement confirming if the project proponent has submitted a written request for Section 408 permission from the Corps office having jurisdiction over the Corps civil works project.

F. MITIGATION

In accordance with the Federal Mitigation Rule (33 CFR part 332), the Section 404(b)(1) guidelines (40 CFR part 230), and current Corps policies and guidelines for compensatory mitigation, regulated activities must be designed and constructed to avoid and minimize (mitigate) adverse effects, both temporary and permanent, to waters of the US to the maximum extent practicable at the project site (i.e., on site). Mitigation includes actions which may avoid, minimize, rectify, reduce, or compensate for adverse environmental effects or activities which may otherwise be contrary to the public interest. Regulated activities which the Corps believes do not mitigate adverse environmental effects or are contrary to the public interest are ineligible for authorization by the Beach Raking RGP, and will be evaluated by the Corps using individual permit procedures.

After all practicable steps to avoid and minimize adverse effects to waters of the US have been considered, the Corps may require compensatory mitigation to ensure that the regulated activity results in no more than minimal adverse environmental effects, or will not be contrary to the public interest. In reviewing the complete PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps will issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps determines, after considering compensatory mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest. When this occurs, the Corps will exercise discretionary authority to require an individual permit evaluation for the proposed regulated activity.

Regulated activities eligible for this RGP which require submittal of a PCN must include a statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required for proposed impacts to waters of the US. Project proponents may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the project proponent must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of the current Corps policies, guidelines, and 33 CFR 332 (the Mitigation Rule).

Information regarding current Corps policies and guidelines about compensatory mitigation in Minnesota and Wisconsin may be viewed online at www.mvp.usace.army.mil/Missions/Regulatory/Mitigation. Information regarding existing banks and in-lieu fee programs is available online at www.ribits.usace.army.mil. Nationally applicable information, including the Mitigation Rule, may be read online at http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/.

G. USE OF MULTIPLE GENERAL PERMITS (STACKING)

Single and complete non-linear projects may not be “piecemealed” to avoid the limits in a general permit (nationwide, programmatic, or regional general permit) authorization. When general permit limits are exceeded, single and complete projects may be eligible for review and authorization by an individual permit.

Unless otherwise indicated by a specific general permit or general permit category, the use of more than one general permit (nationwide, programmatic, or regional general permit) for a single and complete project is prohibited, except when the acreage or linear foot loss of waters of the US authorized by the general permits does not exceed the loss limit of the general permit with the *highest* specified acreage limit.

H. GENERAL CONDITIONS

To qualify for Beach Raking RGP authorization, the prospective permittee must comply with the following conditions, as applicable, in addition to any category-specific requirements and project-specific conditions imposed by the Corps.

1. **Compliance:** The permittee is responsible for ensuring that whomever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP and any special (permit-specific) conditions included in any written verification letter from the Corps. The activity must also comply with any special conditions added by the state, tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the RGP. Any authorized structure or fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the Corps to an RGP authorization.
2. **Compliance Certification:** Each permittee who receives an RGP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The Corps will provide the permittee the certification document with the RGP verification letter. The completed certification document must be submitted to the Corps within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.
3. **Site Inspection:** The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the RGP authorization.
4. **Migratory Birds and Bald and Golden Eagles:** The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service (FWS) to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
5. **Endangered Species:**
 - a. No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a federally threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), 50 CFR 402, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under the RGP which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed, and a Corps RGP verification letter is issued. Direct effects are the immediate effects on listed species and critical habitat caused by the RGP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the RGP activity and are later in time, but still are reasonably certain to occur.

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- b. As a result of formal or informal consultation with the FWS the Corps may add species-specific permit condition to the RGP verification.
 - c. Information on the location of federally threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS on their web page at www.fws.gov/ipac.
6. **Calcareous Fens:** The permittee may not complete regulated activities in a calcareous fen, unless the Wisconsin Department of Natural Resources has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.
 7. **Wild and Scenic Rivers:** The permittee may not complete regulated activities which may affect or are located in a designated portions 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.
 8. **Historic Properties, Cultural Resources:**
 - a. No activity which may affect historic properties listed or potentially eligible for listing on the National Register of Historic Places is authorized until the requirements of Section 106 of the National Historic Preservation Act (Section 106) have been satisfied. Federal project proponents should follow their own procedures for complying with the requirements of Section 106 and provide documentation of compliance with those requirements.
 - b. Information on the location and existence of historic and cultural resources can be obtained from the State Historic Preservation Office, Tribal Historic Preservation Offices, and the National Register of Historic Places.
 - c. Rock or fill material used for activities authorized by this permit must either be obtained from existing quarries or, if a new borrow site is excavated to obtain fill material, the Corps must be notified prior to the use of the new site to determine whether a cultural resources survey of the site is necessary.
 9. **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 Corps must immediately be notified of the findings. To the maximum extent practicable, construction activities must avoided 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.
 10. **Burial Sites:** Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70 and Minnesota Statutes 306 and 307.08). Native American burial sites on federal or tribal land are subject to the provisions of Native American Graves Protection and Repatriation Act (NAGPRA). Regulated activities may not result in disturbance or removal of human remains until disposition of the remains has been determined by the appropriate authority under these laws, and the work is authorized by the Corps. Regulated activities which result in an inadvertent discovery of human remains must stop immediately, and the Corps, as well as the appropriate state and tribal authority, must be notified. Regulated work at inadvertent discovery sites requires compliance with state law and NAGPRA, as appropriate, prior to re-starting work.
 11. **Federally Authorized Corps Civil Works projects:** A permittee is not authorized to begin any regulated activities described this RGP if activities will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues a Section 408 permission to alter, occupy, or use the Corps civil works project (pursuant to 33 U.S.C. 408) and the Corps issues written RGP verification. Examples of federal projects include but are not limited to works that were built by the Corps and are locally maintained (such as local flood control projects) or operated and maintained by the Corps (such as locks and dams).
 12. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
 13. **Best Management Practices (BMPs):** To minimize adverse effects from soil loss and sediment transport that may occur as the result of the authorized work, appropriate BMPs must be implemented and maintained. For authorized work

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above an OHWM the BMPs must remain in place until the affected area is stabilized with vegetation or ground cover. For all authorized work below an OHWM, BMPs are required and must prevent or minimize adverse effects (e.g., total suspended solids or sedimentation) to the water column outside of the authorized work area. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. All BMPs must be inspected and properly maintained following storm events to ensure they are operational. All exposed slopes and stream banks must be stabilized within 24 hours after completion of all tributary crossings.

14. **Aquatic Life Movements:** No regulated 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.
15. **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 sedimentation) of a designated or known spawning area are not authorized.
16. **Pollutant or Hazardous Waste Spills:** The permittee is responsible for removing pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with all applicable state, tribal, and federal laws. In accordance with applicable state, tribal, and federal laws and regulations, if a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or www.nrc.uscg.mil AND
IN WISCONSIN: the WI DNR Spills Team at 1-800-943-0003; or
IN MINNESOTA: the Minnesota State Duty Officer at 1-800-422-0798.
17. **Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
18. **Navigation:** No activity may cause more than a minimal adverse effect on navigation. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the US. 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.
19. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
20. **Section 401 Clean Water Act Water Quality Certification:** forthcoming
21. **Transfer of Regional General Permit Verifications:** If the permittee sells the property associated with a regional general permit verification, the permittee may transfer the regional general permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the regional general permit verification must be attached to the letter, and the letter must contain the following statement and signature "When the structures or work authorized by this regional general permit are still in existence at the time the property is transferred, the terms and conditions of this regional general permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional general permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____(Transferee)
_____(Date)

I. DEFINITIONS

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term discharge of dredged material is defined at 33 CFR 323.2(d) and the term discharge of fill material is defined at 33 CFR 323.2(f).

Historic property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete **non-linear** 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.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Navigable waters: Waters subject to Section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Ordinary high water mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

Overall project: The aggregate of all single and complete projects related to the same purpose, including both linear and non-linear activities with regulated losses and temporary impacts to waters of the US.

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

Pre-construction notification (PCN): A request submitted by the project proponent to the Corps for confirmation that a particular activity is verified by a general permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. PCN may be required by the terms and conditions of this regional general permit. A PCN may be voluntarily submitted in cases where PCN is not required and the project proponent wants verification that the activity is authorized by general permit.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the overall project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility. Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an RGP authorization. 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.

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Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tribal lands: Any lands which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Tributary: For the purposes of this permit, 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 of bed and banks and ordinary high water mark. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches.

Waiver: An approval from the Corps which allows an applicant to exceed the activity restrictions or conditions described in an RGP. Waivers may only be considered when expressly indicated as available in an RGP and will only be granted once the Corps has made a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects. When a waiver is required, an applicant cannot start work until they have received a RGP verification letter with waiver approval.

Waterbody: For purposes of this RGP, a waterbody is a jurisdictional water of the US. Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

J. FURTHER INFORMATION

1. 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).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by an RGP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this authorization:
 - a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
 - b. This RGP does not grant any property rights or exclusive privileges;
 - c. This RGP does not authorize any injury to the property or rights of others; and
 - d. This RGP does not authorize interference with any existing or proposed federal project.
4. Limits of federal liability: In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
 - d. Design or construction deficiencies associated with the permitted work; or
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
5. 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.
6. Re-evaluation 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:

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- a. The permittee fails to comply with the terms and conditions of this permit;
 - b. The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate (See 5 above); or
 - c. 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.
7. This office may also reevaluate its decision to issue this RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, 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.

K. CORPS DECISION

In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific RGP, the Corps should issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the US to determine whether they individually satisfy the terms and conditions of the RGPs, as well as the cumulative effects caused by all of the crossings authorized by RGP. If an applicant requests a waiver for any limit where waivers are indicated as available, the Corps will only grant the waiver upon a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects.

When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the RGP activity. The Corps will also consider the cumulative adverse environmental effects caused by activities authorized by the RGP and whether those cumulative adverse environmental effects are no more than minimal. The Corps will consider site specific factors, such as the environmental setting in the vicinity of the RGP activity, the type of resource that will be affected by the RGP activity, the functions provided by the aquatic resources that will be affected by the RGP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the RGP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the Corps. The Corps may add case-specific special conditions to the RGP authorization to address site-specific environmental concerns.

The Corps will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal to inform decisions regarding whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the Corps determines that the activity complies with the terms and conditions of the RGP and that the adverse environmental effects are no more than minimal, after considering mitigation, the Corps will notify the permittee and include any activity specific conditions in the RGP verification the Corps deems necessary. Conditions for compensatory mitigation requirements must

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comply with the appropriate provisions at 33 CFR 332.3(k). When compensatory mitigation is required, the Corps must approve the final mitigation plan before the permittee commences work in waters of the US, unless the Corps determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant of next steps as described in 33 CFR 325.2.



US Army Corps
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St. Paul District

DEPARTMENT OF THE ARMY

MINOR DISCHARGES REGIONAL GENERAL PERMIT

PERMIT: Minor Discharges Regional General Permit

ISSUING OFFICE: St. Paul District U.S. Army Corps of Engineers

EFFECTIVE DATE: February 17, 2018

EXPIRATION DATE: February 16, 2023

A. AUTHORIZATION

Regulated activities conducted in accordance with the terms and conditions of the Minor Discharges Regional General Permit (RGP or permit) are authorized in the States of Wisconsin and Minnesota and on Federally-recognized American Indian Reservations in Wisconsin and Minnesota. Refer to the appropriate sections of this permit for a description of RGP procedures, eligible activities, conditions, exclusions and application instructions.

Unless otherwise specified in the Corps letter verifying a project complies with the terms and conditions of this RGP, the time limit for completing work authorized by the permit ends upon the expiration date of the RGP. Activities authorized under this RGP that have commenced construction or are under contract to commence construction in reliance upon this RGP, will remain authorized provided the activity is completed within 12 months of the date of the RGP expiration, suspension, or revocation; whichever is sooner.

No RGP authorization is valid until a project proponent obtains a Clean Water Act Section 401 water quality certification (401 certification) or waiver from the appropriate water quality certifying agency; see general condition 25 in Section H below. Regulated activities excluded in general condition 25 require a project-specific 401 certification or waiver from the appropriate agency. In addition, some RGP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This RGP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

B. MINOR DISCHARGES REGIONAL GENERAL PERMIT APPLICABILITY

The Minor Discharges RGP applies to certain activities in waters of the United States (US), including wetlands, as described below, in the States of Wisconsin and Minnesota, including within the exterior boundaries of Indian Reservations.

1. Authority: The Minor Discharges RGP regional general permit may be used to authorize activities pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344, Section 404) for discharges of dredged and fill material into waters of the US. Activities subject to Section 404 regulatory requirements are hereafter referred to as regulated activities.

2. Eligible Activities: Regulated activities associated with minor permanent and temporary discharges of dredged or fill material in waters of the US for a single and complete non-linear project. Discharges that would impound a tributary or lake, or are associated with utility, transportation, or pier or dock projects are not authorized by this permit.

3. Activity Restrictions:

- a. The regulated discharge may not exceed 400 square feet of waters of the US. Losses of waters of the US and temporary impacts to waters of the US contribute toward the 400 square foot threshold, see section D for additional information.
- b. All tributary channel modifications are limited to the minimum necessary and cannot exceed 300 linear feet. See Section D. Calculating Impacts to waters of the US for additional information.
- c. This category may not be used more than once by the permittee, property owner, or agent of a single permittee or property owner in a manner that would cumulatively impact more than 400 square feet of waters of the US.

4. **Pre-Construction Notification (PCN):** No PCN is required prior to the start of work. Applicant must meet ALL the terms and conditions of this permit.

C. MINOR DISCHARGES REGIONAL GENERAL PERMIT EXCLUSIONS

The following activities are **INELIGIBLE** for 2018 Minor Discharges RGP authorization:

1. Regulated activities that would divert more than 10,000 gallons per day of surface or ground water into or out of the Great Lakes Basin.
2. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
3. Regulated activities eligible for authorization under a valid Corps Special Area Management plan (SAMP) general permit, see <http://www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures> for more information on SAMPs
4. Regulated activities that would result in the loss of more than 300 linear feet of a tributary.
5. Regulated activities that would occur in a calcareous fen.
6. Regulated activities that would occur in a component of the National Wild and Scenic River System (St. Croix River in Minnesota and Wisconsin or the Wolf River in Wisconsin), 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.
7. Any regulated activity which might affect or 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.
8. Any regulated activity which might affect, or may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places.
9. Regulated activities which might result in disturbance or removal of human remains.
10. Regulated activities which require permission from the Corps pursuant to 33 U.S.C. 408 because they will alter or temporarily or permanently occupy or use a Corps federally authorized Civil Works project.
11. Regulated activities that do not comply with applicable state dam safety criteria which have not been designed by qualified persons.
12. Regulated activities which would adversely affect public water supplies.

D. CALCULATING IMPACTS TO WATERS OF THE UNITED STATES

1. **Waters of the US may include waterbodies such as streams, rivers, lakes, ponds, and wetlands** (see Definitions, Section I).
2. **Loss of waters of the US** is the sum of all **permanently** adversely affected jurisdictional waterbodies for a single and complete project. Temporary impacts to waters of the US, discussed below, are calculated separately from losses of waters of the US and do not contribute to loss thresholds. Permanent adverse effects include filling, flooding, excavation, or drainage in waters of the US as a result of the regulated activity. Permanent adverse effects to waters of the US include regulated activities that change a waterbody to dry land, increase the bottom elevation of a waterbody, decrease the bottom elevation of a waterbody (e.g. excavation of a sedge meadow wetland to shallow marsh), or change the use of a waterbody.
 - a) Losses of wetland must be reported in either acres or square feet, as appropriate.
 - b) Losses of tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks (e.g. bank stabilization along both banks of a tributary) or at multiple locations (e.g. construction of bridge abutments and piers), they are added together to determine the overall amount of linear loss to waters of the US.

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- c) Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B or in Pre-Construction Notification Information, Section E.
3. **Temporary impacts to waters of the US** include the sum of all regulated impacts to waters of the US for a single and complete project which are restored to preconstruction conditions after construction. Examples of temporary impacts to waters of the US may include the placement of timber matting, installation of coffer dams, trenching and backfilling, and in many cases, mechanized land-clearing.
 - a) Temporary impacts to wetlands must be reported in either acres or square feet, as appropriate.
 - b) Temporary impacts to tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks or at multiple locations, temporary impacts must be added together to determine the overall amount of temporary linear impact.
 - c) Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B or in PCN Information, Section E.
4. **Losses and temporary impacts to waters of the US do not include** activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act.
5. The measurements of loss and temporary impact to waters of the US are for determining whether a project may qualify for the RGP, and are not reduced by compensatory mitigation.

E. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

No PCN is required prior to the start of work. The applicant must meet ALL the terms and conditions of this permit.

Though a PCN is not required, an applicant may request a verification letter from the Corps to confirm the proposed work would meet the terms and conditions of this permit. The PCN must be in writing and should utilize the Minnesota Joint Waters Wetlands Application, WI DNR application or the Corps standard individual permit application Form ENG 4345. A letter containing the required information may also be used. A complete PCN must include:

- a. Contact information including the name, mailing address, email address, and telephone numbers of the prospective permittee and any third party agents.
- b. Location of the proposed activity (i.e. section-township-range and latitude and longitude in decimal degrees);
- c. A description of the proposed activity and its purpose; a description of any avoidance and minimization mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any and all other general or individual permits used or intended to be used to authorize any part of the overall proposed project including activities that require Corps authorization but do not require PCN.
- d. A tabulation of all impacts to waters of the US, including the anticipated amount of loss of waters and temporary impacts expected to result from the proposed activity. Impacts to all waters of the US must be reported in acres or square feet. In addition, tributary, pond, and lake impacts must also be reported in linear feet. A table may be used to clearly and succinctly disclose this information (see Calculating Impacts to Waters of the United States, Section D).
- e. Sketches, maps, drawings and plans must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale included, and depict all identified aquatic resources and aquatic resource impact areas, including plan-view drawings on a recent aerial photograph, and cross-section and profile drawings where appropriate.
- f. Identification of all aquatic resources on the project site and the acreage of each aquatic resource present. Aquatic resources must be identified by type (e.g. wetland, tributary, lake, man-made ditch, pond, etc.) and impacts must be identified by type (e.g. fill, excavation, etc.) and permanence (permanent or temporary). A wetland delineation may be required.

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- g. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section F for more information.
- h. The PCN must specify how long temporary impacts and structures will remain in place and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.

F. MITIGATION

In accordance with the Federal Mitigation Rule (33 CFR part 332), the Section 404(b)(1) guidelines (40 CFR part 230), and current Corps policies and guidelines for compensatory mitigation, regulated activities must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

G. USE OF MULTIPLE RGP CATEGORIES (STACKING)

Activities authorized under the minor discharges RGP may not be combined or stacked with any other general permit (nationwide, programmatic, or regional general permit) authorization. All regulated activities authorized by this permit must be for one single and complete non-linear project that does not require an additional Corps permit(s).

H. GENERAL CONDITIONS

To qualify for Minor Discharges RGP authorization, the prospective permittee must comply with the following conditions, as applicable.

1. **Compliance**: The permittee is responsible for ensuring that whomever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP and any special (permit-specific) conditions included in any written verification letter from the Corps. The activity must also comply with any special conditions added by the state, tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the RGP. Any authorized structure or fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the Corps to an RGP authorization.
2. **Compliance Certification**: Each permittee who receives an RGP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The Corps will provide the permittee the certification document with the RGP verification letter. The completed certification document must be submitted to the Corps within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.
3. **Site Inspection**: The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the RGP authorization.
4. **Migratory Birds and Bald and Golden Eagles**: The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service (FWS) to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
5. **Endangered Species**: No activity is authorized under this RGP which might affect a federally threatened or endangered species or a species proposed for such designation, or critical habitat as identified under the Endangered Species Act

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(ESA), 50 CFR 402. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS on their web page at www.fws.gov/ipac.

6. **Calcareous Fens:** The permittee may not complete regulated activities in a calcareous fen. A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.
7. **Wild and Scenic Rivers:** The permittee may not complete regulated activities which may affect or are located in a designated portions 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.
8. **Historic Properties, Cultural Resources:** No activity which might affect historic properties listed or potentially eligible for listing on the National Register of Historic Places is authorized.
9. **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 Corps must immediately be notified of the findings. To the maximum extent practicable, construction activities must avoided 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.
10. **Burial Sites:** Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70 and Minnesota Statutes 306 and 307.08). Native American burial sites on federal or tribal land are subject to the provisions of Native American Graves Protection and Repatriation Act (NAGPRA). Regulated activities may not result in disturbance or removal of human remains until disposition of the remains has been determined by the appropriate authority under these laws, and the work is authorized by the Corps. Regulated activities which result in an inadvertent discovery of human remains must stop immediately, and the Corps, as well as the appropriate state and tribal authority, must be notified. Regulated work at inadvertent discovery sites requires compliance with state law and NAGPRA, as appropriate, prior to re-starting work.
11. **Federally Authorized Corps Civil Works projects:** A permittee is not authorized to begin any regulated activities described in this RGP if activities will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project.
12. **Dam Safety:** Regulated activities that may affect a dam must comply with applicable state dam safety criteria and be designed by qualified persons.
13. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
14. **Restoration of Temporary Impacts:** All temporary impacts in waters of the US, including discharges resulting from side casting material excavated from trenching, that occur as a result of the regulated activity must be fully contained with appropriate erosion control or containment methods, be restored to preconstruction contours and elevations, and revegetated with native, non-invasive vegetation. In temporarily excavated wetlands, the top 6 to 12 inches of the excavation should normally be backfilled with topsoil originating from the wetland. No temporary excavation area, including, but not limited to trenches, may be constructed or backfilled in such a manner as to drain waters of the US (e.g., backfilling with extensive gravel layers, creating a French drain effect).
15. **Duration of Temporary Impacts:** Temporary impacts in waters of the U.S., including wetlands, must be avoided and limited to the smallest area and the shortest duration required to accomplish the project purpose. Temporary impacts may not remain in place longer than 90 days between May 15 and November 15. Before those 90 days have elapsed all temporary discharges must be removed in their entirety.
16. **Best Management Practices (BMPs):** To minimize adverse effects from soil loss and sediment transport that may occur as the result of the authorized work, appropriate BMPs must be implemented and maintained. For authorized work above an OHWM the BMPs must remain in place until the affected area is stabilized with vegetation or ground cover. For all authorized work below an OHWM, BMPs are required and must prevent or minimize adverse effects (e.g., total suspended solids or sedimentation) to the water column outside of the authorized work area. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil

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disturbance. All BMPs must be inspected and properly maintained following storm events to ensure they are operational. All exposed slopes and stream banks must be stabilized within 24 hours after completion of all tributary crossings.

17. **Culverts and Crossings:** Replacement and installation of culverts or crossings authorized by a RGP are to follow (or be restored to) the natural alignment and profile of the tributary. The culverts or bridges must adequately pass low flow and bankfull events, bedload, sediment load, and provide site-appropriate fish and wildlife passage. Example design elements include recessing single culverts to accommodate natural bankfull width and adjusting additional culvert inverts at an elevation higher than the bankfull elevation.
18. **Aquatic Life Movements:** No regulated 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.
19. **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 sedimentation) of a designated or known spawning area are not authorized.
20. **Riprap:** Only rock rap must be used and it must be of a size sufficient to prevent its movement from the authorized alignment by natural forces under normal or high flows.
21. **Pollutant or Hazardous Waste Spills:** The permittee is responsible for removing pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with all applicable state, tribal, and federal laws. In accordance with applicable state, tribal, and federal laws and regulations, if a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or www.nrc.uscg.mil AND
 IN WISCONSIN: the WI DNR Spills Team at 1-800-943-0003; or
 IN MINNESOTA: the Minnesota State Duty Officer at 1-800-422-0798.
22. **Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
23. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
24. **Access Roads:** Access roads must be sized appropriately and must be constructed in such a way to minimize adverse effects on waters of the US and elevations must be as near as practicable to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). All access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows.
25. **Section 401 Clean Water Act Water Quality Certification:** forthcoming
26. **Transfer of Regional General Permit Verifications:** If the permittee sells the property associated with a regional general permit verification, the permittee may transfer the regional general permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the regional general permit verification must be attached to the letter, and the letter must contain the following statement and signature "When the structures or work authorized by this regional general permit are still in existence at the time the property is transferred, the terms and conditions of this regional general permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional general permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

_____ (Transferee)

_____ (Date)

I. DEFINITIONS

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

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Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term discharge of dredged material is defined at 33 CFR 323.2(d) and the term discharge of fill material is defined at 33 CFR 332.2(f).

Historic property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete **non-linear** 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.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Ordinary high water mark: A line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

Overall project: The aggregate of all single and complete projects related to the same purpose, including both linear and non-linear activities with regulated losses and temporary impacts to waters of the US.

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

Pre-construction notification (PCN): A request submitted by the project proponent to the Corps for confirmation that a particular activity is verified by a general permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. PCN may be required by the terms and conditions of this regional general permit. A PCN may be voluntarily submitted in cases where PCN is not required and the project proponent wants verification that the activity is authorized by general permit.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the overall project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility. Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an RGP authorization. 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.

Tribal lands: Any lands which are either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

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Tributary: For the purposes of this permit, 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 of bed and banks and ordinary high water mark. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches.

Waterbody: For purposes of this RGP, a waterbody is a jurisdictional water of the US. Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

J. FURTHER INFORMATION

1. 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).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by an RGP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this authorization:
 - a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
 - b. This RGP does not grant any property rights or exclusive privileges;
 - c. This RGP does not authorize any injury to the property or rights of others; and
 - d. This RGP does not authorize interference with any existing or proposed federal project.
4. Limits of federal liability: In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
 - d. Design or construction deficiencies associated with the permitted work; or
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
5. 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.
6. Re-evaluation 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:
 - a. The permittee fails to comply with the terms and conditions of this permit;
 - b. The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate (See 5 above); or
 - c. 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.
7. This office may also reevaluate its decision to issue this RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, 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.



US Army Corps
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St. Paul District

DEPARTMENT OF THE ARMY

PIERS AND DOCKS REGIONAL GENERAL PERMIT

PERMIT: Piers and Docks Regional General Permit

ISSUING OFFICE: St. Paul District U.S. Army Corps of Engineers

EFFECTIVE DATE: February 17, 2018

EXPIRATION DATE: February 16, 2023

A. AUTHORIZATION

Regulated activities conducted in accordance with the terms and conditions of the Piers and Docks Regional General Permit (RGP or permit) are authorized in the States of Wisconsin and Minnesota and on Federally-recognized American Indian Reservations in Wisconsin and Minnesota. All regulated activities require an applicant to submit pre-construction notification (PCN) and receive written St. Paul District Corps of Engineers Regulatory Branch (Corps) verification prior to commencing work. Refer to the appropriate sections of this permit for a description of RGP procedures, eligible activities, conditions, exclusions and application instructions.

Unless otherwise specified in the Corps letter verifying a project complies with the terms and conditions of this RGP, the time limit for completing work authorized by the permit ends upon the expiration date of the RGP. Activities authorized under this RGP that have commenced construction or are under contract to commence construction in reliance upon this RGP, will remain authorized provided the activity is completed within 12 months of the date of the RGP expiration, suspension, or revocation; whichever is sooner.

Some RGP authorizations are not valid until a project proponent obtains a Clean Water Act Section 401 water quality certification (401 certification) or waiver from the appropriate water quality certifying agency; see general condition 24 in Section H below. Section 404, Clean Water Act regulated activities excluded from 401 certification in general condition 24 require a project-specific 401 certification or waiver from the appropriate agency. In addition, some RGP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This RGP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

B. PIERS AND DOCKS REGIONAL GENERAL PERMIT APPLICABILITY

The Piers and Docks RGP applies to certain activities in waters of the United States (US), including wetlands, as described below, in the States of Wisconsin and Minnesota, including within the exterior boundaries of Indian Reservations.

1. Authorities: Section 404 of the Clean Water Act (33 U.S.C. 1344, Section 404) for discharges of dredged and fill material into waters of the US and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, Section 10) for work and structures that are located in, under, or over any navigable water of the US. Activities subject to Section 404 and Section 10 regulatory requirements are hereafter referred to as regulated activities.

2. Eligible Activities: Regulated activities associated with the construction, installation, and modification of piers, docks, small rock cribs and ancillary features. Temporary structures, fills, and work, including the use of temporary mats, necessary to accomplish these activities are also authorized.

3. Activity Restrictions:

- a. Length: The pier or dock must only extend into the water from the shoreline out to the point where there is adequate depth to accomplish the primary purpose of the pier or dock (e.g. for mooring a boat or using a boat hoist or lift this is typically 3 feet in depth, fishing piers may require less depth).
- b. Width: The width of the primary walkway (also referred to as the access dock) for a pier or dock may not exceed 8 feet, unless otherwise authorized via a waiver in a Corps verification letter.

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- c. Terminal sections of a pier or dock: (e.g. "L", "T", or "U" shaped pier section, boat shelter, boat hoist, or lift) may not exceed 200 square feet, not including the area of the primary walkway. This criteria may be waived by the Corps.
- d. Regulated discharges of dredged and fill material associated with the construction, installation or modification of small rock cribs must be of the minimum number and size and may not exceed 400 square feet, unless otherwise authorized via a waiver in a Corps verification letter. Rock cribs as pier or dock support must only be used in waters where pilings are not a practicable alternative. Waiver requests must describe the need for the proposed discharge, how the discharge proposed has been avoided and minimized to the maximum extent practicable, and how the proposed discharge complies with B.3.g. below.
- e. All structures and fills authorized by this category shall be designed, located, or operated in a manner which would not impede public use of waterways.
- f. No structures or fills authorized by this RGP may extend into a federal navigational channel or used to moor vessels within a federal navigational channel.
- g. All structures or fills authorized by this RGP must be designed to minimize disruption of flow and circulation patterns and sediment transport.

4. Pre-Construction Notification (PCN): An applicant must submit pre-construction notification and receive written Corps verification of Piers and Docks RGP coverage prior to starting work. See Section E. Pre-construction Notification (PCN) Information for additional information.

C. PIERS AND DOCKS REGIONAL GENERAL PERMIT EXCLUSIONS

The following activities are INELIGIBLE for Piers and Docks RGP authorization:

1. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
2. Regulated activities eligible for authorization under a valid Corps Special Area Management plan (SAMP) general permit, see <http://www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures> for more information on SAMPs.
3. Regulated activities that would cause the loss of more than 400 square feet of a tributary, unless otherwise authorized via a waiver in a Corps verification letter.
4. Regulated activities that would occur in a calcareous fen, unless the Wisconsin Department of Natural Resources (WI DNR) has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources (MN DNR) has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.
5. Regulated activities that would occur in portions of rivers designated as part of the National Wild and Scenic River System (this includes parts of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin), 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. This exclusion applies unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed regulated activity will not adversely affect the Wild and Scenic River designation or study status.
6. Regulated activities which are likely to directly or indirectly jeopardize the continued existence of a federally 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 regulated activity is authorized which "*may affect*" a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed.
7. Regulated activities which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, unless the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

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8. Regulated activities which may result in disturbance or removal of human remains unless disposition of the remains has been determined by the appropriate authority under applicable laws, and the work is authorized by the Corps. See Section H, Condition 10 for more information.
9. Regulated activities which require permission from the Corps pursuant to 33 U.S.C. 408 (Section 408) because they will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues the Section 408 permission to alter, occupy, or use Corps federally authorized civil works project.
10. Regulated activities where applicants are unable to demonstrate that the structures comply with applicable state dam safety criteria or have been designed by qualified persons.
11. Regulated activities which would adversely affect public water supplies.

D. CALCULATING IMPACTS TO WATERS OF THE UNITED STATES

This section describes the impact calculations the Corps generally uses to verify that an RGP meets the stated restrictions in Section B above. Some components described in this section may not be applicable to the Piers and Docks RGP. However, projects where Piers and Docks RGP activities are one component of a larger project requiring Corps authorization may require a tabulation of more varied impacts than required by the Piers and Docks RGP alone. See Section G below for more information regarding the use of multiple general permits.

1. **Waters of the US may include waterbodies such as streams, rivers, lakes, ponds, and wetlands** (see Definitions, Section I).
2. **Loss of waters of the US** is the sum of all permanently adversely affected jurisdictional waterbodies for a single and complete project. Temporary impacts to waters of the US, discussed below, are calculated separately from losses of waters of the US and do not contribute to loss thresholds. Permanent adverse effects include filling, flooding, excavation, or drainage in waters of the US as a result of the regulated activity. Permanent adverse effects to waters of the US include regulated activities that change a waterbody to dry land, increase the bottom elevation of a waterbody (e.g. installation of rock filled cribs), decrease the bottom elevation of a waterbody (e.g. excavation of a sedge meadow wetland to shallow marsh), or change the use of a waterbody.
 - a) Losses of wetland must be reported in either acres or square feet, as appropriate.
 - b) Losses of tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks (e.g. bank stabilization along both banks of a tributary) or at multiple locations (e.g. construction of bridge abutments and piers), they are added together to determine the overall amount of linear loss to waters of the US.
 - c) Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B or in Pre-Construction Notification Information, Section E.
3. **Temporary impacts to waters of the US** include the sum of all regulated impacts to waters of the US for a single and complete project which are restored to preconstruction conditions after construction. Examples of temporary impacts to waters of the US may include the placement of timber matting, installation of coffer dams, trenching and backfilling, and in many cases, mechanized land-clearing.
 - a) Temporary impacts to wetlands must be reported in either acres or square feet, as appropriate.
 - b) Temporary impacts to tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks or at multiple locations, temporary impacts must be added together to determine the overall amount of temporary linear impact.
 - c) Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B or in Pre-Construction Notification Information, Section E.

4. **Losses and temporary impacts to waters of the US do not include:** activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act.
5. The measurements of loss and temporary impact to waters of the US are for determining whether a project may qualify for the RGP, and are not reduced by compensatory mitigation.

E. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

Project proponents must obtain written Corps verification of Piers and Docks RGP coverage prior to starting work.

The PCN must include any and all other nationwide permits, programmatic general permits, regional general permits, or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity.

1. Timing of PCN: Where required by the terms of this RGP, the prospective permittee must notify the Corps by submitting a PCN as early as possible. The Corps will determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. 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, 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. The prospective permittee shall not begin the activity until they are notified in writing by the Corps that the activity may proceed under the RGP with any special conditions imposed by the Corps.

2. Form and Content of PCN: The PCN must be in writing and should utilize the Minnesota Joint Waters Wetlands Application, WI DNR application or the Corps standard individual permit application Form ENG 4345. A letter containing the required information may also be used. A complete PCN must include:

- a. Contact information including the name, mailing address, email address, and telephone numbers of the prospective permittee and any third party agents.
- b. Location of the proposed activity (i.e. section-township-range and latitude and longitude in decimal degrees);
- c. A description of the proposed activity and its purpose; a description of any avoidance and minimization mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any and all other general or individual permits used or intended to be used to authorize any part of the overall proposed project including activities that require Corps authorization but do not require PCN.
- d. A tabulation of all impacts to waters of the US, including the anticipated amount of loss of waters and temporary impacts expected to result from the proposed activity. Impacts to all waters of the US must be reported in acres or square feet. In addition, tributary, pond, and lake impacts must also be reported in linear feet. A table may be used to clearly and succinctly disclose this information (see Calculating Impacts to Waters of the United States, Section D).
- e. Sketches, maps, drawings and plans must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale included, and depict all identified aquatic resources and aquatic resource impact areas, including plan-view drawings on a recent aerial photograph, and cross-section and profile drawings where appropriate.
- f. Identification of all aquatic resources on the project site and the acreage of each aquatic resource present. Aquatic resources must be identified by type (e.g. wetland, tributary, lake, man-made ditch, pond, etc.) and impacts must be identified by type (e.g. fill, excavation, etc.) and permanence (permanent or temporary). A wetland delineation may be required.
- g. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section F for more information.

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- h. If the proposed project would impact a calcareous fen, the PCN must include a copy of the WI DNR authorization for the proposed regulated activity, or a copy of the approved MN DNR calcareous fen management plan specific to the project.
- i. If any federally-listed proposed, threatened or endangered species or proposed or designated critical habitat might be affected by the regulated activity, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with ESA Section 7.
- j. If the activity might have the potential to cause effects to an historic property listed on, eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity and include a vicinity map indicating the location of the historic property. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with Section 106 of the NHPA.
- k. If an activity is proposed in a portion of a river designated as part of the National Wild and Scenic River System (including portions of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin) 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, the PCN must identify the Wild and Scenic River or the “study river.”
- l. The PCN must specify how long temporary impacts and structures will remain in place and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- m. If a waiver for a specific category or condition of the permit is proposed, the PCN must include an explanation of the need for a waiver and why the applicant believes the impacts would result in minimal individual and cumulative adverse environmental effects. The Piers and Docks RGP includes waivers for the following: the 8 foot width threshold in Section B.3.b; the 200 square foot terminal section threshold in Section B.3.c; the 400 square foot discharge threshold in Section B.3.d; the restoration criteria for temporary impacts, see Section H, condition 14; and the duration of temporary impacts condition, see Section H, condition 15. Please refer to these sections as appropriate for additional information required for the specific waiver requested.
- n. For an activity that requires permission from the Corps pursuant to Section 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the PCN must include a statement confirming if the project proponent has submitted a written request for Section 408 permission from the Corps office having jurisdiction over the Corps civil works project.

F. MITIGATION

In accordance with the Federal Mitigation Rule (33 CFR part 332), the Section 404(b)(1) guidelines (40 CFR part 230), and current Corps policies and guidelines for compensatory mitigation, regulated activities must be designed and constructed to avoid and minimize (mitigate) adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site). Mitigation includes actions which may avoid, minimize, rectify, reduce, or compensate for adverse environmental effects or activities which may otherwise be contrary to the public interest. Regulated activities which the Corps believes do not mitigate adverse environmental effects or are contrary to the public interest are ineligible for authorization by the Utility RGP, and will be evaluated by the Corps using individual permit procedures.

After all practicable steps to avoid and minimize adverse effects to waters of the US have been considered, the Corps may require compensatory mitigation to ensure that the regulated activity results in no more than minimal adverse environmental effects, or will not be contrary to the public interest. In reviewing the complete PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps will issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps determines, after

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considering compensatory mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest. When this occurs, the Corps will exercise discretionary authority to require an individual permit evaluation for the proposed regulated activity.

Regulated activities eligible for this RGP which require submittal of a PCN must include a statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required for proposed impacts to waters of the US. Project proponents may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the project proponent must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of the current Corps policies, guidelines, and 33 CFR 332 (the Mitigation Rule).

Information regarding current Corps policies and guidelines about compensatory mitigation in Minnesota and Wisconsin may be viewed online at www.mvp.usace.army.mil/Missions/Regulatory/Mitigation. Information regarding existing banks and in-lieu fee programs is available online at www.ribits.usace.army.mil. Nationally applicable information, including the Mitigation Rule, may be read online at http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/.

G. USE OF MULTIPLE GENERAL PERMITS (STACKING)

Single and complete non-linear projects may not be “piecemealed” to avoid the limits in a general permit (nationwide, programmatic, or regional general permit) authorization. When general permit limits are exceeded, single and complete projects may be eligible for review and authorization by an individual permit.

Unless otherwise indicated by a specific general permit or general permit category, the use of more than one general permit (nationwide, programmatic, or regional general permit) for a single and complete project is prohibited, except when the acreage or linear foot loss of waters of the US authorized by the general permits does not exceed the loss limit of the general permit with the *highest* specified acreage limit.

H. GENERAL CONDITIONS

To qualify for Piers and Docks RGP authorization, the prospective permittee must comply with the following conditions, as applicable, in addition to any project-specific conditions imposed by the Corps.

1. **Compliance:** The permittee is responsible for ensuring that whomever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP and any special (permit-specific) conditions included in any written verification letter from the Corps. The activity must also comply with any special conditions added by the state, tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the RGP. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the Corps to an RGP authorization.
2. **Compliance Certification:** Each permittee who receives an RGP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The Corps will provide the permittee the certification document with the RGP verification letter. The completed certification document must be submitted to the Corps within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

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3. **Site Inspection:** The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the RGP authorization.
4. **Migratory Birds and Bald and Golden Eagles:** The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service (FWS) to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
5. **Endangered Species:**
 - a. No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a federally threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), 50 CFR 402, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under this RGP which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed, and a Corps RGP verification letter is issued. Direct effects are the immediate effects on listed species and critical habitat caused by the RGP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the RGP activity and are later in time, but still are reasonably certain to occur.
 - b. As a result of formal or informal consultation with the FWS the Corps may add species-specific permit condition to the RGP verification.
 - c. Information on the location of federally threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS on their web page at www.fws.gov/ipac.
6. **Calcareous Fens:** The permittee may not complete regulated activities in a calcareous fen, unless the Wisconsin Department of Natural Resources has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.
7. **Wild and Scenic Rivers:** The permittee may not complete regulated activities which may affect or are located in a designated portions 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.
8. **Historic Properties, Cultural Resources:**
 - a. No activity which may affect historic properties listed or potentially eligible for listing on the National Register of Historic Places is authorized until the requirements of Section 106 of the National Historic Preservation Act (Section 106) have been fulfilled. Federal project proponents should follow their own procedures for complying with the requirements of Section 106 and provide documentation of compliance with those requirements.
 - b. Information on the location and existence of historic and cultural resources can be obtained from the State Historic Preservation Office, Tribal Historic Preservation Offices, and the National Register of Historic Places.
 - c. Rock or fill material used for activities authorized by this permit must either be obtained from existing quarries or, if a new borrow site is excavated to obtain fill material, the Corps must be notified prior to the use of the new site to determine whether a cultural resources survey of the site is necessary.
9. **Discovery of Previously Unknown Remains and Artifacts:** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the Corps of what you have 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.
10. **Burial Sites:** Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70 and Minnesota Statutes 306 and 307.08). Native American burial sites on federal or tribal land are subject to the provisions of Native

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American Graves Protection and Repatriation Act (NAGPRA). Regulated activities may not result in disturbance or removal of human remains until disposition of the remains has been determined by the appropriate authority under these laws, and the work is authorized by the Corps. Regulated activities which result in an inadvertent discovery of human remains must stop immediately, and the Corps, as well as the appropriate state and tribal authority, must be notified. Regulated work at inadvertent discovery sites requires compliance with state law and NAGPRA, as appropriate, prior to re-starting work.

11. **Federally Authorized Corps Civil Works projects:** A permittee is not authorized to begin any regulated activities described in this RGP if activities will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues Section 408 permission to alter, occupy, or use the Corps civil works project (pursuant to 33 U.S.C. 408), and the Corps issues written a RGP verification. Examples of federal projects include but are not limited to works that were built by the Corps and are locally maintained (such as local flood control projects) or operated and maintained by the Corps (such as locks and dams).
12. **Dam Safety:** Permittees are not authorized to begin regulated activities unless they are able to demonstrate that the structures, when appropriate, comply with applicable state dam safety criteria or have been designed by qualified persons. The Corps may require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications are made to ensure safety.
13. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
14. **Restoration of Temporary Impacts:** All temporary impacts in waters of the US, including discharges resulting from side casting material excavated from trenching, that occur as a result of the regulated activity must be fully contained with appropriate erosion control or containment methods, be restored to preconstruction contours and elevations, and revegetated with native, non-invasive vegetation. A project proponent may request, in writing, a waiver from this condition from the Corps. An acceptable reason for a waiver to this condition may include, but is not limited to, the Corps allowing natural restoration of the site when the resulting grade and existing seed bank are sufficient for the site to restore to pre-construction conditions. In temporarily excavated wetlands, the top 6 to 12 inches of the excavation should normally be backfilled with topsoil originating from the wetland. No temporary excavation area, including, but not limited to trenches, may be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect).
15. **Duration of Temporary Impacts:** Temporary impacts in waters of the U.S., including wetlands, must be avoided and limited to the smallest area and the shortest duration required to accomplish the project purpose.
 - a. Unless otherwise conditioned in a Corps RGP verification, temporary impacts may not remain in place longer than 90 days between May 15 and November 15. Before those 90 days have elapsed all temporary discharges must be removed in their entirety.
 - b. If the temporary impacts would remain in place for longer than 90 days between May 15 and November 15, the PCN must request a waiver from this condition and specify how long temporary impacts will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. The permittee must remove the temporary impacts in their entirety in accordance with the activity authorized their permit verification.
16. **Best Management Practices (BMPs):** To minimize adverse effects from soil loss and sediment transport that may occur as the result of the authorized work, appropriate BMPs must be implemented and maintained. For authorized work above an OHWM the BMPs must remain in place until the affected area is stabilized with vegetation or ground cover. For all authorized work below an OHWM, BMPs are required and must prevent or minimize adverse effects (e.g., total suspended solids or sedimentation) to the water column outside of the authorized work area. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. All BMPs must be inspected and properly maintained following storm events to ensure they are operational. All exposed slopes and stream banks must be stabilized within 24 hours after completion of all regulated work.

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17. **Aquatic Life Movements:** No regulated activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including species that normally migrate through the area.
18. **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 sedimentation) of a designated or known spawning area are not authorized.
19. **Pollutant or Hazardous Waste Spills:** The permittee is responsible for removing pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with all applicable state, tribal, and federal laws. In accordance with applicable state, tribal, and federal laws and regulations, if a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or www.nrc.uscg.mil AND
IN WISCONSIN: the WI DNR Spills Team at 1-800-943-0003; or
IN MINNESOTA: the Minnesota State Duty Officer at 1-800-422-0798.
20. **Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
21. **Navigation:** No activity may cause more than a minimal adverse effect on navigation. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the US. 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.
22. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
23. **Access Roads:** Access roads must be sized appropriately and must be constructed in such a way to minimize adverse effects on waters of the US and elevations must be as near as practicable to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). All access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows.
24. **Section 401 Clean Water Act Water Quality Certification:** forthcoming
25. **Transfer of Regional General Permit Verifications:** If the permittee sells the property associated with a regional general permit verification, the permittee may transfer the regional general permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the regional general permit verification must be attached to the letter, and the letter must contain the following statement and signature "When the structures or work authorized by this regional general permit are still in existence at the time the property is transferred, the terms and conditions of this regional general permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional general permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

I. DEFINITIONS

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

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Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term discharge of dredged material is defined at 33 CFR 323.2(d) and the term discharge of fill material is defined at 33 CFR 323.2(f).

Historic property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete **non-linear** 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.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Navigable waters: Waters subject to Section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Ordinary high water mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

Overall project: The aggregate of all single and complete projects related to the same purpose, including both linear and non-linear activities with regulated losses and temporary impacts to waters of the US.

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

Pre-construction notification (PCN): A request submitted by the project proponent to the Corps for confirmation that a particular activity is verified by a general permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. PCN may be required by the terms and conditions of this regional general permit. A PCN may be voluntarily submitted in cases where PCN is not required and the project proponent wants verification that the activity is authorized by general permit.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the overall project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility. Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an RGP authorization. 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.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, bulkhead, revetment, riprap, jetty, permanent mooring structure, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tribal lands: Any lands which are either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

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Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Tributary: For the purposes of this permit, 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 of bed and banks and ordinary high water mark. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches.

Waiver: An approval from the Corps which allows an applicant to exceed the activity restrictions or conditions described in an RGP. Waivers may only be considered when expressly indicated as available in an RGP and will only be granted once the Corps has made a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects. When a waiver is required, an applicant cannot start work until they have received a RGP verification letter with waiver approval.

Waterbody: For purposes of this RGP, a waterbody is a jurisdictional water of the US. Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

J. FURTHER INFORMATION

1. 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).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by an RGP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this authorization:
 - a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
 - b. This RGP does not grant any property rights or exclusive privileges;
 - c. This RGP does not authorize any injury to the property or rights of others; and
 - d. This RGP does not authorize interference with any existing or proposed federal project.
4. Limits of federal liability: In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
 - d. Design or construction deficiencies associated with the permitted work; or
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
5. 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.
6. Re-evaluation 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:
 - a. The permittee fails to comply with the terms and conditions of this permit;
 - b. The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate (See 5 above); or
 - c. 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

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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.

7. This office may also reevaluate its decision to issue this RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, 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.

K. CORPS DECISION

In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific RGP, the Corps should issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the US to determine whether they individually satisfy the terms and conditions of the RGPs, as well as the cumulative effects caused by all of the crossings authorized by RGP. If an applicant requests a waiver for any limit where waivers are indicated as available, the Corps will only grant the waiver upon a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects.

When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the RGP activity. The Corps will also consider the cumulative adverse environmental effects caused by activities authorized by the RGP and whether those cumulative adverse environmental effects are no more than minimal. The Corps will consider site specific factors, such as the environmental setting in the vicinity of the RGP activity, the type of resource that will be affected by the RGP activity, the functions provided by the aquatic resources that will be affected by the RGP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the RGP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the Corps. The Corps may add case-specific special conditions to the RGP authorization to address site-specific environmental concerns.

The Corps will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal to inform decisions regarding whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the Corps determines that the activity complies with the terms and conditions of the RGP and that the adverse environmental effects are no more than minimal, after considering mitigation, the Corps will notify the permittee and include any activity specific conditions in the RGP verification the Corps deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). When compensatory mitigation is required, the Corps must approve the final mitigation plan before the permittee commences work in waters of the US, unless the Corps determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant of next steps as described in 33 CFR 325.2.



US Army Corps
of Engineers®
St. Paul District

DEPARTMENT OF THE ARMY

TRANSPORTATION REGIONAL GENERAL PERMIT

PERMIT: Transportation Regional General Permit

ISSUING OFFICE: St. Paul District U.S. Army Corps of Engineers

EFFECTIVE DATE: February 17, 2018

EXPIRATION DATE: February 16, 2023

A. AUTHORIZATION

Regulated activities conducted in accordance with the terms and conditions of the Transportation Regional General Permit (RGP or permit) are authorized in the States of Wisconsin and Minnesota and on Federally-recognized American Indian Reservations in Wisconsin and Minnesota. Certain regulated activities require an applicant to submit pre-construction notification (PCN) and receive written St. Paul District Corps of Engineers Regulatory Branch (Corps) verification prior to commencing work. Refer to the appropriate sections of this permit for a description of RGP procedures, eligible activities, conditions, exclusions and application instructions.

Unless otherwise specified in the Corps letter verifying a project complies with the terms and conditions of this RGP, the time limit for completing work authorized by the permit ends upon the expiration date of the RGP. Activities authorized under this RGP that have commenced construction or are under contract to commence construction in reliance upon this RGP, will remain authorized provided the activity is completed within 12 months of the date of the RGP expiration, suspension, or revocation; whichever is sooner.

Some RGP authorizations are not valid until a project proponent obtains a Clean Water Act Section 401 water quality certification (401 certification) or waiver from the appropriate water quality certifying agency; see general condition 27 in Section H below. Section 404, Clean Water Act regulated activities excluded from 401 certification in general condition 27 require a project-specific 401 certification or waiver from the appropriate agency. In addition, some RGP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This RGP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

B. TRANSPORTATION REGIONAL GENERAL PERMIT APPLICABILITY

The Transportation RGP applies to certain transportation associated activities in waters of the United States (US), including wetlands, as described in this permit, in the States of Wisconsin and Minnesota, including within the exterior boundaries of Indian Reservations.

Authorities: The Transportation RGP may be used to authorize these activities pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344, Section 404) for discharges of dredged and fill material into waters of the US and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, Section 10) for work and structures that are located in, under, or over any navigable water of the US. Activities subject to Section 404 and Section 10 regulatory requirements are hereafter referred to as regulated activities.

CATEGORY 1: MINOR MAINTENANCE - LINEAR TRANSPORTATION

Eligible Activities: Regulated activities required for crossings of waters of the US associated with minor repairs, rehabilitation, or replacement of a previously authorized¹ currently serviceable linear transportation project provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated in the original permit or the most recently authorized modification. **Regulated activities associated with tributary channelization, slope widening, road widening, new lanes, trails, railways and runways, or new stormwater ponds are NOT authorized by this category.**

Activities authorized by this category are limited to:

- (1) *Minor* deviations in a culvert or bridge configuration or filled area due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes, site conditions, or safety standards, including and limited to: the repair of a culvert aprons or bridge piles, lining or cleaning of pipes, culverts or bridges, extension of culverts without slope or shoulder widening, upsizing of culverts or flumes, maintenance of existing stream bank protection (not to expand original footprint), resetting or re-tying of aprons and culverts, and apron placements², including the use of temporary discharges, necessary to conduct those activities;
- (2) Removal of previously authorized structures or fills, including temporary discharges necessary to conduct those activities;
- (3) Repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage, including temporary discharges necessary to conduct those activities; and
- (4) Removal of accumulated sediment and debris within the vicinity of bridges and culverted crossings, including temporary discharges necessary to conduct those activities².

Activity restrictions:

- a) Removal of accumulated sediment and debris is limited to the minimum necessary to reestablish the approximate dimensions of a waterway in the vicinity of a structure to what existed when the structure was built and does not extend farther than 200 feet in any direction from the structure.
- b) All tributary channel modifications are limited to the minimum necessary for the repair, rehabilitation, or replacement of a structure or fill. Modifications to a tributary, including the removal of material from the tributary necessary to complete eligible activities, must be immediately adjacent to the structure or fill being maintained.
- c) All dredged or excavated material must be deposited and retained in an area that is not a water of the US.

No PCN is required unless triggered by the terms and condition of this permit (See Section E. Pre-Construction Notification).

CATEGORY 2: MODIFICATION - LINEAR TRANSPORTATION

¹ Previously authorized under 33 CFR 330.3 or by a Corps permit

² The undertaking of these activities does not always result in a discharge or require a Corps permit. This RGP category authorizes the repair, rehabilitation, or replacement of previously authorized structures or fills that do not qualify for the Clean Water Act (CWA) Section 404(f) exemptions such as the maintenance exemption or the maintenance (but not construction) of drainage ditch exemption.

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Eligible Activities: Regulated activities required for crossings of waters of the US associated with the expansion, modification, improvement or minor realignments of an existing linear transportation project (e.g., roads, highways, attached frontage roads, railways, trails, airport runways, and taxiways), including the temporary structures, fills, and work, including the use of temporary mats, necessary for those activities.

Activity restrictions:

- a) Regulated activities cannot cause the loss of greater than 1.0 acre of waters of the US for each single and complete project, including the area of tributary loss (see definition of single and complete linear project).
- b) If the overall project (including all single and complete projects) would result in the loss of 3.0 acres or less of waters of the US, including the area of tributary loss, the 1.0 acre limit at each single and complete crossing does not apply.
- c) All tributary channel modifications, including bank stabilization, are limited to the minimum necessary to construct or protect the linear transportation project and cannot exceed 500 linear feet³ for each single and complete project, unless the Corps waives the 500 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. An applicant may request, in writing, a waiver from the Corps.

An applicant must submit a PCN for the overall linear project proposed:

- i. If a single and complete project exceeds 0.1 acre of loss of waters of the US;
- ii. If the overall linear project (including all single and complete projects) exceeds 10,000 square feet of loss of waters of the US;
- iii. If the single and complete project exceeds 0.5 acre of temporary impact to waters of the US;
- iv. If a waiver from General Condition 15 for the duration of temporary impacts in waters of the US is requested by the applicant (allowing temporary fill to remain in place longer than 90 days between May 15 and November 15);
- v. If a waiver from the 500 linear foot tributary limit is requested by an applicant; or
- vi. If triggered by the project's location or potential impacts as described in Section E. Pre-Construction Notification.

CATEGORY 3: NEW CONSTRUCTION - LINEAR TRANSPORTATION

Eligible Activities: Regulated activities required for crossings of waters of the US associated with the construction of a linear transportation project (e.g., roads, highways, railways, trails, airport runways, and taxiways). Examples of eligible activities include: discharges for the construction of: (1) new roads or major realignments of existing roadways; (2) new railroad spurs or tracks; (3) new or detached frontage roads; (4) new airport runways; (5) new or detached trails; (6) associated linear infrastructure for those new construction projects, and (7) temporary structures, fills, and work, including the use of temporary mats, necessary for activities 1-6.

Activity restrictions:

- a) Regulated activities cannot cause the loss of greater than 0.5 acre of waters of the US for each single and complete project, including the area of tributary loss (see definition of single and complete linear project).
- b) All tributary channel modifications, including bank stabilization, are limited to the minimum necessary to construct or protect the linear transportation project and cannot exceed 500 linear feet for each single and complete project, unless the Corps waives the 500 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. An applicant may request, in writing, a waiver from the Corps.

CATEGORY 3: NEW CONSTRUCTION - LINEAR TRANSPORTATION, CONTINUED

³ When calculating loss of a tributary for a culvert replacement, the linear foot length of the existing culvert does not count toward the 500 linear foot limit. Rip-rap and other tributary impacts count towards the tributary modification limit. See Section D. Calculating Impacts to Waters of the United States for more information.

An applicant must submit a PCN for the overall linear project proposed:

- i. If a single and complete project exceeds 400 square feet of loss of waters of the US;
- ii. If a single and complete project exceeds 0.5 acre of temporary impact to waters of the US;
- iii. If a waiver from General Condition 15 for the duration of temporary impacts in waters of the US is requested by an applicant (allowing temporary fill to remain in place longer than 90 days between May 15 and November 15);
- iv. If a waiver from the 500 linear foot tributary limit is requested by an applicant; or
- v. If triggered by the project's location or potential impacts as described in Section E. Pre-Construction Notification.

CATEGORY 4: NON-LINEAR TRANSPORTATION PROJECTS

Eligible Activities: Regulated activities required for the construction, expansion, or maintenance of non-linear features associated with transportation projects, including the use of temporary discharges necessary to conduct those activities. Such projects may include: vehicle maintenance or storage buildings, weigh stations, rest-stops, parking lots, train stations, aircraft hangars, and associated infrastructure, including stormwater management facilities.

Activity restrictions:

- a) Regulated activities cannot cause the loss of greater than 0.5 acre of waters of the US, including the area of tributary loss (see definition of single and complete non-linear project).
- b) The discharge must not cause the loss of greater than 300 linear feet of a tributary, unless the Corps waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects (see definition of single and complete non-linear project). An applicant may request, in writing, a waiver from the Corps.

An applicant must submit a PCN:

- i. If the single and complete project exceeds 0.1 acre of loss of waters of the US;
- ii. If the single and complete project exceeds 0.5 acre of temporary impact to waters of the US;
- iii. If a waiver from General Condition 15 for the duration of temporary impacts in waters of the US is requested by an applicant (allowing temporary fill to remain in place longer than 90 days between May 15 and November 15);
- iv. If a waiver from the 300 linear foot tributary limit is requested by an applicant; or
- v. If triggered by the project's location or potential impacts as described in Section E. Pre-Construction Notification.

CATEGORY 5: TRANSPORTATION SURVEYING

Eligible Activities: Regulated temporary activities required for surveying activities necessary for transportation projects, such as core sampling, exploratory-type bore holes, exploratory trenching, soil surveys, sediment sampling, sample plots or transects for wetland delineations, historic resources surveys, and temporary access roads necessary to perform those activities.

Activity restrictions:

- a) Regulated activities for the recovery of historic resources are not authorized.
- b) Losses of waters of the US are not authorized.
- c) Bore holes must be properly sealed following completion of survey activities.

An applicant must submit a PCN for the overall project proposed:

- i. If the single and complete project exceeds 0.5 acre of temporary impact to waters of the US; or
- ii. If triggered by the project's location or potential impacts as described in Section E. Pre-Construction Notification.

C. TRANSPORTATION REGIONAL GENERAL PERMIT EXCLUSIONS

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The following activities are INELIGIBLE for Transportation RGP authorization:

1. Regulated activities that would divert more than 10,000 gallons per day of surface or ground water into or out of the Great Lakes Basin.
2. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
3. Regulated activities eligible for authorization under a valid Corps Special Area Management plan (SAMP) general permit, see <http://www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures/> for more information on SAMPs.
4. Regulated activities that would occur in a calcareous fen, unless the Wisconsin Department of Natural Resources (WI DNR) has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources (MN DNR) has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.
5. Activities that would occur in or affect designated portions of a National Wild and Scenic River System, including parts of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin, or 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.
6. Regulated activities which are 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 regulated activity is authorized which “*may affect*” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed.
7. Regulated activities which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, unless the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
8. Regulated activities which may result in disturbance or removal of human remains unless disposition of the remains has been determined by the appropriate authority under applicable laws, and the work is authorized by the Corps. See Section H, Condition 10 for more information.
9. Regulated activities which require permission from the Corps pursuant to 33 U.S.C. 408 (Section 408) because they will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues the Section 408 permission to alter, occupy, or use the Corps federally authorized civil works project.
10. Regulated activities where applicants are unable to demonstrate that the structures comply with applicable state dam safety criteria or have been designed by qualified persons.
11. Regulated activities which would adversely affect public water supplies.

D. CALCULATING IMPACTS TO WATERS OF THE UNITED STATES

1. **Waters of the US may include waterbodies such as streams, rivers, lakes, ponds, and wetlands** (see Definitions, Section I).
2. **Loss of waters of the US** is the sum of all permanently adversely affected jurisdictional waterbodies for a single and complete project. Temporary impacts to waters of the US, discussed below, are calculated separately from losses of waters of the US and do not contribute to loss thresholds. Permanent adverse effects include filling, flooding, excavation, or drainage in waters of the US as a result of the regulated activity. Permanent adverse effects to waters of the US include regulated activities that change a waterbody to dry land, increase the bottom elevation of a waterbody, decrease the bottom elevation of a waterbody (e.g. excavation of a sedge meadow wetland to shallow marsh), or change the use of a waterbody.

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- a) Losses of wetland must be reported in either acres or square feet, as appropriate.
 - b) Losses of tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks (e.g. bank stabilization along both banks of a tributary) or at multiple locations (e.g. construction of bridge abutments and piers), they are added together to determine the overall amount of linear loss to waters of the US.
 - c) Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B or in Pre-Construction Notification Information, Section E.
3. **Temporary impacts to waters of the US** include the sum of all regulated impacts to waters of the US for a single and complete project which are restored to preconstruction conditions after construction. Examples of temporary impacts to waters of the US may include the placement of timber matting, installation of coffer dams, trenching and backfilling, and in many cases, mechanized land-clearing.
- a) Temporary impacts to wetlands must be reported in either acres or square feet, as appropriate.
 - b) Temporary impacts to tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks or at multiple locations, temporary impacts must be added together to determine the overall amount of temporary linear impact.
 - c) Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B or in Pre-Construction Notification Information, Section E.
4. **Losses and temporary impacts to waters of the US do not include:**
- a) Activities that do not require Department of the Army authorization, such as activities eligible for exemptions under Section 404(f) of the Clean Water Act.
 - b) Impacts to linear ditches, as defined in Section I provided the ditch is not constructed in a wetland.
5. The measurements of loss and temporary impact to waters of the US are for determining whether a project may qualify for the RGP, and are not reduced by compensatory mitigation.

E. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

Projects that meet the terms and conditions of the Transportation RGP and do not require submittal of a PCN, as outlined below, may commence work after project proponents have carefully confirmed that the activity will be conducted in compliance with all applicable terms and conditions of the RGP.

For all activities which require PCN, project proponents must obtain written Corps verification of Transportation RGP coverage before starting regulated work. For Transportation RGP activities that require PCN, the PCN must include all other nationwide permits, programmatic general permits, RGPs, or individual permits used or intended to be used to authorize any part of the overall linear and non-linear project (including all single and complete projects), including regulated activities that require Corps authorization but do not require PCN.

If an activity does not specifically require a PCN (as described in each RGP category), follow the table below to know if a PCN must be submitted and a written verification letter received prior to starting work.

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<p>With the exception of all category 1 activities, a PCN is required for regulated activities proposed in these aquatic resources⁴:</p>	<p><u>WISCONSIN:</u></p> <ol style="list-style-type: none"> 1. The Apostle Islands National Lakeshore; 2. Madeline Island; 3. State-designated wild rice waters (https://data.glifwc.org/manoomin.harvest.info); 4. Coastal plain marshes; 5. Bog wetland plant communities; 6. Interdunal wetlands; 7. Great Lakes ridge and swale complexes; 8. Fens; and 9. Wetland sites designated by the Ramsar Convention (as of the date of publication, these include: the Horicon Marsh, Upper Mississippi River Floodplain wetlands, Kakagon and Bad River Sloughs, Door County Peninsula Coastal wetlands, and the Chiwaukee Illinois Beach Lake Plain), see https://rsis Ramsar.org/. 	<p><u>MINNESOTA:</u></p> <ol style="list-style-type: none"> 1. Wild rice waters identified in Minn. R. 7050.0470, subpart 1 (or as amended by the Minnesota Pollution Control Agency); 2. Bog wetland plant communities; and 3. Fens.
<p>PCN is required for the following activities to comply with other federal laws:</p>	<ol style="list-style-type: none"> 1. Regulated activities which might affect Federally-listed threatened, endangered, or proposed threatened and endangered species, designated critical habitat, or proposed critical habitat <u>unless</u> ESA Section 7 consultation addressing the effects of the proposed activity has been completed by a federal applicant or lead federal agency. 2. Regulated activities which might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties <u>unless</u> the requirements of Section 106 of the NHPA have been satisfied by a federal applicant or lead federal agency. 3. Regulated activities which might result in disturbance or removal of human remains. 4. Regulated activities which require Section 408 permission from the Corps because it will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project. 5. Regulated activities in the National Wild and Scenic River System, including the designated portions of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin, 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. 	
<p>Other activities which require PCN include:</p>	<ol style="list-style-type: none"> 1. Areas of suspected sediment or soil contamination, including but not limited to Superfund sites. Superfund sites in Minnesota or Wisconsin can be located by searching the EPA's website: https://www.epa.gov/superfund/search-superfund-sites-where-you-live. 2. Bridges, structures, and sunken vessels more than 50 years old, unless already determined ineligible for listing on National Register of Historic Places. Culverts that are constructed using pre-cast concrete or corrugated metal are not subject to this PCN requirement. 3. All regulated activities which require a waiver to be eligible for authorization by the RGP, including and limited to: a waiver to exceed the listed 500 linear foot tributary limit (Categories 2 and 3); a waiver to exceed the listed 300 linear foot tributary limit (Category 4); or a waiver from general condition 15. Duration of Temporary Impacts (allowing temporary fill to remain in place longer than 90 days between May 15 and November 15, see Section H). 	

Timing of PCN: Where required by the terms of this RGP, the prospective permittee must notify the Corps by submitting a PCN as early as possible. The Corps will determine if the PCN is complete within 30 calendar days of the date of receipt

⁴ Additional information for identifying listed plant communities can be found at: www.mvp.usace.army.mil/Missions/Regulatory.aspx, the Wisconsin Department of Natural Resources’ (WI DNR) website: www.dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland, or at the Minnesota Department of Natural Resources’ Native Plant Community Classification’s website: www.dnr.state.mn.us/npc/classification.html.

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and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. 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, 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.

The prospective permittee shall not begin the activity until they are notified in writing by the Corps that the activity may proceed under the RGP with any special conditions imposed by the Corps.

Form and Content of PCN: The PCN must be in writing and should utilize the Minnesota Joint Waters Wetlands Application, WI DNR application or the Corps standard individual permit application Form ENG 4345. A letter containing the required information may also be used. A complete PCN must include:

- a. Contact information including the name, mailing address, email address, and telephone numbers of the prospective permittee and any third party agents.
- b. Location of the proposed activity (i.e. section-township-range and latitude and longitude in decimal degrees).
- c. A description of the proposed activity and its purpose; a description of any avoidance and minimization mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any and all other general or individual permits used or intended to be used to authorize any part of the overall proposed project including activities that require Corps authorization but do not require PCN.
- d. A tabulation of all impacts to waters of the US, including the anticipated amount of loss of waters and temporary impacts expected to result from the proposed activity. Impacts to all waters of the US must be reported in acres or square feet. In addition, tributary, pond, and lake impacts must also be reported in linear feet. A table may be used to clearly and succinctly disclose this information (see Calculating Impacts to Waters of the United States, Section D).
- e. Sketches, maps, drawings and plans must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale included, and depict all identified aquatic resources and aquatic resource impact areas, including plan-view drawings on a recent aerial photograph, and cross-section and profile drawings where appropriate.
- f. Identification of all aquatic resources on the project site and the acreage of each aquatic resource present. Aquatic resources must be identified by type (e.g. wetland, tributary, lake, man-made ditch, pond, etc.) and impacts must be identified by type (e.g. fill, excavation, etc.) and permanence (permanent or temporary). A wetland delineation may be required.
- g. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section F for more information.
- h. If the proposed project would impact a calcareous fen, the PCN must include a copy of the WI DNR authorization for the proposed regulated activity, or a copy of the approved MN DNR calcareous fen management plan specific to the project.
- i. If any federally-listed proposed, threatened or endangered species or proposed or designated critical habitat might be affected by the regulated activity, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with ESA Section 7.
- j. If the activity might have the potential to cause effects to an historic property listed on, eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity and include a vicinity map indicating the location of

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the historic property. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with Section 106 of the NHPA.

- k. If an activity is proposed in a component of the National Wild and Scenic River System (including the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin) 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, the PCN must identify the Wild and Scenic River or the “study river.”
- l. The PCN must specify how long temporary impacts and structures will remain in place and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- m. If a waiver for a specific category or condition of the permit is proposed (e.g. from a linear tributary impact limit or duration of temporary impact), the PCN must include an explanation of the need for a waiver and why the applicant believes the impacts would result in minimal individual and cumulative adverse environmental effects.
- n. For an activity that requires permission from the Corps pursuant to Section 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the PCN must include a statement confirming if the project proponent has submitted a written request for Section 408 permission from the Corps office having jurisdiction over the Corps civil works project.

F. MITIGATION

In accordance with the Federal Mitigation Rule (33 CFR part 332), the Section 404(b)(1) guidelines (40 CFR part 230), and current Corps policies and guidelines for compensatory mitigation, regulated activities must be designed and constructed to avoid and minimize (mitigate) adverse effects, both temporary and permanent, to waters of the US to the maximum extent practicable at the project site (i.e., on site). Mitigation includes actions which may avoid, minimize, rectify, reduce, or compensate for adverse environmental effects or activities which may otherwise be contrary to the public interest. Regulated activities which the Corps believes do not mitigate adverse environmental effects or are contrary to the public interest are ineligible for authorization by the Transportation RGP, and will be evaluated by the Corps using individual permit procedures.

After all practicable steps to avoid and minimize adverse effects to waters of the US have been considered, the Corps may require compensatory mitigation to ensure that the regulated activity results in no more than minimal adverse environmental effects, or will not be contrary to the public interest. In reviewing the complete PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps will issue the RGP verification for that activity if it meets the terms and conditions of the RGP, unless the Corps determines, after considering compensatory mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest. When this occurs, the Corps will exercise discretionary authority to require an individual permit evaluation for the proposed regulated activity.

Regulated activities eligible for this RGP which require submittal of a PCN must include a statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required for proposed impacts to waters of the US. Project proponents may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the project proponent must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of the current Corps policies, guidelines, and 33 CFR 332 (the Mitigation Rule).

Information regarding current Corps policies and guidelines about compensatory mitigation in Minnesota and Wisconsin may be viewed online at www.mvp.usace.army.mil/Missions/Regulatory/Mitigation. Information regarding existing banks

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and in-lieu fee programs is available online at www.ribits.usace.army.mil. Nationally applicable information, including the Mitigation Rule, may be read online at http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/.

G. USE OF MULTIPLE RGP CATEGORIES (STACKING)

Single and complete non-linear projects may not be “piecemealed” to avoid the limits in a general permit (nationwide, programmatic, or regional general permit) authorization. When general permit limits are exceeded, single and complete projects may be eligible for review and authorization by an individual permit.

Unless otherwise indicated by a specific general permit or general permit category, the use of more than one general permit (nationwide, programmatic, or regional general permit) for a single and complete project is prohibited, except when the acreage or linear foot loss of waters of the US authorized by the general permits do not exceed the loss limit of the general permit with the *highest* specified acreage limit.

Category 4, Non-linear Transportation projects, can be used multiple times with other categories in this general permit but the sum of loss of waters of the US for each single and complete non-linear project may not exceed the loss impact limit for waters of the US of category 4 for the overall linear project. For example, two category 4 activities (a 0.25 acre stormwater pond and a 0.25 acre train station in waters of the US) may be authorized for a new light-rail authorized under category 3 if the sum of loss of waters of the US for the stormwater pond and train station does not exceed 0.5 acre.

H. GENERAL CONDITIONS

To qualify for regional general permit (RGP) authorization, the prospective permittee must comply with the following conditions, as applicable, in addition to any category-specific requirements and project-specific conditions imposed by the Corps.

1. **Compliance:** The permittee is responsible for ensuring that whomever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP and any special (permit-specific) conditions included in any written verification letter from the Corps. The activity must also comply with any special conditions added by a state, tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the RGP. Any authorized structure or fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the Corps to an RGP authorization.
2. **Compliance Certification:** Each permittee who receives an RGP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The Corps will provide the permittee the certification document with the RGP verification letter. The completed certification document must be submitted to the Corps within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.
3. **Site Inspection:** The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the RGP authorization.
4. **Migratory Birds and Bald and Golden Eagles:** The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service (FWS) to determine applicable measures to reduce

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impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

5. **Endangered Species:**

- a. No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a federally threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), 50 CFR 402, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under the RGP which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the RGP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the RGP activity and are later in time, but still are reasonably certain to occur.
- b. As a result of formal or informal consultation with the FWS the Corps may add species-specific permit conditions to the RGP verification.
- c. Information on the location of federally threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS on their web page at www.fws.gov/ipac.

6. **Calcareous Fens:** The permittee may not complete regulated activities in a calcareous fen, unless the Wisconsin Department of Natural Resources has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.

7. **Wild and Scenic Rivers:** The permittee may not complete regulated activities which may affect or are located in a designated portions 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.

8. **Historic Properties, Cultural Resources:**

- a. No activity which may affect historic properties listed or potentially eligible for listing on the National Register of Historic Places is authorized until the requirements of Section 106 of the National Historic Preservation Act (Section 106) have been satisfied. If PCN is required for the proposed activity, the federal project proponent should follow their own procedures for complying with the requirements of Section 106 and provide documentation of compliance with those requirements.
- b. Information on the location and existence of historic and cultural resources can be obtained from the State Historic Preservation Office, Tribal Historic Preservation Offices, and the National Register of Historic Places.
- c. Rock or fill material used for activities authorized by this permit must either be obtained from existing quarries or, if a new borrow site is excavated to obtain fill material, the Corps must be notified prior to the use of the new site to determine whether a cultural resources survey of the site is necessary.

9. **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 Corps must immediately be notified of the findings. To the maximum extent practicable, construction activities must avoided 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.

10. **Burial Sites:** Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70 and Minnesota Statutes 306 and 307.08). Native American burial sites on federal or tribal land are subject to the provisions of Native American Graves Protection and Repatriation Act (NAGPRA). Regulated activities may not result in disturbance or removal of human remains until disposition of the remains has been determined by the appropriate authority under these laws, and the work is authorized by the Corps. Regulated activities which result in an inadvertent discovery of human remains must stop immediately, and the Corps, as well as the appropriate state and tribal authority, must be

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notified. Regulated work at inadvertent discovery sites requires compliance with state law and NAGPRA, as appropriate, prior to re-starting work.

11. **Federally Authorized Corps Civil Works projects:** A permittee is not authorized to begin any regulated activities described in this RGP if activities will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues a Section 408 permission to alter, occupy, or use the Corps civil works project (pursuant to 33 U.S.C. 408) and the Corps issues written RGP verification. Examples of federal projects include but are not limited to works that were built by the Corps and are locally maintained (such as local flood control projects) or operated and maintained by the Corps (such as locks and dams).
12. **Dam Safety:** Permittees are not authorized to begin regulated activities unless they are able to demonstrate that the structures, when appropriate, comply with applicable state dam safety criteria or have been designed by qualified persons. The Corps may require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications are made to ensure safety.
13. **Suitable Material:** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
14. **Restoration of Temporary Impacts:** All temporary impacts in waters of the US, including discharges resulting from side casting material excavated from trenching, that occur as a result of the regulated activity must be fully contained with appropriate erosion control or containment methods, be restored to preconstruction contours and elevations, and as appropriate, revegetated with native, non-invasive vegetation. In temporarily excavated wetlands, the top 6 to 12 inches of the excavation should normally be backfilled with topsoil originating from the wetland. No temporary excavation area, including, but not limited to trenches, may be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect).
15. **Duration of Temporary Impacts:** Temporary impacts in waters of the U.S., including wetlands, must be avoided and limited to the smallest area and the shortest duration required to accomplish the project purpose.
 - a. Unless otherwise conditioned in a Corps RGP verification, temporary impacts may not remain in place longer than 90 days between May 15 and November 15. Before those 90 days have elapsed all temporary discharges must be removed in their entirety.
 - b. If the temporary impacts would remain in place for longer than 90 days between May 15 and November 15, the PCN must request a waiver from this condition and specify how long temporary impacts will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. The permittee must remove the temporary impacts in their entirety in accordance with the activity authorized their permit verification.
16. **Best Management Practices (BMPs):** To minimize adverse effects from soil loss and sediment transport that may occur as the result of the authorized work, appropriate BMPs must be implemented and maintained. For authorized work above an OHWM the BMPs must remain in place until the affected area is stabilized with vegetation or ground cover. For all authorized work below an OHWM, BMPs are required and must prevent or minimize adverse effects (e.g., total suspended solids or sedimentation) to the water column outside of the authorized work area. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. All BMPs must be inspected and properly maintained following storm events to ensure they are operational. All exposed slopes and stream banks must be stabilized within 24 hours after completion of all tributary crossings.
17. **Culverts and Crossings:** Unless an RGP verification authorizes otherwise, replacement and installation of culverts or crossings authorized by a RGP are to follow (or be restored to) the natural alignment and profile of the tributary. The culverts or bridges must adequately pass low flow and bankfull events, bedload, sediment load, and provide site-appropriate fish and wildlife passage. Example design elements include recessing single culverts to accommodate natural bankfull width and adjusting additional culvert inverts at an elevation higher than the bankfull elevation.

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18. **Aquatic Life Movements:** No regulated 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.
19. **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 sedimentation) of a designated or known spawning area are not authorized.
20. **Riprap:** For RGP categories that allow for the use of riprap material for bank stabilization, only rock must be used and it must be of a size sufficient to prevent its movement from the authorized alignment by natural forces under normal or high flows.
21. **Pollutant or Hazardous Waste Spills:** The permittee is responsible for removing pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with state and federal laws. In accordance with applicable state, tribal and federal laws and regulations, if a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or www.nrc.uscg.mil AND
IN WISCONSIN: the WI DNR Spills Team at 1-800-943-0003, or
IN MINNESOTA: the Minnesota State Duty Officer at 1-800-422-0798.
22. **Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
23. **Navigation:** No activity may cause more than a minimal adverse effect on navigation. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the US. 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.
24. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
25. **Access Roads:** Access roads must be sized appropriately and must be constructed in such a way to minimize adverse effects on waters of the US and elevations must be as near as practicable to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). All access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows.
26. **Tributary Modifications.** When stream channelization is performed with the construction of a road crossing, both activities should be considered as a single and complete project, which may be authorized by another form of authorization. The Corps does not consider installation of a culvert in a stream bed as stream channelization as long as those activities are conducted in accordance with the terms of the categories described in this permit. Unless the general permit verification authorizes otherwise, replacement and installation of culverts or crossings authorized are to follow (or be restored to) the natural alignment and profile of the tributary, see General Condition 17. Culverts and Crossings.
27. **Section 401 Clean Water Act, Water Quality Certification:** forthcoming.
28. **Transfer of Regional General Permit Verifications:** If the permittee sells the property associated with a regional general permit verification, the permittee may transfer the regional general permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the regional general permit verification must be attached to the letter, and the letter must contain the following statement and signature "When the structures or work authorized by this regional general permit are still in existence at the time the property is transferred, the terms and conditions of this regional general permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional

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general permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

_____ (Transferee)

_____ (Date)

I. DEFINITIONS

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term discharge of dredged material is defined at 33 CFR 323.2(d) and the term discharge of fill material is defined at 33 CFR 323.2(f).

Exploratory trenching: temporary excavation of the upper soil profile to expose bedrock or substrate for the purpose of mapping or sampling the exposed material.

Historic property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete **non-linear** 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.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Linear ditch: A defined channel constructed adjacent to a linear transportation facility (e.g., roads, highways, railways, trails, airport runways, and taxiways, etc.) to convey runoff from the linear facilities and from areas which drain toward the linear facilities. The term linear ditch does not include natural tributaries, relocated natural tributaries, or modified natural tributaries.

Navigable waters: Waters subject to Section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Ordinary high water mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

Overall project: The aggregate of all single and complete projects related to the same purpose, including both linear and non-linear activities with regulated losses and temporary impacts to waters of the US.

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

Pre-construction notification (PCN): A request submitted by the project proponent to the Corps for confirmation that a particular activity is verified by a general permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. PCN may be required by the

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terms and conditions of this regional general permit. A PCN may be voluntarily submitted in cases where PCN is not required and the project proponent wants verification that the activity is authorized by general permit.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

Single and complete linear project (categories 1-3 and temporary access roads fills): A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the overall linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the US (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of this general permit authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately. The definition of “single and complete linear project” does not include the term “independent utility” because each crossing of waters of the US is needed for the single and complete linear project to fulfill its purpose of transporting people, goods, and services from the point of origin to the terminal point.

Single and complete non-linear project (categories 4 and 5): For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the overall project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility. Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an RGP authorization. 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.

Stormwater management facilities: Stormwater management facilities are those facilities including, but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tribal lands: Any lands which are either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Tributary: For the purposes of this permit, 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 of bed and banks and ordinary high water mark. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches.

Waiver: An approval from the Corps which allows an applicant to exceed the activity restrictions or conditions described in an RGP. Waivers may only be considered when expressly indicated as available in a RGP and will only be granted once the Corps has made a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects. When a waiver is required, an applicant cannot start work until they have received a RGP verification letter with waiver approval.

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Waterbody: For purposes of this RGP, a waterbody is a jurisdictional water of the US. Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

J. FURTHER INFORMATION

1. 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).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by a RGP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this authorization:
 - a) This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
 - b) This RGP does not grant any property rights or exclusive privileges;
 - c) This RGP does not authorize any injury to the property or rights of others; and
 - d) This RGP does not authorize interference with any existing or proposed federal project.
4. Limits of federal liability: In issuing this permit, the Federal Government does not assume any liability for the following:
 - a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
 - b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
 - c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
 - d) Design or construction deficiencies associated with the permitted work; or
 - e) Damage claims associated with any future modification, suspension, or revocation of this permit.
5. 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.
6. Re-evaluation 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:
 - a) The permittee fails to comply with the terms and conditions of this permit;
 - b) The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate (See 5 above); or
 - c) 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.
7. This office may also reevaluate its decision to issue this RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, 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.

K. CORPS DECISION

In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific RGP, the Corps should issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the US to determine whether they individually satisfy the terms and conditions of the RGPs, as well as the cumulative effects caused by all of the crossings authorized by RGP. If an applicant requests a waiver for any limit where waivers are indicated as available, the Corps will only grant the waiver upon a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects.

When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the RGP activity. The Corps will also consider the cumulative adverse environmental effects caused by activities authorized by the RGP and whether those cumulative adverse environmental effects are no more than minimal. The Corps will consider site specific factors, such as the environmental setting in the vicinity of the RGP activity, the type of resource that will be affected by the RGP activity, the functions provided by the aquatic resources that will be affected by the RGP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the RGP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the Corps. The Corps may add case-specific special conditions to the RGP authorization to address site-specific environmental concerns.

The Corps will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal to inform decisions regarding whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the Corps determines that the activity complies with the terms and conditions of the RGP and that the adverse environmental effects are no more than minimal, after considering mitigation, the Corps will notify the permittee and include any activity specific conditions in the RGP verification the Corps deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). When compensatory mitigation is required, the Corps must approve the final mitigation plan before the permittee commences work in waters of the US, unless the Corps determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant of next steps as described in 33 CFR 325.2.



US Army Corps
of Engineers®
St. Paul District

DEPARTMENT OF THE ARMY

UTILITY REGIONAL GENERAL PERMIT

PERMIT: Utility Regional General Permit

ISSUING OFFICE: St. Paul District U.S. Army Corps of Engineers

EFFECTIVE DATE: February 17, 2018

EXPIRATION DATE: February 16, 2023

A. AUTHORIZATION

Regulated activities conducted in accordance with all applicable terms and conditions of the Utility Regional General Permit (RGP or permit) are authorized in the States of Wisconsin and Minnesota and on Federally-recognized American Indian Reservations in Wisconsin and Minnesota. Certain activities require an applicant to submit pre-construction notification (PCN) and receive written St. Paul District Corps of Engineers Regulatory Branch (Corps) verification prior to commencing work. Refer to the appropriate sections of this permit for a description of RGP procedures, eligible activities, conditions, exclusions and application instructions.

Unless otherwise specified in the Corps letter verifying a project complies with the terms and conditions of this RGP, the time limit for completing work authorized by the permit ends upon the expiration date of the RGP. Activities authorized under this RGP that have commenced construction or are under contract to commence construction in reliance upon this RGP, will remain authorized provided the activity is completed within 12 months of the date of the RGP expiration, suspension, or revocation; whichever is sooner.

Some RGP authorizations are not valid until a project proponent obtains a Clean Water Act Section 401 water quality certification (401 certification) or waiver from the appropriate water quality certifying agency; see general condition 30 in Section H below. Section 404, Clean Water Act regulated activities excluded from 401 certification in general condition 30 require a project-specific 401 certification or waiver from the appropriate agency. In addition, some RGP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This RGP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

B. UTILITY REGIONAL GENERAL PERMIT APPLICABILITY

The Utility RGP applies to certain activities in waters of the United States (US), including wetlands, as described below, in the States of Wisconsin and Minnesota, including within the exterior boundaries of Indian Reservations.

1. Authorities: Section 404 of the Clean Water Act (33 U.S.C. 1344, Section 404) for discharges of dredged and fill material into waters of the US, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, Section 10) for work and structures that are located in, under, or over any navigable water of the US. Activities subject to Section 404¹ and Section 10 authorization requirements are hereafter referred to as regulated activities.

2. Eligible Activities: Regulated activities associated with the five items listed below are eligible for authorization using the Utility RGP. The Utility RGP may be used to authorize losses and temporary impacts in waters of the US necessary to accomplish the activities listed below.

- a. Utility Lines: Regulated activities for single and complete linear projects to construct, maintain, or repair utility lines, including foundations for overhead utility line towers, poles, and anchors. This includes utility lines strung above, and routed in and under, Section 10 waters.

¹ Federal regulations at 33 CFR 323.4 include information about discharges which do not require Section 404 permits. These activities are not subject to the requirements of this RGP.

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- b. Utility Survey Activities: Temporary regulated activities for survey projects. Survey activities include core sampling, exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys.
- c. Substation Facilities: Regulated activities for single and complete non-linear projects required to construct, maintain, or expand substation facilities.
- d. Access Roads: Regulated activities for single and complete linear projects to construct permanent and temporary access roads necessary for the construction, repair, and maintenance of utility lines and substations, and to provide access to utility survey locations.
- e. Remediation of Inadvertent Returns of Drilling Fluid: Regulated activities necessary for the remediation of inadvertent returns of drilling fluids through sub-soil fissures or fractures that might occur during directional drilling or boring activities conducted for the purpose of installing or replacing utility lines. These remediation activities must be done as soon as practicable to restore the affected waterbody. The Corps may add special conditions to RGP verifications to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the US during drilling and boring activities conducted for installing or replacing utility lines.

3. Activity restrictions:

- a. Regulated activities for each single and complete project cannot cause the loss of greater than 0.5 acre of waters of the US. Where a single and complete project would result in losses to more than one aquatic resource type (e.g. wetland and tributary), this restriction is calculated as the sum for all losses to aquatic resources.
- b. Regulated activities may not cause the loss of more than 300 linear feet of tributary for any single and complete project, unless the Corps waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. An applicant may request, in writing, a waiver from the Corps. For purposes of this restriction, do not include linear ditches as defined in Section I below. Tributary losses contribute to activity restriction a. above.
- c. Regulated activities for the recovery of historic resources are not eligible for authorization as a survey activity.
- d. Regulated survey activities may not result in a loss of waters of the US.
- e. Bore holes must be properly sealed following completion of regulated survey activities.

4. Pre-Construction Notification (PCN): Some activities eligible for Utility RGP authorization require a PCN to the Corps. Please refer to Section E below for additional information regarding PCN requirements.

NOTE: Pipes and pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the US are considered bridges, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. Discharges of dredged and fill material into waters of the US associated with such pipes and pipelines require Section 404 authorization.

C. UTILITY REGIONAL GENERAL PERMIT EXCLUSIONS

The following activities are INELIGIBLE for Utility RGP authorization:

1. Regulated activities that would divert more than 10,000 gallons per day of surface or ground water into or out of the Great Lakes Basin.
2. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
3. Regulated activities eligible for authorization under a valid Corps Special Area Management plan (SAMP) general permit, see <http://www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures> for more information on SAMPs.

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4. Regulated activities that would occur in a calcareous fen, unless the Wisconsin Department of Natural Resources (WI DNR) has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources (MN DNR) has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.
5. Regulated activities that would occur in or affect designated portions of the National Wild and Scenic River System (this includes parts of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin), 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. This exclusion applies unless the appropriate Federal agency with direct management responsibility for such river has determined in writing that the proposed regulated activity will not adversely affect the Wild and Scenic River designation or study status.
6. Regulated activities which are likely to directly or indirectly jeopardize the continued existence of a federally 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 regulated activity is authorized which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed.
7. Regulated activities which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, unless the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
8. Regulated activities which may result in disturbance or removal of human remains unless disposition of the remains has been determined by the appropriate authority under applicable law, and the work is authorized by the Corps. See Section H, Condition 10 for more information.
9. Regulated activities which require permission from the Corps pursuant to 33 U.S.C. 408 (Section 408) because they will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues the Section 408 permission to alter, occupy, or use the Corps federally authorized civil works project.
10. Regulated activities where applicants are unable to demonstrate that the structures, when appropriate, comply with applicable state dam safety criteria or have been designed by qualified persons.
11. Regulated activities which would adversely affect public water supplies.
12. Regulated activities, except access roads and temporary crossings required for utility line construction, repair, or maintenance, which would enclose any portion of a non-wetland water of the US.

D. CALCULATING IMPACTS TO WATERS OF THE UNITED STATES

1. **Waters of the US may include waterbodies such as streams, rivers, lakes, ponds, and wetlands** (see Definitions, Section I).
2. **Loss of waters of the US** is the sum of all permanently adversely affected jurisdictional waterbodies for a single and complete project. Temporary impacts to waters of the US, discussed below, are calculated separately from losses of waters of the US, and do not contribute to loss thresholds. Permanent adverse effects include filling, flooding, excavation, or drainage in waters of the US as a result of the regulated activity. Permanent adverse effects to waters of the US include regulated activities that change a waterbody to dry land, increase the bottom elevation of a waterbody, or decrease the bottom elevation of a waterbody (e.g. excavation of a sedge meadow wetland to shallow marsh), or change the use of a waterbody.
 - a) Losses of wetland must be reported in either acres or square feet, as appropriate.
 - b) Losses of tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks (e.g. bank stabilization along both banks of a tributary) or at multiple locations (e.g. construction of bridge abutments and piers), they are added together to determine the total amount of linear loss to waters of the US.

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- c) Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B, or in Pre-Construction Notification Information, Section E.
3. **Temporary impacts to waters of the US** include the sum of all regulated impacts to waters of the US for a single and complete project which are restored to pre-construction conditions after construction. Examples of temporary impacts in waters of the US include the placement of timber matting, installation of coffer dams, trenching and backfilling, and in many cases, mechanized land-clearing².
 - a) Temporary impacts to wetlands must be reported in either acres or square feet, as appropriate.
 - b) Temporary impacts to tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks or at multiple locations, temporary impacts must be added together to determine the total amount of temporary linear impact.
 - c) Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B, or in Pre-Construction Notification Information, Section E.
4. **Losses and temporary impacts to waters of the US do not include:**
 - a) Activities that do not require Department of the Army authorization, such as activities eligible for exemptions under Section 404(f) of the Clean Water Act.
 - b) Impacts to linear ditches as defined in Section I.
5. The measurements of loss and temporary impact to waters of the US are for determining whether a project may qualify for the RGP, and are not reduced by compensatory mitigation.

E. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

Projects that meet the terms and conditions of the Utility RGP and do not require submittal of a PCN, as outlined below, may commence work after project proponents have carefully confirmed that the activity will be conducted in compliance with all applicable terms and conditions of the Utility RGP.

Before starting regulated work, project proponents must obtain written Corps verification of Utility RGP coverage for all activities which require PCN. For Utility RGP activities that require PCN, the PCN must include all other nationwide permits, programmatic general permits, RGPs, or individual permits used or intended to be used to authorize any part of the overall project (including all single and complete projects), including other regulated activities that require authorization but do not require PCN.

² Refer to the definition of Discharge in Section I of this RGP.

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1. When PCN is required: A PCN is required for the locations, impact thresholds, and activities listed below.

<p><u>PCN is required for regulated activities proposed in these Aquatic Resources³:</u></p>	<p><u>WISCONSIN:</u></p> <ol style="list-style-type: none"> Section 10 waters; The Apostle Islands National Lakeshore; Madeline Island; State-designated wild rice waters (https://data.glifwc.org/manoomin.harvest.info); Coastal plain marshes; Bog wetland plant communities; Interdunal wetlands; Great Lakes ridge and swale complexes; Fens; and Wetland sites designated by the Ramsar Convention (as of the date of publication, these include: the Horicon Marsh, Upper Mississippi River Floodplain wetlands, Kakagon and Bad River Sloughs, Door County Peninsula Coastal wetlands, and the Chiwaukee Illinois Beach Lake Plain), see https://rsis Ramsar.org/. 	<p><u>MINNESOTA:</u></p> <ol style="list-style-type: none"> Section 10 waters; Wild rice waters identified in Minn. R. 7050.0470, subpart 1 (or as amended by the Minnesota Pollution Control Agency); Bog wetland plant communities; and Fens.
<p><u>PCN is required for the following activities to comply with other federal laws:</u></p>	<ol style="list-style-type: none"> Regulated activities which might affect any Federally-listed threatened, endangered, or proposed threatened and endangered species, designated critical habitat, or proposed critical habitat. Regulated activities which might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. Regulated activities which might result in disturbance or removal of human remains. Regulated activities which require permission from the Corps pursuant to Section 408 because it will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project. Regulated activities proposed in or which might affect portions of rivers designated as part of the National Wild and Scenic River System, including parts of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin, or 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. 	
<p><u>PCN is required for the following Utility RGP regulated activities:</u></p>	<ol style="list-style-type: none"> All single and complete regulated activities, excluding overhead lines and construction matting, which exceed 500 linear feet in non-tributary waters of the US. All single and complete projects where the regulated activity would result in the loss of greater than 0.1 acre of waters of the US. All single and complete projects where the temporary impacts are proposed to impact 0.5 acre or greater of waters of the US, including wetlands. Overall projects (defined in Section I) which would result in the loss of 0.5 acre or greater of waters of the US. Regulated activities associated with mechanized land-clearing⁴ which results in the conversion of wooded, including both shrub and forested, wetlands to herbaceous communities. Utility lines installed via trenching within a water of the United States, where the utility line runs parallel to or along a tributary contiguous with the water of the US trenched. Linear ditches (see Definitions, Section I) are not subject to this PCN requirement. 	
<p><u>Other activities which require PCN include:</u></p>	<ol style="list-style-type: none"> Regulated activities in areas of suspected sediment or soil contamination, including but not limited to Superfund sites. Superfund sites in Minnesota or Wisconsin can be located by searching the EPA's website: https://www.epa.gov/superfund/search-superfund-sites-where-you-live. Regulated activities impacting bridges, structures, and sunken vessels more than 50 years old, unless already determined ineligible for listing on National Register of Historic Places. Culverts that are constructed using pre-cast concrete or corrugated metal are not subject to this PCN requirement. Regulated temporary impacts remaining in place for longer than 90 days between May 15 and November 15. All regulated activities which require a waiver to be eligible for authorization by the Utility RGP. The Utility RGP allows waivers only for the following two regulated activities: a waiver to exceed the listed 300 linear foot tributary loss; and a waiver for duration of temporary impacts (see Section H. General Conditions). 	

³ Information about the plant communities listed can be found at www.mvp.usace.army.mil/Missions/Regulatory.aspx, www.dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland or www.dnr.state.mn.us/npc/classification.html.

⁴ See 33 CFR 323.2 for additional information about regulated activities.

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2. Timing of PCN: Where required by the terms of this RGP, the prospective permittee must notify the Corps by submitting a PCN as early as possible. The Corps will determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. 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, 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. The prospective permittee shall not begin the activity until they are notified in writing by the Corps that the activity may proceed under the RGP with any special conditions imposed by the Corps.

3. Form and Content of PCN: The PCN must be in writing and should utilize the Minnesota Joint Waters Wetlands Application, WI DNR application or the Corps standard individual permit application Form ENG 4345. A letter containing the required information may also be used. A complete PCN must include:

- a. Contact information including the name, mailing address, email address, and telephone numbers of the prospective permittee and any third party agents.
- b. Location of the proposed activity (i.e. section-township-range and latitude and longitude in decimal degrees).
- c. A description of the proposed activity and its purpose; a description of any avoidance and minimization mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any and all other general or individual permits used or intended to be used to authorize any part of the overall project, including activities that require Corps authorization but do not require PCN.
- d. A tabulation of all impacts to waters of the US, including the anticipated amount of loss and temporary impact to waters of the US expected to result from the proposed activity. For the Utility RGP, all PCNs must additionally report conversions of wooded (shrub and forested) communities in waters of the US. Conversion reporting in waters of the US must distinguish permanent conversion from areas proposed to regenerate, and must clarify which conversions proposed would, and would not, incorporate a regulated activity in waters of the US. Impacts to all waters of the US must be reported in acres or square feet. In addition, tributary, pond, and lake impacts must also be reported in linear feet. A table may be used to clearly and succinctly disclose this information (see Calculating Impacts to Water of the United States, Section D).
- e. Sketches, maps, drawings and plans must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale bar included, and depict all identified aquatic resources and aquatic resource impact areas, including plan-view drawings on a recent aerial photograph, and cross-section and profile drawings where appropriate.
- f. Identification of all aquatic resources on the project site and the acreage of each aquatic resource present. Aquatic resources shall be identified by type (e.g. wetland, tributary, lake, man-made ditch, pond, etc.) and impacts shall be identified by type (e.g. fill, excavation, etc.) and permanence (permanent or temporary). A wetland delineation may be required.
- g. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section F for more information.
- h. If the proposed project would impact a calcareous fen, the PCN must include a copy of the WI DNR authorization for the proposed regulated activity, or a copy of the approved MN DNR calcareous fen management plan specific to the project.
- i. If any federally-listed proposed, threatened or endangered species or proposed or designated critical habitat might be affected by the regulated activity, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with ESA Section 7.

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- j. If the activity might have the potential to cause effects to an historic property listed on, eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity and include a vicinity map indicating the location of the historic property. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with Section 106 of the NHPA.
- k. If an activity is proposed in or might affect a component of the National Wild and Scenic River System (including designated portions of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin) 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, the PCN must identify the Wild and Scenic River or the “study river.”
- l. The PCN must specify how long temporary impacts and structures will remain in place and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- m. If a waiver from for a specific condition of the permit is proposed, the PCN must include an explanation of the need for a waiver and why the applicant believes the impacts would result in minimal individual and cumulative adverse environmental effects. The Utility RGP includes a waiver for Condition 15 (duration of temporary impacts), and the 300 linear foot tributary threshold. In addition to the information described above, any waiver request from Condition 15 requires information which describes how long the temporary impact will remain and must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- n. For an activity that requires permission from the Corps pursuant to Section 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the PCN must include a statement confirming if the project proponent has submitted a written request for Section 408 permission from the Corps office having jurisdiction over the Corps civil works project.

F. MITIGATION

In accordance with the Federal Mitigation Rule (33 CFR part 332), the Section 404(b)(1) guidelines (40 CFR part 230), and current Corps policies and guidelines for compensatory mitigation, regulated activities must be designed and constructed to avoid and minimize (mitigate) adverse effects, both temporary and permanent, to waters of the US to the maximum extent practicable at the project site (i.e., on site). Mitigation includes actions which may avoid, minimize, rectify, reduce, or compensate for adverse environmental effects or activities which may otherwise be contrary to the public interest. Examples of avoidance activities may include installation of clear-span bridges over tributaries or excluding wetlands from additional temporary workspace. Minimization activities may include use of construction matting in waters of the US, or seasonally restricting the timing for regulated activities within tributaries. Regulated activities which the Corps believes do not mitigate adverse environmental effects or are contrary to the public interest are ineligible for authorization by the Utility RGP, and will be evaluated by the Corps using individual permit procedures.

After all practicable steps to avoid and minimize adverse effects to waters of the US have been considered, the Corps may require compensatory mitigation to ensure that the regulated activity results in no more than minimal adverse environmental effects, or will not be contrary to the public interest. In reviewing the complete PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps will issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps determines, after considering compensatory mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest. When this occurs, the Corps will exercise discretionary authority to require an individual permit evaluation for the proposed regulated activity.

Regulated activities eligible for this RGP which require submittal of a PCN must include a statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be

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required for proposed impacts to waters of the US. Project proponents may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the project proponent must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of the current Corps policies, guidelines, and 33 CFR 332 (the Mitigation Rule).

Information regarding current Corps policies and guidelines about compensatory mitigation in Minnesota and Wisconsin may be viewed online at www.mvp.usace.army.mil/Missions/Regulatory/Mitigation. Information regarding existing banks and in-lieu fee programs is available online at www.ribits.usace.army.mil. Nationally applicable information, including the Mitigation Rule, may be read online at http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/.

G. USE OF MULTIPLE GENERAL PERMITS (STACKING)

Single and complete non-linear projects may not be “piecemealed” to avoid the limits in a general permit (nationwide, programmatic, or regional general permit) authorization. When general permit limits are exceeded, single and complete projects may be eligible for review and authorization by an individual permit.

Unless otherwise indicated by a specific general permit or general permit category, the use of more than one general permit (nationwide, programmatic, or regional general permit) for a single and complete project is prohibited, except when the acreage or linear foot loss of waters of the US authorized by the general permits does not exceed the loss limit of the general permit with the *highest* specified acreage limit.

H. GENERAL CONDITIONS

To qualify for Utility regional general permit (RGP) authorization, the prospective permittee must comply with the following conditions, as applicable, in addition to any Utility RGP terms and project-specific conditions imposed by the Corps.

1. **Compliance:** The permittee is responsible for ensuring that whomever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP and any special (permit-specific) conditions included in any written verification letter from the Corps. The activity must also comply with any special conditions added by the state, tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the RGP. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the Corps to an RGP authorization.
2. **Compliance Certification:** Each permittee who receives an RGP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The Corps will provide the permittee the certification document with the RGP verification letter. The completed certification document must be submitted to the Corps within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.
3. **Site Inspection:** The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the RGP authorization.
4. **Migratory Birds and Bald and Golden Eagles:** The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting

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appropriate local office of the U.S. Fish and Wildlife Service (FWS) to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

5. **Endangered Species:**

- a. No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a federally threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), 50 CFR 402, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under the Utility RGP which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed, and a Corps RGP verification letter is issued. Direct effects are the immediate effects on listed species and critical habitat caused by the RGP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the RGP activity and are later in time, but still are reasonably certain to occur.
- b. As a result of formal or informal consultation with the FWS the Corps may add species-specific permit condition to the RGP verification.
- c. Information on the location of federally threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS on their web page at www.fws.gov/ipac.

6. **Calcareous Fens:** The permittee may not complete regulated activities in a calcareous fen, unless the Wisconsin Department of Natural Resources has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.

7. **Wild and Scenic Rivers:** The permittee may not complete regulated activities which may affect or are located in a designated portions 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.

8. **Historic Properties, Cultural Resources:**

- a. No activity which may affect historic properties listed or potentially eligible for listing on the National Register of Historic Places is authorized until the requirements of Section 106 of the National Historic Preservation Act (Section 106) have been satisfied. Federal project proponents should follow their own procedures for complying with the requirements of Section 106 and provide documentation of compliance with those requirements.
- b. Information on the location and existence of historic and cultural resources can be obtained from the State Historic Preservation Office, Tribal Historic Preservation Offices, and the National Register of Historic Places.
- c. Rock or fill material used for activities authorized by this permit must either be obtained from existing quarries or, if a new borrow site is excavated to obtain fill material, the Corps must be notified prior to the use of the new site to determine whether a cultural resources survey of the site is necessary.

9. **Discovery of Previously Unknown Remains and Artifacts:** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the Corps of what you have 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.

10. **Burial Sites:** Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70 and Minnesota Statutes 306 and 307.08). Native American burial sites on federal or tribal land are subject to the provisions of Native American Graves Protection and Repatriation Act (NAGPRA). Regulated activities may not result in disturbance or removal of human remains until disposition of the remains has been determined by the appropriate authority under these laws, and the work is authorized by the Corps. Regulated activities which result in an inadvertent discovery of human remains must stop immediately, and the Corps, as well as the appropriate state and tribal authority, must be

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notified. Regulated work at inadvertent discovery sites requires compliance with state law and NAGPRA, as appropriate, prior to re-starting work.

11. **Federally Authorized Corps Civil Works projects:** A permittee is not authorized to begin any regulated activities described in this RGP if activities will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues Section 408 permission to alter, occupy, or use the Corps civil works project (pursuant to 33 U.S.C. 408), and the Corps issues written a Utility RGP verification. Examples of federal projects include but are not limited to works that were built by the Corps and are locally maintained (such as local flood control projects) or operated and maintained by the Corps (such as locks and dams).
12. **Dam Safety:** Permittees are not authorized to begin regulated activities unless they are able to demonstrate that the structures, when appropriate, comply with applicable state dam safety criteria or have been designed by qualified persons. The Corps may require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications are made to ensure safety.
13. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
14. **Restoration of Temporary Impacts:** All temporary impacts in waters of the US, including discharges resulting from side casting material excavated from trenching, that occur as a result of the regulated activity must be fully contained with appropriate erosion control or containment methods, be restored to preconstruction contours and elevations, and, as appropriate, revegetated with native, non-invasive vegetation. In temporarily excavated wetlands, topsoil should be segregated and replaced to original depths, for example, in most wetlands the top 6 to 12 inches of the excavation should normally be backfilled with topsoil originating from the wetland. No temporary excavation area, including, but not limited to trenches, may be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect).
15. **Duration of Temporary Impacts:** Temporary impacts in waters of the U.S., including wetlands, must be avoided and limited to the smallest area and the shortest duration required to accomplish the project purpose.
 - a. Unless otherwise conditioned in a Corps RGP verification, temporary impacts may not remain in place longer than 90 days between May 15 and November 15. Before those 90 days have elapsed all temporary discharges must be removed in their entirety.
 - b. If the temporary impacts would remain in place for longer than 90 days between May 15 and November 15, the PCN must request a waiver from this condition and specify how long temporary impacts will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. The permittee must remove the temporary impacts in their entirety in accordance with the activity authorized their permit verification.
16. **Best Management Practices (BMPs):** To minimize adverse effects from soil loss and sediment transport that may occur as the result of the authorized work, appropriate BMPs must be implemented and maintained. For authorized work above an OHWM the BMPs must remain in place until the affected area is stabilized with vegetation or ground cover. For all authorized work below an OHWM, BMPs are required and must prevent or minimize adverse effects (e.g., total suspended solids or sedimentation) to the water column outside of the authorized work area. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. All BMPs must be inspected and properly maintained following storm events to ensure they are operational. All exposed slopes and stream banks must be stabilized within 24 hours after completion of all tributary crossings.
17. **Culverts and Crossings:** Unless an RGP verification authorizes otherwise, replacement and installation of culverts or crossings authorized by a RGP are to follow (or be restored to) the natural alignment and profile of the tributary. The culverts or bridges must adequately pass low flow and bankfull events, bedload, sediment load, and provide site-appropriate fish and wildlife passage. Example design elements include recessing single culverts to accommodate natural bankfull width and adjusting additional culvert inverts at an elevation higher than the bankfull elevation.

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18. **Aquatic Life Movements:** No regulated 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.
19. **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 sedimentation) of a designated or known spawning area are not authorized.
20. **Riprap:** For RGP categories that allow for the use of riprap material for bank stabilization, only rock shall be used and it must be of a size sufficient to prevent its movement from the authorized alignment by natural forces under normal or high flows.
21. **Pollutant or Hazardous Waste Spills:** The permittee is responsible for removing pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with all applicable state, tribal, and federal laws. In accordance with applicable state, tribal, and federal laws and regulations, if a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or www.nrc.uscg.mil AND
 IN WISCONSIN: the WI DNR Spills Team at 1-800-943-0003; or
 IN MINNESOTA: the Minnesota State Duty Officer at 1-800-422-0798.
22. **Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
23. **Navigation:** No activity may cause more than a minimal adverse effect on navigation. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the US. 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.
24. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
25. **Access Roads:** Access roads must be sized appropriately and must be constructed in such a way to minimize adverse effects on waters of the US and elevations must be as near as practicable to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). All access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows.
26. **Minimum Clearances for Aerial Lines over Navigable Waters:** The minimum clearance* for an aerial electrical power transmission line is based on the low point of the line under conditions that produce the greatest sag, taking into consideration temperature, load, wind, length or span and the type of supports. The minimum clearance for an aerial electrical power transmission line crossing navigable waters of the United States, where there is an established bridge clearance established by the U.S. Coast Guard, shall be governed by the system voltage, as indicated below:

Nominal System Voltage, in kilovolts	Minimum Clearance Above Bridge (as established by the U.S. Coast Guard)
115 and below	20 feet
138	22
161	24
230	26
350	30
500	35
700	42
750 to 765	45

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*NOTE: Minimum clearance is the distance measured between the lowest point of a stationary bridge, including any infrastructure attached to underside of the bridge, and the ordinary high water mark of the navigable waters of the United States beneath the bridge.

27. **Minimum Depths for Utility Lines under Federally-Maintained Channels:** Unless otherwise conditioned in a Corps Utility RGP verification letter, all utility line crossings of federally-maintained channels (i.e., the Mississippi River) will be buried at least six (6) feet below the allowable over depth of the authorized channel, including all side slopes.
28. **Overhead Utility Line Foundations:** Foundations proposed for overhead utility lines must be the minimum size necessary and separate footings for each tower leg (rather than a large single pad) must be used where practicable.
29. **Remediation of Inadvertent Returns of Drilling Fluid:** When an inadvertent return of drilling fluids is suspected or detected in a regulated water of the U.S. the contractor shall suspend all drilling operations at the return site immediately. Work shall be undertaken immediately to contain and clean-up the inadvertent drilling fluid and minimize further migration of the drilling fluids/slurry in waters of the US. All inadvertent return sites located in waters of the U.S. shall be returned to pre-project conditions pursuant to Conditions 14 and 15. Notification must be provided consistent with Condition 21. Notification of inadvertent returns in waters of the US must also include notification to the Corps, but does not require Utility RGP verification prior to commencing remediation work.
30. **Section 401 Clean Water Act Water Quality Certification:** forthcoming
31. **Transfer of Regional General Permit Verifications:** If the permittee sells the property associated with a regional general permit verification, the permittee may transfer the regional general permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the regional general permit verification must be attached to the letter, and the letter must contain the following statement and signature "When the structures or work authorized by this regional general permit are still in existence at the time the property is transferred, the terms and conditions of this regional general permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional general permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

I. DEFINITIONS

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term discharge of dredged material is defined at 33 CFR 323.2(d) and the term discharge of fill material is defined at 33 CFR 323.2(f).

Exploratory trenching: Temporary excavation of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material.

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Historic property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete *non-linear* 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.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Linear ditch: A defined channel constructed adjacent to a linear transportation facility (e.g., roads, highways, railways, trails, airport runways, and taxiways, etc.) to convey runoff from the linear facilities and from areas which drain toward the linear facilities. The term linear ditch does not include natural tributaries, relocated natural tributaries, or modified natural tributaries.

Navigable waters: Waters subject to Section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Ordinary high water mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

Overall project: The aggregate of all single and complete projects related to the same purpose, including linear and non-linear projects with regulated losses and temporary impacts to waters of the US.

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

Pre-construction notification (PCN): A request submitted by the project proponent to the Corps for confirmation that a particular activity is verified by a general permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. PCN may be required by the terms and conditions of this regional general permit. A PCN may be voluntarily submitted in cases where PCN is not required and the project proponent wants verification that the activity is authorized by general permit.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the overall linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the US (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of this general permit authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately. The definition of "single and complete linear project" does not include the term "independent utility" because each crossing of waters of the US is needed for the single and complete linear project to fulfill its purpose of transporting people, goods, and services from the point of origin to the terminal point.

Single and complete non-linear project: For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the overall project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility. Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an RGP authorization. A project is considered to have

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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.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tribal lands: Any lands which are either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Tributary: For purposes of this RGP, 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 of bed and banks and ordinary high water mark. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches.

Utility line: Any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose not excluded herein, and any cable, line, or wire for the transmission of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication. The term utility line does not include activities that drain a water of the United States, such as drainage tile or French drains. The term also excludes pipes and culverts for residential, commercial, industrial, agricultural, recreational, or other developments associated with driveways, roadways, lots, and storm water ponds.

Waiver: An approval from the Corps which allows an applicant to exceed the activity restrictions or conditions described in an RGP. Waivers may only be considered when expressly indicated as available in an RGP and will only be granted once the Corps has made a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects. When a waiver is required, an applicant cannot start work until they have received a RGP verification letter with waiver approval.

Waterbody: For purposes of this RGP, a waterbody is a jurisdictional water of the US. Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

J. FURTHER INFORMATION

1. 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).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by an RGP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this authorization:
 - a) This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
 - b) This RGP does not grant any property rights or exclusive privileges;
 - c) This RGP does not authorize any injury to the property or rights of others; and
 - d) This RGP does not authorize interference with any existing or proposed federal project.
4. Limits of federal liability: In issuing this permit, the Federal Government does not assume any liability for the following:
 - a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;

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- b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
 - c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
 - d) Design or construction deficiencies associated with the permitted work; or
 - e) Damage claims associated with any future modification, suspension, or revocation of this permit.
5. 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.
6. Re-evaluation 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:
- a) The permittee fails to comply with the terms and conditions of this permit;
 - b) The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate (See 5 above); or
 - c) 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.
7. This office may also reevaluate its decision to issue this Utility RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, 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.

K. CORPS DECISION

In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific RGP, the Corps should issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the US to determine whether they individually satisfy the terms and conditions of the RGPs, as well as the cumulative effects caused by all of the crossings authorized by RGP.

If an applicant requests a waiver for any limit where waivers are indicated as available, the Corps will only grant the waiver upon a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects.

When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the RGP activity. The Corps will also consider the cumulative adverse environmental effects caused by activities authorized by the RGP and whether those cumulative adverse environmental effects are no more than minimal. The Corps will consider site specific factors, such as the environmental setting in the vicinity of the RGP activity, the type

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of resource that will be affected by the RGP activity, the functions provided by the aquatic resources that will be affected by the RGP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the RGP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the Corps. The Corps may add case-specific special conditions to the RGP authorization to address site-specific environmental concerns.

The Corps will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal to inform decisions regarding whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the Corps determines that the activity complies with the terms and conditions of the RGP and that the adverse environmental effects are no more than minimal, after considering mitigation, the Corps will notify the permittee and include any activity specific conditions in the RGP verification the Corps deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). When compensatory mitigation is required, the Corps must approve the final mitigation plan before the permittee commences work in waters of the US, unless the Corps determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant of next steps as described in 33 CFR 325.



US Army Corps
of Engineers®
St. Paul District

DEPARTMENT OF THE ARMY

WILDLIFE PONDS REGIONAL GENERAL PERMIT

PERMIT: Wildlife Ponds Regional General Permit

ISSUING OFFICE: St. Paul District U.S. Army Corps of Engineers

EFFECTIVE DATE: February 17, 2018

EXPIRATION DATE: February 16, 2023

A. AUTHORIZATION

Regulated activities conducted in accordance with the terms and conditions of the Wildlife Ponds Regional General Permit (RGP or permit) are authorized in the States of Wisconsin and Minnesota and on Federally-recognized American Indian Reservations in Wisconsin and Minnesota. All regulated activities require an applicant to submit pre-construction notification (PCN) and receive written St. Paul District Corps of Engineers Regulatory Branch (Corps) verification prior to commencing work. Refer to the appropriate sections of this permit for a description of RGP procedures, eligible activities, conditions, exclusions and application instructions.

Unless otherwise specified in the Corps letter verifying a project complies with the terms and conditions of this RGP, the time limit for completing work authorized by the permit ends upon the expiration date of the RGP. Activities authorized under this RGP that have commenced construction or are under contract to commence construction in reliance upon this RGP, will remain authorized provided the activity is completed within 12 months of the date of the RGP expiration, suspension, or revocation; whichever is sooner.

Wildlife Ponds RGP authorizations are not valid until a project proponent obtains a Clean Water Act Section 401 water quality certification (401 certification) or waiver from the appropriate water quality certifying agency; see general condition 22 in Section H below. Regulated activities excluded in general condition 22 require a project-specific 401 certification or waiver from the appropriate agency. In addition, some RGP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This RGP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

B. WILDLIFE PONDS REGIONAL GENERAL PERMIT APPLICABILITY

The Wildlife Ponds RGP applies to certain activities in waters of the United States (US), including wetlands, as described below, in the States of Wisconsin and Minnesota, including within the exterior boundaries of Indian Reservations.

- 1. Regulatory Authority:** Section 404 of the Clean Water Act (33 U.S.C. 1344, Section 404) for discharges of dredged and fill material into waters of the US (referred to as regulated activities).
- 2. Eligible Activities:** Regulated activities, including losses and temporary impacts (see Section D, Calculating Impacts to Waters of the US), required for the construction of small ponds for wildlife habitat.
- 3. Activity Restrictions (the regulated activity must meet the following terms):**
 - a) Each wildlife pond proposed is a single and complete non-linear project, and regulated activities for each pond may not result in the loss of more than 0.5 acre of water of the US.
 - b) This RGP may be stacked to authorize more than one pond, but the cumulative loss to waters of the US may not exceed 1.0 acre.
 - c) Wildlife ponds must be constructed with irregular shorelines, shallow side slopes (8H:1V or flatter), and dominated by water depths of 4 feet or less, but not deeper than 6 feet.
 - d) Upon completion of pond construction, all dredged material must be placed at an upland location.
 - e) This RGP does not authorize the installation of pond liners, and does not authorize construction of aquaculture or swimming ponds.
 - f) This RGP may not be used to authorize the construction of ponds within tributaries.
 - g) This RGP may not be used to authorize the conversion of waters of the US to uplands.

- 4. Pre-Construction Notification (PCN):** All activities eligible for authorization by the Wildlife Ponds RGP require submittal of a PCN and written Corps verification of coverage prior to starting work. Please refer to Section E below for additional information regarding PCN requirements.

C. WILDLIFE PONDS REGIONAL GENERAL PERMIT EXCLUSIONS

The following activities are INELIGIBLE for Wildlife Ponds RGP authorization:

1. Regulated activities that would require authorization from the Corps pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
2. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
3. Regulated activities eligible for authorization under a valid Corps Special Area Management plan (SAMP) general permit, see <http://www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures> for more information on SAMPs.
4. Wildlife ponds proposed near existing airports which do not meet the requirements of Federal Aviation Administration (FAA) Advisory Circular 150/5200-33B (Hazardous Wildlife Attractants On or Near Airports).
5. Regulated activities that would occur in a calcareous fen, unless the Wisconsin Department of Natural Resources (WI DNR) has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources (MN DNR) has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.
6. Regulated activities which are likely to directly or indirectly jeopardize the continued existence of a federally 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 regulated activity is authorized under any RGP which "may affect" a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed.
7. Regulated activities which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, unless the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
8. Regulated activities which may result in disturbance or removal of human remains unless disposition of the remains has been determined by the appropriate authority under applicable laws, and the work is authorized by the Corps. See Section H, Condition 10 for more information.

D. CALCULATING IMPACTS TO WATERS OF THE UNITED STATES

This section describes the impact calculations the Corps generally uses to verify that an RGP meets the stated restrictions in Section B above. Some components described in this section may not be applicable to the Wildlife Ponds RGP. However, projects where Wildlife Ponds RGP activities are one component of a larger project requiring Corps authorization may require a tabulation of more varied impacts than required by the Wildlife Ponds RGP alone. See Section G below for more information regarding the use of multiple general permits.

1. **Waters of the US may include waterbodies such as streams, rivers, lakes, ponds, and wetlands** (see the Definitions Section I below).
2. **Loss of waters of the US** is the sum of all permanently adversely affected jurisdictional waterbodies for a single and complete project. Temporary impacts to waters of the US, discussed below, are calculated separately from losses of waters of the US, and do not contribute to loss thresholds. Permanent adverse effects include filling, flooding, excavation, or drainage in waters of the US as a result of the regulated activity. Permanent adverse effects to waters of the US include regulated activities that change a waterbody to dry land, increase the bottom

elevation of a waterbody, or decrease the bottom elevation of a waterbody (e.g. excavation of a sedge meadow wetland to shallow marsh), or change the use of a waterbody.

- a) Losses of wetland must be reported in either acres or square feet, as appropriate.
 - b) Losses of tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks (e.g. bank stabilization along both banks of a tributary) or at multiple locations (e.g. construction of bridge abutments and piers), they are added together to determine the total amount of linear loss to waters of the US.
 - c) Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability Section B, or in Pre-Construction Notification Information Section E.
3. **Temporary impacts to waters of the US** include the sum of all regulated activities in jurisdictional waterbodies at a single and complete location which are restored to pre-construction conditions. Examples of temporary impacts in waters of the US include the placement of timber matting, temporary stockpiling of dredged material, trenching and backfilling, and in many cases - mechanized land-clearing in waters of the US.
- a) Temporary impacts to wetlands must be reported in either acres or square feet, as appropriate.
 - b) Temporary impacts to tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed along opposite banks or at multiple locations, temporary impacts are added together to determine the total amount of temporary linear impact.
 - c) Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability Section B, or in Pre-Construction Notification Information Section E.
4. **Losses and temporary impacts to waters of the US do not include** activities that do not require Department of the Army authorization, such as activities eligible for exemptions under Section 404(f) of the Clean Water Act.
5. The measurements of loss and temporary impact to waters of the US are for determining whether a project may qualify for the RGP, and are not reduced by compensatory mitigation.

E. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

All Wildlife Ponds RGP activities require PCN.

The PCN must include all other nationwide permits, programmatic general permits, RGPs, or individual permits used or intended to be used to authorize any part of the overall project, including other regulated activities that require Corps authorization but do not require PCN.

Before starting regulated work, project proponents must obtain written Corps verification of Wildlife Ponds RGP coverage for all activities.

1. Timing of PCN: The prospective permittee must notify the Corps by submitting a PCN as early as possible. The Corps will determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. 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, 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. The prospective permittee shall not begin the activity until they are notified in writing by the Corps that the activity may proceed under the RGP with any special conditions imposed by the Corps.

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2. Form and Content of PCN: The PCN must be in writing and should utilize the Minnesota Joint Waters Wetlands Application, WI DNR application or the Corps standard individual permit application Form ENG 4345. A letter containing the required information may also be used. A complete PCN must include:

- a. Contact information including the name, mailing address, email address, and telephone numbers of the prospective permittee and any third party agents.
- b. Location of the proposed activity (i.e. section-township-range and latitude and longitude in decimal degrees).
- c. A description of the proposed activity and its purpose; a description of any avoidance and minimization mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any and all other general or individual permits used or intended to be used to authorize any part of the overall project, including activities that require Corps authorization but do not require PCN.
- d. A tabulation of all impacts to waters of the US, including the anticipated amount of loss and temporary impact to waters of the US expected to result from the proposed activity. Impacts to all waters of the US must be reported in acres or square feet. In addition, pond and lake impacts must also be reported in linear feet (see Calculating Impacts to Water of the United States, Section D).
- e. Sketches, maps, drawings and plans must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale bar included, and depict all identified aquatic resources and aquatic resource impact areas, including plan-view drawings on a recent aerial photograph, and cross-section and profile drawings where appropriate.
- f. Identification of all aquatic resources on the project site and the acreage of each aquatic resource present. Aquatic resources shall be identified by type (e.g. wetland, lake, man-made ditch, pond, etc.) and impacts shall be identified by type (e.g. fill, excavation, etc.) and permanence (permanent or temporary). A wetland delineation may be required.
- g. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section F for more information.
- h. If the proposed project would impact a calcareous fen, the PCN must include a copy of the WI DNR authorization for the proposed regulated activity, or a copy of the approved MN DNR calcareous fen management plan specific to the project.
- i. If any federally-listed proposed, threatened or endangered species or proposed or designated critical habitat might be affected by the regulated activity, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with ESA Section 7.
- j. If the activity might have the potential to cause effects to an historic property listed on, eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity and include a vicinity map indicating the location of the historic property. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with Section 106 of the NHPA.
- k. The PCN must specify how long temporary impacts and structures will remain in place and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- l. If a waiver from general conditions 13 or 14 are proposed (Section H, Restoration of Temporary Impacts and Duration of Temporary Impacts), the PCN must include an explanation of the need for a waiver and why the applicant believes the impacts would result in minimal individual and cumulative adverse environmental effects. Waiver requests for Condition 13 must also describe why the resulting grade and existing seed bank are sufficient to restore the site to pre-construction conditions. Waiver requests for Condition 14 must disclose the proposed duration of temporary impacts between May 15 and November 15, and provide a restoration plan showing how all temporary impacts will be removed and the areas restored to pre-construction conditions. General conditions 13 and 14 are the only waivers available for the Wildlife Ponds RGP.

F. MITIGATION

In accordance with the Federal Mitigation Rule (33 CFR part 332), the Section 404(b)(1) guidelines (40 CFR part 230), and current Corps policies and guidelines for compensatory mitigation, regulated activities must be designed and constructed to avoid and minimize (mitigate) adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site). Mitigation includes actions which may avoid, minimize, rectify, reduce, or compensate for adverse environmental effects or activities which may otherwise be contrary to the public interest. Examples of avoidance activities may include installation of clear-span bridges over tributaries or excluding wetlands from additional temporary workspace. Minimization activities may include use of construction matting in waters of the US, or seasonally restricting the timing for regulated activities within tributaries. Regulated activities which the Corps believes do not mitigate adverse environmental effects or are contrary to the public interest are ineligible for authorization by the Utility RGP, and will be evaluated by the Corps using individual permit procedures.

After all practicable steps to avoid and minimize adverse effects to waters of the US have been considered, the Corps may require compensatory mitigation to ensure that the regulated activity results in no more than minimal adverse environmental effects, or will not be contrary to the public interest. In reviewing the complete PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps will issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps determines, after considering compensatory mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest. When this occurs, the Corps will exercise discretionary authority to require an individual permit evaluation for the proposed regulated activity.

Regulated activities eligible for this RGP must include a statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required for proposed impacts to waters of the US. Project proponents may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the project proponent must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of the current Corps policies, guidelines, and 33 CFR 332 (the Mitigation Rule).

Information regarding current Corps policies and guidelines about compensatory mitigation in Minnesota and Wisconsin may be viewed online at www.mvp.usace.army.mil/Missions/Regulatory/Mitigation. Information regarding existing banks and in-lieu fee programs is available online at www.ribits.usace.army.mil. Nationally applicable information, including the Mitigation Rule, may be read online at http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/.

G. USE OF MULTIPLE GENERAL PERMITS (STACKING)

Single and complete non-linear projects may not be “piecemealed” to avoid the limits in a general permit (nationwide, programmatic, or regional general permit) authorization. When general permit limits are exceeded, single and complete projects may be eligible for review and authorization by an individual permit.

Unless otherwise indicated by a specific general permit or general permit category, the use of more than one general permit (nationwide, programmatic, or regional general permit) for a single and complete project is prohibited, except when the acreage or linear foot loss of waters of the US authorized by the general permit does not exceed the acreage limit of the general permit with the *highest* specified acreage limit.

H. GENERAL CONDITIONS

To qualify for Wildlife Ponds RGP authorization, the prospective permittee must comply with the following conditions, as applicable, in addition to all applicable Wildlife Ponds RGP terms and requirements and all project-specific conditions imposed by the Corps.

1. **Compliance:** The permittee is responsible for ensuring that whomever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP and any special (permit-specific) conditions included in any written verification letter from the Corps. The activity must also comply with any special conditions added by the state, tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the RGP. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the Corps to an RGP authorization.
2. **Compliance Certification:** Each permittee who receives an RGP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The Corps will provide the permittee the certification document with the RGP verification letter. The completed certification document must be submitted to the Corps within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.
3. **Site Inspection:** The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the RGP authorization.
4. **Migratory Birds and Bald and Golden Eagles:** The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service (FWS) to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
5. **Endangered Species:**
 - a. No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a federally threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), 50 CFR 402, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under the Wildlife Ponds RGP which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed, and a Corps RGP verification letter is issued. Direct effects are the immediate effects on listed species and critical habitat caused by the RGP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the RGP activity and are later in time, but still are reasonably certain to occur.
 - b. As a result of formal or informal consultation with the FWS the Corps may add species-specific permit condition to the RGP verification.
 - c. Information on the location of federally threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS on their web page at www.fws.gov/ipac.
6. **Calcareous Fens:** The permittee may not complete regulated activities in a calcareous fen, unless the Wisconsin Department of Natural Resources has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf.
7. **Historic Properties, Cultural Resources:**
 - a. No activity which may affect historic properties listed or potentially eligible for listing on the National Register of Historic Places is authorized until the requirements of Section 106 of the National Historic Preservation Act

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(Section 106) have been fulfilled. Federal project proponents should follow their own procedures for complying with the requirements of Section 106 and provide documentation of compliance with those requirements.

- b. Information on the location and existence of historic and cultural resources can be obtained from the State Historic Preservation Office, Tribal Historic Preservation Offices, and the National Register of Historic Places.
 - c. Rock or fill material used for activities authorized by this permit must either be obtained from existing quarries or, if a new borrow site is excavated to obtain fill material, the Corps must be notified prior to the use of the new site to determine whether a cultural resources survey of the site is necessary.
8. **Discovery of Previously Unknown Remains and Artifacts:** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the Corps of what you have 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.
 9. **Burial Sites:** Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70 and Minnesota Statutes 306 and 307.08). Native American burial sites on federal or tribal land are subject to the provisions of Native American Graves Protection and Repatriation Act (NAGPRA). Regulated activities may not result in disturbance or removal of human remains until disposition of the remains has been determined by the appropriate authority under these laws, and the work is authorized by the Corps. Regulated activities which result in an inadvertent discovery of human remains must stop immediately, and the Corps, as well as the appropriate state and tribal authority, must be notified. Regulated work at inadvertent discovery sites requires compliance with state law and NAGPRA, as appropriate, prior to re-starting work.
 10. **Federally Authorized Corps Civil Works projects:** A permittee is not authorized to begin any regulated activities described in this RGP if activities will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues Section 408 permission to alter, occupy, or use the Corps civil works project (pursuant to 33 U.S.C. 408), and the Corps issues written a Wildlife Ponds RGP verification. Examples of federal projects include but are not limited to works that were built by the Corps and are locally maintained (such as local flood control projects) or operated and maintained by the Corps (such as locks and dams).
 11. **Dam Safety:** Permittees are not authorized to begin regulated activities unless they are able to demonstrate that the structures, when appropriate, comply with applicable state dam safety criteria or have been designed by qualified persons. The Corps may require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications are made to ensure safety.
 12. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
 13. **Restoration of Temporary Impacts:** All temporary impacts in waters of the US, including discharges resulting from side casting material excavated from trenching, that occur as a result of the regulated activity must be fully contained with appropriate erosion control or containment methods, be restored to preconstruction contours and elevations, and revegetated with native, non-invasive vegetation. A project proponent may request, in writing, a waiver from this condition from the Corps. An acceptable reason for a waiver to this condition may include, but is not limited to, the Corps allowing natural restoration of the site when the resulting grade and existing seed bank are sufficient for the site to restore to pre-construction conditions. In temporarily excavated wetlands, the top 6 to 12 inches of the excavation should normally be backfilled with topsoil originating from the wetland. No temporary excavation area, including, but not limited to trenches, may be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect).
 14. **Duration of Temporary Impacts:** Temporary impacts in waters of the U.S., including wetlands, must be avoided and limited to the smallest area and the shortest duration required to accomplish the project purpose.

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- a. Unless otherwise conditioned in a Corps RGP verification, temporary impacts may not remain in place longer than 90 days between May 15 and November 15. Before those 90 days have elapsed all temporary discharges must be removed in their entirety.
 - b. If the temporary impacts would remain in place for longer than 90 days between May 15 and November 15, the PCN must request a waiver from this condition and specify how long temporary impacts will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. The permittee must remove the temporary impacts in their entirety in accordance with the activity authorized their permit verification.
15. **Best Management Practices (BMPs):** To minimize adverse effects from soil loss and sediment transport that may occur as the result of the authorized work, appropriate BMPs must be implemented and maintained. For authorized work above an OHWM the BMPs must remain in place until the affected area is stabilized with vegetation or ground cover. For all authorized work below an OHWM, BMPs are required and must prevent or minimize adverse effects (e.g., total suspended solids or sedimentation) to the water column outside of the authorized work area. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. All BMPs must be inspected and properly maintained following storm events to ensure they are operational. All exposed slopes and stream banks must be stabilized within 24 hours after completion of all tributary crossings.
 16. **Aquatic Life Movements:** No regulated 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.
 17. **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 sedimentation) of a designated or known spawning area are not authorized.
 18. **Pollutant or Hazardous Waste Spills:** The permittee is responsible for removing pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with all applicable state, tribal, and federal laws. In accordance with applicable state, tribal, and federal laws and regulations, if a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or www.nrc.uscg.mil AND
IN WISCONSIN: the WI DNR Spills Team at 1-800-943-0003; or
IN MINNESOTA: the Minnesota State Duty Officer at 1-800-422-0798.
 19. **Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
 20. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
 21. **Access Roads:** Access roads must be sized appropriately and must be constructed in such a way to minimize adverse effects on waters of the US and elevations must be as near as practicable to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). All access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows.
 22. **Section 401 Clean Water Act Water Quality Certification:** forthcoming
 23. **Transfer of Regional General Permit Verifications:** If the permittee sells the property associated with a regional general permit verification, the permittee may transfer the regional general permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the regional general permit verification must be attached to the letter, and the letter must contain the following statement and signature "When the structures or work authorized by this regional general permit are still in existence at the time the property is transferred, the terms and conditions of this regional general permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional general permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

I. DEFINITIONS

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term discharge of dredged material is defined at 33 CFR 323.2(d) and the term discharge of fill material is defined at 33 CFR 323.2(f).

Historic property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete *non-linear* 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.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Navigable waters: Waters subject to Section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Ordinary high water mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

Overall project: The aggregate of all single and complete projects related to the same purpose, including both linear and non-linear activities with regulated losses and temporary impacts to waters of the US.

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

Pre-construction notification (PCN): A request submitted by the project proponent to the Corps for confirmation that a particular activity is verified by a general permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. PCN may be required by the terms and conditions of this regional general permit. A PCN may be voluntarily submitted in cases where PCN is not required and the project proponent wants verification that the activity is authorized by general permit.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

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Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the overall linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the US (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of this general permit authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately. The definition of “single and complete linear project” does not include the term “independent utility” because each crossing of waters of the US is needed for the single and complete linear project to fulfill its purpose of transporting people, goods, and services from the point of origin to the terminal point.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the overall project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility. Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an RGP authorization. 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.

Tribal lands: Any lands which are either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Tributary: For purposes of this RGP, 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 of bed and banks and ordinary high water mark. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches.

Waiver: An approval from the Corps which allows an applicant to exceed the activity restrictions or conditions described in an RGP. Waivers may only be considered when expressly indicated as available in an RGP and will only be granted once the Corps has made a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects. When a waiver is required, an applicant cannot start work until they have received a RGP verification letter with waiver approval.

Waterbody: For purposes of this RGP, a waterbody is a jurisdictional water of the US. Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

J. FURTHER INFORMATION

1. 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).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by a RGP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this authorization:
 - a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
 - b. This RGP does not grant any property rights or exclusive privileges;
 - c. This RGP does not authorize any injury to the property or rights of others; and
 - d. This RGP does not authorize interference with any existing or proposed federal project.

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4. Limits of federal liability: In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
 - d. Design or construction deficiencies associated with the permitted work; or
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
5. 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.
6. Re-evaluation 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:
 - a. The permittee fails to comply with the terms and conditions of this permit;
 - b. The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate (See 5 above); or
 - c. 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.
7. This office may also reevaluate its decision to issue this Wildlife Ponds RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, 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.

K. CORPS DECISION

In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific RGP, the Corps should issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the US to determine whether they individually satisfy the terms and conditions of the RGPs, as well as the cumulative effects caused by all of the crossings authorized by RGP.

If an applicant requests a waiver for any limit where waivers are indicated as available, the Corps will only grant the waiver upon a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects.

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When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the RGP activity. The Corps will also consider the cumulative adverse environmental effects caused by activities authorized by the RGP and whether those cumulative adverse environmental effects are no more than minimal. The Corps will consider site specific factors, such as the environmental setting in the vicinity of the RGP activity, the type of resource that will be affected by the RGP activity, the functions provided by the aquatic resources that will be affected by the RGP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the RGP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the Corps. The Corps may add case-specific special conditions to the RGP authorization to address site-specific environmental concerns.

The Corps will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal to inform decisions regarding whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the Corps determines that the activity complies with the terms and conditions of the RGP and that the adverse environmental effects are no more than minimal, after considering mitigation, the Corps will notify the permittee and include any activity specific conditions in the RGP verification the Corps deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). When compensatory mitigation is required, the Corps must approve the final mitigation plan before the permittee commences work in waters of the US, unless the Corps determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant of next steps as described in 33 CFR 325.