



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 21, 2018

EXPIRATION DATE: February 20, 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 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 used 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.

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- a. Losses of wetlands 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 at multiple locations, 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 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.

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.

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 Application for Department of the Army Permit Form ENG 4345. A letter containing the required information may also be used. A complete PCN must include:

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1. Contact information including the name, mailing address, email address, and telephone numbers of the prospective permittee and any third party agents.
2. Location of the proposed activity (i.e. section-township-range and latitude and longitude in decimal degrees).
3. 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.
4. 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).
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. If the activity might have the potential to cause effects to a 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.
11. 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.
12. If a waiver from general conditions 13 or 14 is 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 the 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

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

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- 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.
8. **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, 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

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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 include a request for a waiver from this condition, 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 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:** All regulated activities authorized by the Wildlife Ponds RGP pursuant to Section 404 of the Clean Water Act require Section 401 Clean Water Act certification or waiver to be considered valid.
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

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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 (OHWM): 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 the 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.

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 an 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 an RGP based on concern for the aquatic environment or for any other factor of the public interest.

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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 permittees 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

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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.