



US Army Corps  
of Engineers  
St Paul District

# Public Notice

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ISSUED: 9-January-2013

EXPIRES: 7-February-2013

**AUTHORITIES:**

Section 404, Clean Water Act

Section 10, Rivers and Harbors Act

**REFER TO: GP-001-WI (2012-03486-RMG)**

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## **SUSPENSION AND PROPOSED REVOCATION OF REGIONAL GENERAL PERMIT GP-001-WI IN THE STATE OF WISCONSIN**

1. PURPOSE OF THIS PUBLIC NOTICE. This public notice is to notify the public that the St. Paul District Corps of Engineers (Corps) has suspended GP-001-WI. Additionally, this public notice is to request public comment on the Corps proposal to ultimately revoke regional general permit GP-001-WI. GP-001-WI is a regional, programmatic general permit (GP) which provides Federal authorization under Section 10 of the Rivers and Harbors Act (Section 10) and Section 404 of the Clean Water Act (Section 404) to conduct certain activities in waters of the United States that are regulated and approved by the Wisconsin Department of Natural Resources (WDNR).

The Corps has suspended GP-001-WI as of January 9, 2013. Projects confirmed in writing as eligible for authorization under Part A prior to the suspension date remain valid until the expiration date indicated in our confirmation letter. No extensions of time are available for these projects. No new confirmations of coverage are available under Part A of GP-001-WI.

Projects eligible for authorization under Part B of GP-001-WI which commenced work prior to the suspension date of GP-001-WI continue to be authorized through April 9, 2013. No extensions of time are available for these projects. No coverage is available for projects otherwise eligible under Part B of GP-001-WI which have not commenced as of January 9, 2013.

It is the permittee's responsibility to remain informed regarding changes to GP-001-WI.

2. BACKGROUND. GP-001-WI includes a Part A and Part B.

Federal authorization under Part A required project proponents to receive both a Corps confirmation letter and WDNR authorization under 30.1235, 30.2022, or a state permit under Chapter 30 or 31. Section 10 and Section 404 regulated activities eligible for authorization under Part A of GP-001-WI include:

- Trans. 207 projects (Wisconsin statute 30.1235 for construction of county, town, village, and city highway bridges, arches, and culverts in or over navigable streams) that would impact or drain not more than 0.1 acre of waters of the United States;
- Public transportation projects that are in compliance with the WDNR-Wisconsin Department of Transportation (WDOT) liaison procedure under Wisconsin Statute 30.2022

Suspension and Proposed Revocation of GP-001-WI

and in accordance with the WDNR/WDOT cooperative agreement that would impact not more than 2 acres of waters of the United States; and

- Other activities not specified above that impact non-wetland waters of the United States, limited to no more than 0.5 acre.

Part B of GP-001-WI was developed to be non-reporting to the Corps, thus applications were not required to be submitted for projects that qualify for authorization under Part B. Non-reporting activities eligible for authorization under Part B include those activities that are specifically exempted from regulation under Wisconsin Statutes Chapter 30.12 dated February 6, 2004.

The Corps has issued GP-003-WI and GP-004-WI to replace and update the coverage under Section 404 and Section 10 currently afforded by GP-001-WI. Both GP's have been publicly noticed as separate announcements.

3. **FINDINGS.** The following four points represent the relevant public interest factors evaluated regarding the suspension and proposed revocation of GP-001-WI:

*a. Changes to circumstances relating to authorized activity*

Part A of GP-001-WI authorizes discharges of dredged and/or fill materials for projects approved by the WDNR pursuant to Trans 207 (WI Chapter 30.1235). 2011 Act 167 (Act 167) repealed this statute, leaving the underpinning State program tied to GP-001-WI invalid.

Act 167 has reduced the level of state review for piers and wharves in areas of state natural resource interest from a State individual permit (IP) to a State general permit (to be developed). The diminished level of state review for these projects may not provide the level of review required under the Clean Water Act.

Grading for stormwater discharge permits and dredging to allow access to piers/wharves was exempted from WDNR's regulation under Chapter 30 as of August 1, 2012 (new statute 30.19(1m)). These activities were originally drafted by the Corps to be eligible for authorization under Part A of GP-001-WI because the State's permitting scheme was found to be adequate. Because no State review of these projects is provided as a result of Act 167, there is no underlying state program for us to piggyback on for those two activities.

In 2011, GP-001-WI was utilized 102 times for structures (including Trans 207, piers and wharves), and 63 times for dredging. These authorizations represent approximately 40% of the authorizations issued using GP-001-WI. Retention of GP-001-WI as it exists currently would result in public confusion and overall regulatory inefficiency as the State programs GP-001-WI was designed to piggyback either no longer exist, or have been altered to provide a less rigorous review than may be required under Section 404.

*b. Statutory and/or regulatory authority revision*

Act 167 requires all state general permits include presumptive approval after 30 days. This means after 30 days, all applications default to be considered approved. Based Corps data from 2011, 23% of the time the state did not provide authorization in 30 or fewer days. Based on this information, it is appropriate to estimate that one of five projects will be presumptively approved.

Further, exemption of piers and wharves, dredging, and stormwater discharge grading projects will completely eliminate state review of these proposals. Because of its programmatic nature, GP-001-WI is no longer available to provide coverage for these projects.

Suspension and Proposed Revocation of GP-001-WI

Reduced or eliminated state scrutiny is likely to result in projects which may not meet the 404(b)(1) guidelines, or which may fail to meet the public interest. Retention of GP-001-WI is not likely to provide a level of state review consistent with the requirements of Section 404.

*c. Adequacy of Permit*

In addition to the state changes which have limited applicability of GP-001-WI, GP-001-WI as written may not be utilized to authorize impacts to all types of waters of the United States. Specifically, GP-001-WI may not be used to authorize projects which include a discharge of dredged/fill material into wetlands (with case-by-case exception for wetland fills which were previously eligible for Trans 207). The limited applicability of GP-001-WI to wetlands further reduces the desirability of retaining GP-001-WI.

*d. Extent to which suspension/revocation would adversely affect plans*

Suspension and the proposed revocation of GP-001-WI is anticipated to have a negligible potential to impact projects not currently authorized but otherwise eligible for authorization by GP-001-WI. Retention of GP-001-WI as-is is undesirable because it is no longer available to authorize the full range of activities it was developed to cover as a result of Act 167. Issuance of GP-003-WI and GP-004-WI further mitigate any adverse effects, as they were developed primarily to replace and improve the coverage previously afforded by GP-001-WI. Finally, modification of GP-001-WI is undesirable because the extensive revisions would require re-drafting of virtually the entire permit, and would not eliminate the concerns associated with a programmatic GP.

Suspension and the proposed revocation of GP-001-WI are anticipated to have a negligible potential to impact projects currently authorized by this GP. GP-001-WI currently states that the time limit for completing work authorized under Part A ends 3 years after the date of the state authorization, unless otherwise specified by the state. Suspension and the proposed revocation of GP-001-WI would not alter this expiration for projects already authorized under Part A. Projects authorized under Part B of GP-001-WI where work has commenced would be grandfathered until April 9, 2013. However, no time extensions will be granted for authorizations under either Part A or Part B. Projects currently authorized under GP-001-WI which require additional time are likely to be eligible for a lower-level authorization under another GP.

4. JURISDICTION AND REGULATORY AUTHORITY. All work authorized under GP-001-WI occurs in waters of the U.S., which include Navigable Waters of the U.S., wetlands, and other waters subject to the regulatory jurisdiction of the Corps under Section 404 and Section 10.
5. REPLIES/COMMENTS. Interested parties are invited to submit to this office written facts, arguments, or objections concerning the proposed revocation of GP-001-WI within 30 days of the date of this notice. These statements should bear upon the suitability and adequacy of the proposal and should, if appropriate, suggest any changes deemed desirable. Replies may be addressed to the Corps of Engineers, 180 Fifth Street East, St. Paul, Minnesota 55101-1678, ATTENTION: Kathryn Swanson, OP-R. Questions about the proposal may be directed to Rebecca Graser at (262) 717-9531, [rebecca.m.graser@usace.army.mil](mailto:rebecca.m.graser@usace.army.mil).
6. FEDERALLY-LISTED THREATENED OR ENDANGERED SPECIES OR THEIR CRITICAL HABITAT. The suspension and proposed revocation of GP-001-WI is not anticipated to affect Federally-listed endangered or threatened species or their critical habitat. However, this public notice is being coordinated with the United States Fish and Wildlife Service for comments.

CEMVP-OP-R (2012-03486-RMG)  
Suspension and Proposed Revocation of GP-001-WI

7. HISTORICAL/ARCHAEOLOGICAL. The suspension and proposed revocation of GP-001-WI is not anticipated to affect known or unknown archaeological, scientific, or historical resources. However, this public notice is being sent to the National Park Service, the State Historic Preservation Officer, and Tribal Historic Preservation Offices for comment. Implementation of this proposal would not affect the Corps' responsibility to insure that all Section 10 and Section 404 authorizations comply with Section 106 of the National Historic Preservation Act.
8. WATER QUALITY CERTIFICATION. Water quality certification is not required for the suspension or proposed revocation of GP-001-WI. However, this notice has been sent to the WDNR, the agency responsible for water quality certification pursuant to Section 401 of the Clean Water Act in the State of Wisconsin.
9. PUBLIC HEARING REQUESTS. Any person may request, in writing, within 10 days of this notice, that a public hearing be held to consider this proposal. Requests for public hearings shall state, in detail, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served.
10. PUBLIC INTEREST REVIEW. The decision to revoke GP-001-WI will be based on an evaluation of the probable impact, including cumulative impacts, of the proposal on the public interest as described in 33 Code of Federal Regulations 325.7. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects. Among those are the extent of compliance with the terms and conditions of the GP, whether or not circumstances relating to the authorized activity have changed since GP-001-WI was issued, the continuing adequacy of or need for the permit conditions, significant objections to GP-001-WI which were not previously considered, revisions to applicable statutory and/or regulatory authorities, and the extent to which revocation would adversely affect plans, investments and actions the public has reasonably made or taken in reliance of the permit. The permit record will be available for review in the Corps District Office.
11. COASTAL MANAGEMENT PROGRAM CONSISTENCY CERTIFICATION. The suspension and revocation of GP-001-WI is not anticipated to result in non-compliance with state policies in Wisconsin's coastal zone. However, this notice has been sent to the Wisconsin Coastal Management Program (WCMP) in the Wisconsin Department of Administration.

FOR THE DISTRICT ENGINEER:

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