



US Army Corps  
of Engineers®  
St. Paul District

# Public Notice

ISSUED: August 30, 2022

EXPIRES: September 29, 2022

Authorities:

Section 404 Clean Water Act,

Section 10 Rivers and Harbors Act

## PROPOSED REGIONAL GENERAL PERMITS

- |   |                   |
|---|-------------------|
| A. Bank Stabilization & Habitat Improvement | E. Piers & Docks  |
| B. Beach Creation & Nourishment             | F. Transportation |
| C. Beach Raking                             | G. Utility        |
| D. Minor Discharges                         | H. Wildlife Ponds |

### SUMMARY

On July 13, 2022, the U.S. Army Corps of Engineers, St. Paul District (District) issued a public notice announcing its intent to develop one new regional general permit (RGP) and re-issue seven RGPs. The new RGP would combine coverage currently offered by stacking Nationwide Permits (NWP) 13 and 27. This new, single RGP would be used to authorize stream bank stabilization and accompanying habitat improvement activities. The seven RGPs proposed for re-issuance are intended to provide authorization for regulated minor activities in waters of the United States associated with beach creation and nourishment, beach raking, minor discharges, piers and docks, transportation, utilities, and wildlife ponds. The District is proposing to re-issue these RGPs in February 2023 with minor changes. This public notice solicits public comment on the attached 2023 RGPs proposed for use in Minnesota, Wisconsin, and within the exterior boundaries of Federally-recognized American Indian reservations.

### JURISDICTION AND REGULATORY AUTHORITY

The proposed 2023 RGPs would authorize regulated work and structures in, under, or over navigable waters subject to Section 10 Rivers and Harbors Act of 1899 (Section 10), 33 U.S.C. 403, and regulated discharges of dredged or fill material in waters of the U.S., including wetlands, pursuant to Section 404 of the Clean Water Act (Section 404), 33 U.S.C. 1344. Information is included in each of the proposed 2023 RGPs describing which regulatory authorities apply to each RGP.

### BACKGROUND AND PURPOSE

General permits are used by the Corps to streamline review of activities determined to result in no more than minimal adverse effects, individually and cumulatively. General permits include NWPs, programmatic general permits, and RGPs. On February 21, 2018, the District issued seven RGPs for use in Minnesota and Wisconsin, including within Federally recognized American Indian reservations. These RGPs are set to expire on February 20, 2023. The District is proposing to re-issue the seven existing RGPs with minor changes and issue a new RGP. The proposed 2023 RGPs will ensure continued regional general permit coverage in the District's area of responsibility, improve efficiency and consistency in project reviews, and will provide appropriate and consistent protections for waters of the United States.

### PROPOSED 2023 RGPs

The Corps is proposing that all 2023 RGPs be eligible for use in both Minnesota and Wisconsin and within the exterior boundaries of all Federally-recognized American Indian reservations in both states. The full content of the RGPs is appended to this Public Notice as Enclosures A through H. All the RGPs proposed for re-issuance have changes to the organization of the document compared to the 2018 versions. Minor word changes to general conditions are proposed to improve understanding and better align the conditions to be consistent with the NWPs. A summary of each RGP and changes from the 2018 versions are listed as follows:

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- A. Bank Stabilization & Habitat Improvement: This new RGP would authorize bank bio-stabilization actions, hard armoring, and agency sponsored bank stabilization and habitat improvement projects necessary for erosion control or prevention (3 Categories). The RGP would also authorize habitat improvement features integrated along with stabilization activities and maintenance of previously authorized structures or fills that do not qualify for Clean Water Act Section 404 exemptions. This RGP combines general permit coverage currently provided by stacking NWP 13 and 27.
- B. Beach Creation & Nourishment: This RGP would authorize certain activities associated with the placement of sand or pea gravel for the creation or nourishment of beaches. Only minor organizational changes are proposed for this RGP compared to the current version.
- C. Beach Raking: This RGP would authorize certain activities associated with mechanical beach raking activities for the purpose of removing accumulated debris. Only minor organizational changes are proposed for this RGP compared to the current version.
- D. Minor Discharges: This RGP would authorize the discharge of up to 400 square feet of dredged or fill material in waters of the U.S. Only minor organizational changes are proposed for this RGP compared to the current version.
- E. Piers & Docks: This RGP would authorize certain activities associated with new and existing piers and docks. Changes to the RGP would clarify current implementation, by explicitly excluding the use of the RGP for public marinas. Other changes would increase the allowable width of the primary walkway from 8 to 10 feet and increase the allowable area of the terminal section from 200 to 400 square feet.
- F. Transportation: This RGP would authorize certain activities associated with transportation projects. Changes to the RGP would include: 1) requiring pre-construction notification for Category 2 and 3 activities that exceed 300 linear feet of tributary loss, 2) adding a pre-construction notification requirement for regulated activities within Areas of Special Natural Resources Interest (WI) or Outstanding Resource Value Waters (MN), and 3) removing the existing Category 2 reporting requirement. This reporting requirement applied to for overall projects proposed to result in the cumulative loss of 10,000 square feet or more of waters of the U.S.
- G. Utility: This RGP would authorize certain activities associated with utility projects such as utility lines, survey activities, substation facilities, access roads, and the remediation of inadvertent returns of drilling fluid. Changes to the RGP would include: 1) requiring pre-construction notification for mechanized land-clearing of shrub and forested wetlands in excess of 400 square feet, and 2) adding a pre-construction notification requirement for regulated activities within Areas of Special Natural Resources Interest (WI) or Outstanding Resource Value Waters (MN).
- H. Wildlife Pond: This RGP would authorize certain activities for the construction of small ponds for wildlife habitat. Only minor organizational changes are proposed for this RGP compared to the current version.

### PRE-CONSTRUCTION NOTIFICATION

Where required by the terms of a proposed RGP, a permittee must notify the Corps by submitting a pre-construction notification (PCN) as early as possible. Each proposed 2023 RGP indicates the types of eligible activities which would require submittal of a PCN. PCN requirements are fulfilled by completing and submitting the Minnesota Joint Application Form, the Wisconsin Department of Natural Resources Water Permits Application, or the Application for Department of the Army Permit. Depending on the activity proposed and the PCN requirement associated with the regulated activity, additional information not requested on these forms may be required to support Corps decision-making. As an alternative to these forms, a letter containing all the required PCN information listed in the appropriate proposed RGP may also be submitted.

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When a PCN is required, the content of the PCN must disclose any and all other nationwide permits, programmatic general permits, RGPs, or individual permit(s) used or intended to be used to authorize any part of the total linear and non-linear project (including all single and complete activities) and any related activity, including other separate and distant crossings that require Section 10 and Section 404 authorization but do not require PCN. Additional information on when PCN is required, and what is required to submit a complete PCN is specific to each RGP proposed. See Enclosures A through H for more information.

Projects that meet the terms and conditions of a proposed RGP and do not require submittal of a PCN would be able to commence work after project proponents have carefully confirmed that the activity will be conducted in compliance with all applicable terms and conditions of the specific RGP issued.

### **PROJECT-SPECIFIC EVALUATION PROCEDURES**

When making minimal adverse environmental effects determinations, the Corps considers the direct and indirect effects caused by the RGP activity. The Corps also considers 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.

### **COMPENSATORY MITIGATION**

The current Corps compensatory mitigation policies for Minnesota and Wisconsin are unaffected by these proposed RGPs. Any proposed changes to Corps mitigation policies will be appropriately coordinated with the public and published in a separate public notice. Minnesota and Wisconsin mitigation policies can be viewed on the Corps website:  
<https://www.mvp.usace.army.mil/Missions/Regulatory/Mitigation/>

For proposed RGP activities which require PCN, the prospective permittee is required to submit a mitigation proposal with the PCN. The Corps will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining 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 that the Corps deems necessary.

### **PUBLIC COMMENTS**

Interested parties are invited to submit written facts, arguments, or objections concerning the proposal 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. Comments on the re-issuance of the RGPs can be submitted by e-mail to [CEMVP-RGP-Comments@usace.army.mil](mailto:CEMVP-RGP-Comments@usace.army.mil).

The Corps intends to use these comments to inform decisions regarding any final RGPs issued, including RGP terms and conditions. Comments should be accompanied by data and other information supporting the commenter's views on these questions as available.

### **WORK AUTHORIZED BY THE EXISTING REGIONAL GENERAL PERMITS**

Activities authorized by the existing RGPs that have commenced construction, or are under contract to commence construction, will remain authorized for up to 12 months after the date of original RGP expiration. Projects currently authorized by the existing RGPs which have not begun work and are not under contract at the time of RGP expiration are no longer authorized. These projects may be eligible for authorization under another general permit or individual permit.

### **FEDERALLY-LISTED THREATENED OR ENDANGERED SPECIES AND CRITICAL HABITAT**

The proposed issuance of all eight 2023 RGPs is being coordinated with the U.S. Fish and Wildlife Service. Any comments it may have concerning Federally-listed threatened or endangered species or their critical habitat will be considered in deciding whether to issue any or all of the eight proposed RGPs. Issuance of any 2023 RGP will not affect the Corps responsibility to comply with Section 7 of the Endangered Species Act.

### **TRIBAL/HISTORICAL/ARCHAEOLOGICAL**

The National Park Service, interested Tribal Historic Preservation Offices, the State Archaeologists and the Minnesota and Wisconsin State Historic Preservation Officers have been provided notification regarding the Corps proposed action and have been invited to comment or consult as appropriate. Issuance of the 2023 RGPs will not affect the Corps responsibility to ensure that all Section 10 and Section 404 authorizations do not impair treaty rights, including but not limited to reserved water rights and treaty fishing and hunting rights, or adversely affect Indian lands or protected Tribal resources. Finally, issuance of any or all proposed 2023 RGPs will not affect the Corps responsibility to comply with Section 106 of the National Historic Preservation Act.

### **WATER QUALITY CERTIFICATION**

The Wisconsin Department of Natural Resources (WDNR) and Minnesota Pollution Control Agency (MPCA) are responsible for water quality certification pursuant to Section 401 of the Clean Water Act (Section 401) outside the exterior boundaries of Federally-recognized American Indian reservations in Wisconsin and Minnesota, respectively. The following Tribes are responsible for Section 401 within the exterior boundaries of their reservations: 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 Lake Superior Chippewa, Leech Lake Band of Ojibwe, Red Lake Band of Chippewa Indians, and Sokaogon Chippewa Community. The United States Environmental Protection Agency (EPA) is responsible for Section 401 in all other Federally-recognized American Indian reservations in Minnesota and Wisconsin. A copy of this notice has been provided to the named entities above. If a Section 401 authority does not provide water quality certification for an RGP issued by the Corps, project-specific confirmations and verifications issued by the Corps using the subject RGP are provisional, and grant of a project-specific Section 401 would be required prior to starting work.

### **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.

### **PUBLIC INTEREST REVIEW**

The decision to issue any, or all, of the 2023 RGPs will be based on an evaluation of the probable impact, including cumulative impacts, of the proposal on the public interest. 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 conservation, economics, aesthetics, general environmental

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concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people.

### **COASTAL MANAGEMENT PROGRAM CONSISTENCY CERTIFICATION**

This notice has been sent to the Minnesota Department of Natural Resources' Coastal Program and Wisconsin Coastal Management Program (WCMP) in the Wisconsin Department of Administration.

### **ADDITIONAL INFORMATION**

All other questions concerning development of the RGPs should be directed to the following main contact: A.J. Kitchen 651-290-5729, [anthony.j.kitchen@usace.army.mil](mailto:anthony.j.kitchen@usace.army.mil).

See Enclosures A-H

# **Enclosure A**

## **Bank Stabilization and Habitat Improvement RGP**



US Army Corps  
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St. Paul District

## DEPARTMENT OF THE ARMY

### BANK STABILIZATION AND HABITAT IMPROVEMENT REGIONAL GENERAL PERMIT

PERMIT: Bank Stabilization and Habitat Improvement Regional General Permit

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

EFFECTIVE DATE: To be announced

EXPIRATION DATE: Five years after the effective date

#### A. AUTHORIZATION AND APPLICABILITY

Regulated activities conducted in accordance with the terms and conditions of the Bank Stabilization and Habitat Improvement Regional General Permit (RGP or permit) are authorized in the States of Wisconsin and Minnesota and on 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.

1. **Regulatory 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. **Exclusion:** The following activities are **INELIGIBLE** for this RGP authorization:
  - a. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
  - b. 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.
  - c. Regulated activities which would adversely affect public water supplies.
3. **Expiration:** 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.
4. **Section 401 Water Quality Certification:** Where Section 404 activities are proposed, 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 24 in Section F below. 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.

## **CATEGORY 1: BIO-STABILIZATION AND HABITAT IMPROVEMENT PROJECTS**

**Eligible Activities:** Regulated activities associated with bank bio-stabilization (See Definition) actions necessary for erosion control or prevention. Habitat improvement features (See Definition) associated with stabilization activities are also authorized by this RGP. Hard rock features, such as toe rock associated with integrated bank treatment, may be incorporated into the design provided it is a minor component of the design and is imperative to the integrity of the bio-stabilization activity. This RGP category also authorizes the maintenance of previously authorized structures or fills that do not qualify for Clean Water Act Section 404 Exemptions. This RGP category also authorizes activities associated with temporary construction access provided restoration to pre-construction contours and elevations is completed. See General Condition 14 concerning temporary construction access restoration requirements.

### **Activity Restrictions:**

- a. The activity may not result in the loss of more than 0.1 acre of regulated wetland.
- b. The activity may not result in the temporary impact to more than 0.5 acre of waters of the US.
- c. The activity may not result in reclamation of land lost due to erosive forces over time or as a result of specific natural events.
- d. No material may be placed in excess of the minimum needed for erosion protection.
- e. Native plants appropriate for current site conditions must be used for bio-stabilization and/or habitat features.
- f. The activity may not result in the conversion of the existing resource to another aquatic use/type (See Definition).
- g. No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the US.
- h. Un-suitable material cannot be used for any portion of the project (See Suitable Material Definition).

**Note 1:** An applicant can request a waiver, in writing, of these threshold restriction amounts (a.-b. above). The waiver may only be granted by the Corps, if a determination can be made that the discharge will result in no more than minimal adverse environmental effects. Waivers may also result in compensatory mitigation requirements.

### **An applicant must submit a Pre-Construction Notification (PCN) when:**

- a. The length of bio-stabilization and/or habitat improvement activities for a single and complete project exceeds 1,500 linear feet in length below the Ordinary High Water Mark (OHWM) of a water of the US.
- b. Regulated wetland loss exceeds 400 square feet.
- c. The activity would trigger any of the other PCN requirements in Section D below.

## **CATEGORY 2: HARD ARMORING PROJECTS**

**Eligible Activities:** Regulated activities associated with bank stabilization actions necessary for erosion control or prevention that utilize hard armoring features, which may include, but are not limited to: rip rap, revetment, gabion baskets, stream barbs, and bulkheads, seawalls, sheet piling and fabric formed concrete or combinations of hard armoring bank stabilization techniques. This RGP category also authorizes the maintenance of previously authorized structures or fills that do not qualify for Clean Water Act Section 404 Exemptions. This RGP category also authorizes activities associated with temporary construction access provided restoration to pre-construction contours and elevations is completed. See General Condition 14 concerning temporary construction access restoration requirements.

### **Activity Restrictions:**

- a. Hard armoring activities along the bank for a single and complete project may not result in the loss of more than:
  - 1. 1,000 linear feet of tributary if placed along a continuous length of stream with no breaks in armoring.
  - 2. 2,000 linear feet of tributary if placed strategically along actively eroding sites at multiple locations within a single and complete project. No single hard armoring location can exceed 1,000 linear feet in length below



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OHWL. No vertical stabilization features (i.e. seawall, bulkhead, gabions, etc.) may be included within the design where there are multiple stabilization locations.

3. 1,000 linear feet of lakeshore.

- b. The activity may not result in the loss of more than 0.1 acre of regulated wetland.
- c. The activity may not result in the temporary impact to more than 0.5 acre of waters of the US.
- d. The activity may not result in reclamation of land lost due to erosive forces over time or as a result of specific natural events.
- e. No material may be placed in excess of the minimum needed for erosion protection.
- f. No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the US.
- g. The activity cannot result in stream channelization (See Definition).
- h. The activities may not result in the conversion of the existing resource to another aquatic use/type (See Definition).
- i. Un-suitable material cannot be used for any portion of the project (See Suitable Material Definition).

**Note 1:** Project proponents may utilize bio-stabilization and/or habitat improvement features (Category 1, above) in combination with hard armoring practices. Bio-stabilization and/or habitat improvement features will not be counted towards activity restriction thresholds in this category. Linear foot lengths for the associated bio-stabilization and/or habitat improvement features will count towards activity PCN requirements (a., b.) below.

**Note 2:** An applicant can request a waiver, in writing, of these threshold restriction amounts (a.-c. above). The waiver may only be granted by the Corps, if a determination can be made that the discharge will result in no more than minimal adverse environmental effects. Waiver reviews may require application of available functional analysis tools. Waivers may also result in compensatory mitigation requirements.

**An applicant must submit a Pre-Construction Notification (PCN) when:**

- a. The length of hard armoring activities for a single and complete project exceeds:
  - 1. 500 linear feet in length below the OHWL of a water of the US at any single location.
  - 2. 1,000 linear feet in total project length below the OHWL (the sum of all individual hard armoring locations) of a water of the US.
- b. Regulated wetland loss exceeds 400 square feet.
- c. Hard armoring is proposed on opposite, parallel banks (along both banks) within the same length of stream.
- d. The activity would trigger any of the other PCN requirements in Section D below.

### **CATEGORY 3: FEDERAL AND STATE RESOURCE AGENCY SPONSORED BANK STABILIZATION AND HABITAT IMPROVEMENT PROJECTS**

**Eligible Activities:** Regulated activities associated with bank stabilization actions necessary for erosion control or prevention as well as habitat improvement features (See Definition). This includes both hard armoring and bio-stabilization methods of bank stabilization. To be eligible for this category, the project must be designed, funded and/or approved by a government resource agency (See Definition). When Pre-Construction Notification (PCN) is required, applicants must provide documentation that the project has been designed and/or funded by, or with direct oversight, from a Federal or State Resource Agency. This RGP category also authorizes the maintenance of previously authorized structures or fills that do not qualify for Clean Water Act Section 404 Exemptions. This RGP category also authorizes activities associated with temporary construction access provided restoration to pre-construction contours and elevations is completed. See General Condition 14 concerning temporary construction access restoration requirements.

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**Activity Restrictions:**

- a. Hard armoring activities along the bank for a single and complete project may not result in the loss of more than:
  - 1. 1,500 linear feet of tributary if placed along a continuous length of stream with no breaks in armoring.
  - 2. 2,500 linear feet of tributary if placed strategically along highly eroding bends at multiple locations within a single and complete project. No single location can exceed 1,500 linear feet in length below the OHWM.
  - 3. 1,500 linear feet of lakeshore.
- b. The activity may not result in the loss of more than 0.1 acre of regulated wetland.
- c. The activity may not result in the temporary impact to more than 0.5 acre of waters of the US.
- d. The activity may not result in reclamation of land lost due to erosive forces over time or as a result of specific natural events.
- e. No material may be placed in excess of the minimum needed for erosion protection.
- f. No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the US.
- g. The activity cannot result in stream channelization.
- h. The activities may not result in the conversion of the existing resource to another aquatic use/type (See Definition).
- j. Un-suitable material cannot be used for any portion of the project (See Suitable Material Definition).

**Note 1:** Project proponents may utilize bio-stabilization and/or habitat improvement features (Category 1, above) in combination with hard armoring practices. Bio-stabilization and/or habitat improvement features will not be counted towards activity restriction thresholds in this category. Linear foot lengths for the associated bio-stabilization and/or habitat improvement features will count towards activity PCN requirements (a., b.) below.

**Note 2:** An applicant can request a waiver, in writing, of these threshold restriction amounts (a.-c. above). The waiver may only be granted by the Corps, if a determination can be made that the discharge will result in no more than minimal adverse environmental effects. Waiver reviews may require application of available functional analysis tools. Waivers may also result in compensatory mitigation requirements.

**An applicant must submit a Pre-Construction Notification (PCN) when:**

- a. The length of hard armoring activities for a single and complete project exceeds:
  - 1. 1,000 linear feet below the OHWM of a water of the US at any single location.
  - 2. 1,500 linear feet in total project length below the OHWM of a water of the US. (The sum of all individual hard armoring locations)
- b. Regulated wetland loss exceeds 400 square feet.
- c. Hard armoring is proposed on opposite, parallel banks (along both banks) within the same length of stream.
- d. The activity would trigger any of the other PCN requirements in Section D below.

## **B. 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, 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.

## C. 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 G).
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 or at multiple locations within the same property or proposed by the same applicant, they are added together to determine the overall amount of linear loss to waters of the US.
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 contours and elevations 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 (e.g. which is parallel along both banks of a tributary) or at multiple locations within the same property or proposed by the same applicant, temporary impacts must be added together to determine the overall amount of temporary linear impact.
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) Although they are a regulated activity, for the purposes of this RGP, bio-stabilization and habitat improvement features with a demonstrable increase in aquatic resource functions (see Definitions in Section G) are not included in loss calculations because they do not result in a permanent adverse effect to resources.
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.

## D. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

Projects that meet the terms and conditions of this RGP and do not require pre-construction notification (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. See list below for additional PCN requirements.

**For all activities which require PCN, project proponents must obtain written Corps verification of RGP coverage before starting regulated work.** 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 regulated activities that require Corps authorization but do not require PCN.

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

**PCN is required for regulated activities proposed in these Aquatic Resources<sup>1</sup>:**

1. State-designated wild rice waters<sup>1, 2</sup>;
2. Bogs and fens<sup>1, 3</sup>;
3. Apostle Islands National Lakeshore and Madeline Island (WI only);
4. Coastal plain marshes, interdunal wetlands, and Great Lakes ridge and swale complexes (WI only)<sup>1</sup>;
5. 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, Chiwaukee Illinois Beach Lake Plain, and Lower Wisconsin Riverway), see <https://rsis Ramsar.org/> (WI only).
6. Areas of Special Natural Resources Interest (WI) or Outstanding Resource Value Waters (MN)<sup>4</sup>

**PCN is required for the following activities to comply with other federal laws:**

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 may 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.

**Other activities which require PCN include:**

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. Temporary impacts remaining in place for longer than 90 days between May 15 and November 15.
3. Temporary impacts to forest or shrub wetlands or conversion of forest or shrub wetlands to another wetland type.

<sup>1</sup> Information about Wisconsin plant community types for 1-3 above may be obtained from at <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.

<sup>2</sup> Information regarding wild rice waters and their extent may be obtained from at <https://www.dnr.state.mn.us/wildlife/shallowlakes/wildrice.html> and <https://gisdata.mn.gov/dataset/biotawild-rice-lakes-dnr-wld> in Minnesota, <https://dnr.wisconsin.gov/topic/wildlifehabitat/rice.html> in Wisconsin, and an interactive map is provided at: <http://maps.glifwc.org/> (under Treaty Resources – Gathering).

<sup>3</sup> Additional information on bog and fen communities can be found at <http://www.mvp.usace.army.mil/missions/regulatory.aspx> and in Minnesota at <http://www.dnr.state.mn.us/npc/classification.html>

<sup>4</sup> Information about ASNRI waters can be found at <https://dnr.wisconsin.gov/topic/SurfaceWater/swdvw>. Information about ORVW can be found at <https://www.pca.state.mn.us/water/outstanding-resource-value-waters>.

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**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. Generally, 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 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:

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 proposed 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 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 C).
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 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 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.
7. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section E 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 threatened or endangered species (or species proposed for listing) or proposed or designated critical habitat might be affected or is in the vicinity of the regulated activity, the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) 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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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. 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.”
12. 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 (see general conditions 14 and 15).
13. 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.
14. For an activity that requires permission from, or review by, 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 that the project proponent has submitted a written request for Section 408 permission from, or review by, the Corps office having jurisdiction over the Corps civil works project.

## E. 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, guidelines, and procedures 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 this 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 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

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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, procedures, 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](http://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](http://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/](http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/).

## F. GENERAL CONDITIONS

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

1. **Compliance:**
  - a. The permittee is responsible for ensuring that whoever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of 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.
  - b. 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.
  - c. 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 the 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

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- 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](http://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](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf). Information about calcareous fens in Wisconsin can be found at <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.
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 permittee must immediately notify the Corps of what they 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.



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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. **Safety of Impoundment Structures:** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications 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 pre-construction contours and elevations, and revegetated with native, non-invasive vegetation, unless otherwise conditioned in a Corps RGP verification. All temporary access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows. 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 in their permit verification.
16. **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.
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. All

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permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

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. **Hard Armoring:** For RGP categories that allow for the use of hard armoring for bank stabilization, only suitable material must be used and be of a size and configuration sufficient to prevent its movement from the authorized alignment by natural forces under normal or high flows.
20. **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 [nrc.uscg.mil](mailto: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.
21. **Clean Construction Equipment:** To prevent the spread of invasive species, all construction equipment must be clean prior to entering and before leaving the work site.
22. **Navigation:**
  - a. No activity may cause more than a minimal adverse effect on navigation.
  - b. 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.
  - c. For activities subject to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), 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.
23. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
24. **Section 401 Clean Water Act Water Quality Certification:** All regulated activities authorized by this RGP pursuant to Section 404 of the Clean Water Act require Section 401 Clean Water Act certification or waiver to be considered valid.
25. **Maintenance:** The activity must be properly maintained, which may require repairs after severe storms or erosion events.
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

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

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(Transferee)

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(Date)

## G. DEFINITIONS

Bank Stabilization: A vegetative, structural, or combination of bank treatment designed to stabilize stream and shoreline and to reduce erosion. Methods include bio stabilization and hard armoring.

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.

Bio-Stabilization: Native material revetments that combine live and/or dead plant materials such as engineered log jams, large woody debris, rootwads, and boulder clusters. Other structural engineering techniques to stabilize slopes and stream banks can be incorporated to key in slopes or stabilize organic material. Examples of bio-stabilization or biotechnical practices include but are not limited to, A-jack structures keyed in the toe of the slope with native plantings on the banks above, vegetated geo-grids, coconut fiber, live vegetated cuttings, brush layering and soil lifts or toe rock associated with integrated bank treatment.

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.

Conversion of Aquatic Resources: A change of the existing aquatic resource to a different resource or wetland type.

Example: The conversion of a stream to a wetland, a bog to a lake or forested wetland to shallow marsh wetland, etc.

Direct Effects: Effects that are caused by the regulated 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).

Functional Lift: An improvement from the base-line functional value to the post restoration value. There must be a measurable increase in at least one of the five following categories for a lift to be evident: biological, physicochemical, geomorphological, hydraulic and/or hydrological aspects.

Government Resource Agency: Government agencies delegated to manage and conserve natural resources. Government agencies can include federal, tribal, and state agencies. Designated agencies which design projects with direct approval oversight and/or funding from a Federal or State Resource Agency may also be considered a Government Resource Agency.

Habitat Improvement Features: For the purposes of this permit, construction techniques and structures that provide a measurable functional lift to the aquatic resource. Activities include (but are not limited to) the removal of accumulated sediments; releases of sediment from reservoirs to maintain sediment transport continuity to restore downstream habitats; the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms are removed; the installation of current deflectors; the enhancement, rehabilitation, or reestablishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to enhance, rehabilitate, or reestablish stream meanders; the removal of stream barriers, such as undersized culverts, fords, and grade control structures; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to restore or enhance wetland or stream hydrology; the

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construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; coral restoration or relocation activities; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; reestablishment of submerged aquatic vegetation in areas where those plant communities previously existed; reestablishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

**Hard Armoring:** A layer of stone or other suitable material placed in the stream to protect the banks from erosion. Examples of hard armoring can include, but is not limited to: rip rap, revetment, gabion baskets, stream barbs, and bulkheads, seawalls, sheet piling, limestone slabs, and fabric formed concrete.

**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 regulated 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.

**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.

**Stream Channelization:** The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the US. Activities that result in

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stream channelization include but are not limited to the process of straightening, redirecting natural stream course, or bank stabilization that reduces channel complexity and diversity.

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, rip rap, jetty, permanent mooring structure, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Suitable Material: Materials designed to resist erosive forces that are free of toxic pollutants and other materials inappropriate for stabilization activities. Examples of materials not suitable for use include, but are not limited to: trash, tires, debris, car bodies, asphalt, scrap lumber, roofing materials, etc.

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 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.

## H. 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;

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- 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.

## I. 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 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

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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.

## **Enclosure B**

### **Beach Creation and Nourishment 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: U.S. Army Corps of Engineers, St. Paul District

EFFECTIVE DATE: To be announced

EXPIRATION DATE: Five years after the effective date

#### A. AUTHORIZATION AND APPLICABILITY

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 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.

1. **Regulatory 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:**
  - 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.
  - 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 D, below, for additional information regarding PCN requirements.
5. **Exclusions:** The following activities are **INELEGIBLE** for Beach Creation and Nourishment RGP authorization:
  - a. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty

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- rights), protected tribal resources, or tribal lands.
- b. 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.
  - c. Regulated activities which would adversely affect public water supplies.
6. **Expiration:** 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.
7. **Section 401 Water Quality Certification:** Where Section 404 activities are proposed, 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 22 in Section F below. 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. 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 permits does not exceed the loss limit of the general permit with the *highest* specified acreage limit.

## C. 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 G).
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 at multiple locations, they are added together to determine the total amount of linear loss to waters of the US.

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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 contours and elevations 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 at multiple locations, temporary impacts must be added together to determine the total amount of temporary linear impact.
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.

#### D. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

All Project proponents must obtain written Corps verification of RGP coverage before starting regulated work. The PCN must include 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, including other regulated activities that require Corps authorization but do not require PCN.

**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. Generally, the Corps will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all 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 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:

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 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, 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 C).
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

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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, 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.
7. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section E 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 threatened or endangered species (or species proposed for listing) or proposed or designated critical habitat might be affected or is in the vicinity of the regulated activity, the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) 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 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.
11. If an activity is proposed in 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.”
12. 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.
13. If a waiver for a specific condition of the permit is proposed 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.
14. For an activity that requires permission from, or review by, 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 that the project proponent has submitted a written request for Section 408 permission from, or review by, the Corps office having jurisdiction over the Corps civil works project.

## E. 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, guidelines, and procedures 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 this RGP and will be evaluated by the Corps using individual permit procedures.

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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 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, procedures, 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](http://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](http://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/](http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/).

## F. GENERAL CONDITIONS

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

1. **Compliance:**
  - a. The permittee is responsible for ensuring that whoever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of 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.
  - b. 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.
  - c. 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.

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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 the 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 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](http://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](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf). Information about calcareous fens in Wisconsin can be found at <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.
7. **Wild and Scenic Rivers:** The permittee may not complete regulated activities which may affect or are located in a designated portion 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 any previously unknown historic, cultural, or archeological remains and artifacts are discovered while accomplishing the activity authorized by this permit, the permittee must immediately notify the Corps of what they 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

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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 a written 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).
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 pre-construction contours and elevations, and revegetated with native, non-invasive vegetation, unless otherwise conditioned in a Corps RGP verification. All temporary access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows. 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 in 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. **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. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

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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 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:** To prevent the spread of invasive species, all construction equipment must be clean prior to entering and before leaving the work site.
20. **Navigation:**
  - a. No activity may cause more than a minimal adverse effect on navigation.
  - b. 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.
  - c. For activities subject to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), 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.
21. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
22. **Section 401 Clean Water Act Water Quality Certification:** All regulated activities authorized by this 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 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)

## G. 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-



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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 regulated 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 regulated 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.

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, 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.

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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 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.

## H. 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

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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 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.

## I. 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 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.

# **Enclosure C**

## **Beach Raking RGP**



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: U.S. Army Corps of Engineers, St. Paul District

EFFECTIVE DATE: To be announced

EXPIRATION DATE: Five years after the effective date

#### A. AUTHORIZATION AND APPLICABILITY

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 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.

1. **Regulatory 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 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 more than minimal adverse environmental effects. An applicant may request a waiver from the District. Any waiver requested must include the information in Section D, Pre-Construction Notification.
4. **Pre-Construction Notification (PCN):** Some activities eligible for the Beach Raking RGP authorization require PCN. Please refer to Section D below for additional information regarding PCN requirements.
5. **Exclusions:** The following activities are **INELEGIBLE** for Beach Raking RGP authorization:
  - a. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
  - b. 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.
  - c. Regulated activities which would adversely affect public water supplies.

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6. **Expiration:** 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.
7. **Section 401 Water Quality Certification:** Where Section 404 activities are proposed, 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 22 in Section F below. 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. 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 permits does not exceed the loss limit of the general permit with the *highest* specified acreage limit.

## C. 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 G).
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 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 overall amount of linear loss to waters of the US.
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 contours and elevations 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 at multiple locations, temporary impacts must be added together to determine the overall amount of temporary linear impact.

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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.

#### **D. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION**

Projects that meet the terms and conditions of this RGP and do not require pre-construction notification (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. See list below for additional PCN requirements.

**For all activities which require PCN, project proponents must obtain written Corps verification of Beach Raking RGP coverage before starting regulated work.** 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.

**PCN is required for regulated activities proposed in these Aquatic Resources<sup>1</sup>:**

1. State-designated wild rice waters<sup>1, 2</sup>;
2. Bogs and fens<sup>1, 3</sup>;
3. Apostle Islands National Lakeshore and Madeline Island (WI only);
4. Coastal plain marshes, interdunal wetlands, and Great Lakes ridge and swale complexes (WI only)<sup>1</sup>;
5. 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, Chiwaukee Illinois Beach Lake Plain, and Lower Wisconsin Riverway), see <https://rsis Ramsar.org/> (WI only).
6. Areas of Special Natural Resources Interest (WI) or Outstanding Resource Value Waters (MN)<sup>4</sup>

**PCN is required for the following activities to comply with other federal laws:**

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 may 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.

<sup>1</sup> Information about Wisconsin plant community types for 1-3 above may be obtained from at <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.

<sup>2</sup> Information regarding wild rice waters and their extent may be obtained from at <https://www.dnr.state.mn.us/wildlife/shallowlakes/wildrice.html> and <https://gisdata.mn.gov/dataset/biotawild-rice-lakes-dnr-wld> in Minnesota, <https://dnr.wisconsin.gov/topic/wildlifehabitat/rice.html> in Wisconsin, and an interactive map is provided at: <http://maps.gliwfc.org/> (under Treaty Resources – Gathering).

<sup>3</sup> Additional information on bog and fen communities can be found at <http://www.mvp.usace.army.mil/missions/regulatory.aspx> and in Minnesota at <http://www.dnr.state.mn.us/npc/classification.html>.

<sup>4</sup> Information about ASNRI waters can be found at <https://dnr.wisconsin.gov/topic/SurfaceWater/swdv>. Information about ORWW can be found at <https://www.pca.state.mn.us/water/outstanding-resource-value-waters>.

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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.

**Other activities which require PCN include:**

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.

**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. Generally, the Corps will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all 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 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:

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 proposed 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 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 C).
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 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 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.
7. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section E for more information.



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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 threatened or endangered species (or species proposed for listing) or proposed or designated critical habitat might be affected or is in the vicinity of the regulated activity, the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) 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. 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.”
12. 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 (see general conditions 13 and 14).
13. 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.
14. For an activity that requires permission from, or review by, 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 that the project proponent has submitted a written request for Section 408 permission from, or review by, the Corps office having jurisdiction over the Corps civil works project.

## E. 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, guidelines, and procedures 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 this 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

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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 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, procedures, 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](http://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](http://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/](http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/).

## F. GENERAL CONDITIONS

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

1. **Compliance:**
  - a. The permittee is responsible for ensuring that whoever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of 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.
  - b. 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.
  - c. 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 the 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.

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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.
- 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](http://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](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf). Information about calcareous fens in Wisconsin can be found at <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.

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 permittee must immediately notify the Corps of what they 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

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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 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. **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 pre-construction contours and elevations, and revegetated with native, non-invasive vegetation, unless otherwise conditioned in a Corps RGP verification. All temporary access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows. 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 in 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. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
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

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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 [nrc.uscg.mil](http://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:** To prevent the spread of invasive species, all construction equipment must be clean prior to entering and before leaving the work site.
20. **Navigation:**
- a. No activity may cause more than a minimal adverse effect on navigation.
  - b. 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.
  - c. For activities subject to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), 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.
21. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
22. **Section 401 Clean Water Act Water Quality Certification:** All regulated activities authorized by this 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 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)

## G. 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 regulated 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 regulated 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 terms and conditions of this regional 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, 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

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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 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.

## H. 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 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative

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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.

## I. 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 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.



## **Enclosure D**

### **Minor Discharges RGP**



US Army Corps  
of Engineers®  
St. Paul District

## DEPARTMENT OF THE ARMY

### MINOR DISCHARGES REGIONAL GENERAL PERMIT

PERMIT: Minor Discharges Regional General Permit

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

EFFECTIVE DATE: To be announced

EXPIRATION DATE: Five years after the effective date

#### A. AUTHORIZATION AND APPLICABILITY

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 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.

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. 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 C for additional information).
  - b. All tributary channel modifications are limited to the minimum necessary and cannot exceed 300 linear feet of loss (see Section C 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):** PCN is not required prior to the start of work. Applicant must meet ALL the terms and conditions of this permit.
5. **Exclusion:** The following activities are **INELIGIBLE** for Minor Discharges RGP authorization:
  - a. 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.
  - b. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
  - c. 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.
  - d. Regulated activities that would result in the loss of more than 300 linear feet of a tributary.

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- e. Regulated activities that would occur 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](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf). Information about calcareous fens in Wisconsin can be found at <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.
  - f. 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.
  - g. 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.
  - h. 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.
  - i. Regulated activities which might result in disturbance or removal of human remains.
  - j. 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.
  - k. Regulated activities that do not comply with applicable state dam safety criteria which have not been designed by qualified persons.
  - l. Regulated activities which would adversely affect public water supplies.
  - m. Activities within Section 10 waters.
6. **Expiration:** 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.
7. **Section 401 Water Quality Certification:** 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 18 in Section F below. This RGP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

## B. USE OF MULTIPLE GENERAL PERMITS

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 any additional Corps permit.

## C. 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 G).
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. However, temporary impacts do contribute toward the 400 square foot threshold for the Minor Discharges RGP, as described in Section A.3.a. Permanent adverse effects include filling, flooding, excavation, or drainage in waters of the US as a result of the regulated activity.

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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 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 overall amount of linear loss to waters of the US.
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 contours and elevations 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 at multiple locations, temporary impacts must be added together to determine the overall amount of temporary linear impact.
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.

#### D. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

No activities authorized by this RGP require pre-construction notification (PCN). Individuals intending to conduct RGP activities should carefully review the description and limits of the authorization, restrictions and exclusions, and general conditions of the RGP to determine whether the work meets ALL the terms and conditions of the permit. PCN is not required prior to the start of work. Applicants may contact the appropriate Corps office with questions about RGP usage. Contact information is available at <https://www.mvp.usace.army.mil/Missions/Regulatory/District-Boundaries-Contact/>.

#### E. 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).

#### F. GENERAL CONDITIONS

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

1. **Compliance:**
  - a. The permittee is responsible for ensuring that whoever performs, supervises, or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP.
  - b. 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.

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- c. Any authorized structure or fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions.
2. **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.
3. **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.
4. **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 be 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.
5. **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.
6. **Safety of Impoundment Structures:** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.
7. **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).
8. **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 pre-construction contours and elevations, and revegetated with native, non-invasive vegetation. All temporary access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows. 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).
9. **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 and restoration activities, as required by general condition 8, must be undertaken as applicable.
10. **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

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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.

11. **Culverts and Crossings:** Replacement and installation of culverts or crossings authorized by an 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.
12. **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. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
13. **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.
14. **Hard Armoring:** Only suitable material must be used and be of a size and configuration sufficient to prevent its movement from the authorized alignment by natural forces under normal or high flows.
15. **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 [nrc.uscg.mil](mailto: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.
16. **Clean Construction Equipment:** To prevent the spread of invasive species, all construction equipment must be clean prior to entering and before leaving the work site.
17. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
18. **Section 401 Clean Water Act Water Quality Certification:** All regulated activities authorized by this RGP require Section 401 Clean Water Act certification or waiver to be considered valid.

## G. 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.

**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

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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.

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): 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.

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.

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.

## H. 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).

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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.



# **Enclosure E**

## **Piers and Docks RGP**



US Army Corps  
of Engineers®  
St. Paul District

## DEPARTMENT OF THE ARMY

### PIERS AND DOCKS REGIONAL GENERAL PERMIT

PERMIT: Piers and Docks Regional General Permit

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

EFFECTIVE DATE: To be announced

EXPIRATION DATE: Five years after the effective date

#### A. AUTHORIZATION AND APPLICABILITY

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 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.

1. **Regulatory 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. Additions to existing piers or docks are allowed, provided the entire pier or dock does not exceed the thresholds stated in this general permit. Activities associated with the construction or modification of public marinas are NOT 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, while 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 10 feet, unless otherwise authorized via a waiver in a Corps verification letter.
  - 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 400 square feet, not including the area of the primary walkway, unless otherwise authorized via a waiver in a Corps verification letter.
  - 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 A.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 be used to moor vessels within a federal navigational channel.

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- g. All structures or fills authorized by this RGP must be designed to minimize disruption of flow and circulation patterns and sediment transport.
  - h. A pier or dock facility shall not be enclosed with wood, glass, fiberglass, metal, or any other solid type of material; however, screening or covering of dock facilities is authorized.
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 D. Pre-construction Notification (PCN) Information for additional information.
5. **Exclusions:** The following activities are **INELEGIBLE** for Piers and Docks RGP authorization:
- a. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
  - b. 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.
  - c. Regulated activities which would adversely affect public water supplies.
6. **Expiration:** 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.
7. **Section 401 Water Quality Certification:** Where Section 404 activities are proposed, 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 23 in Section F below. 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. 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 permits does not exceed the loss limit of the general permit with the *highest* specified acreage limit.

## C. 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 G).

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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 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 overall amount of linear loss to waters of the US.
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 contours and elevations 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 at multiple locations, temporary impacts must be added together to determine the overall amount of temporary linear impact.
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.

## D. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

**Project proponents must obtain written Corps verification of coverage before starting regulated work.** The PCN must include 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, including other regulated activities that require Corps authorization but do not require PCN.

**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. Generally, the Corps will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all 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 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:

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);

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3. A description of the proposed activity and its purpose; a description of any avoidance and minimization 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.
4. 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 C).
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 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 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.
7. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section E 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 threatened or endangered species (or species proposed for listing) or proposed or designated critical habitat might be affected or is in the vicinity of the regulated activity, the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) 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. 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.”
12. 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 (see general conditions 14 and 15).
13. 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.
14. For an activity that requires permission from, or review by, 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

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works project, the PCN must include a statement confirming that the project proponent has submitted a written request for Section 408 permission from, or review by, the Corps office having jurisdiction over the Corps civil works project.

## E. 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, guidelines, and procedures 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 this 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, procedures, 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](http://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](http://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/](http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/).

## F. GENERAL CONDITIONS

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

1. **Compliance:**

- a. The permittee is responsible for ensuring that whoever performs, supervises, or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP.

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- b. 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.
  - c. Any authorized structure or fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions.
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 the 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 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](http://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](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf). Information about calcareous fens in Wisconsin can be found at <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.
7. **Wild and Scenic Rivers**: The permittee may not complete regulated activities which may affect or are located in a designated portion 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

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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.
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 permittee must immediately notify the Corps of what they 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 the 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 an 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 works operated and maintained by the Corps (such as locks and dams).
  12. **Safety of Impoundment Structures:** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications 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 pre-construction contours and elevations, and revegetated with native, non-invasive vegetation, unless otherwise conditioned in a Corps RGP verification. All temporary access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows. 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.



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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-construction contours and elevations. The permittee must remove the temporary impacts in their entirety in accordance with the activity authorized in their permit verification.
16. **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 regulated work.
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. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
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 [nrc.uscg.mil](http://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**: To prevent the spread of invasive species, all construction equipment must be clean prior to entering and before leaving the work site.
21. **Navigation**:
- a. No activity may cause more than a minimal adverse effect on navigation.
  - b. 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.
  - c. For activities subject to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), 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.

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22. **Fills Within 100-Year Floodplains**: The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
23. **Section 401 Clean Water Act Water Quality Certification**: All regulated activities authorized by this RGP pursuant to Section 404 of the Clean Water Act require Section 401 Clean Water Act certification or waiver to be considered valid.
24. **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)

## G. 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 regulated 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 regulated 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.

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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.

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.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, or 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 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.

## H. 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;

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- 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
5. Damage claims associated with any future modification, suspension, or revocation of this permit.
6. 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.
7. 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.
8. 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.

## I. 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

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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.

# **Enclosure F**

## **Transportation RGP**



US Army Corps  
of Engineers®  
St. Paul District

## DEPARTMENT OF THE ARMY

### TRANSPORTATION REGIONAL GENERAL PERMIT

PERMIT: Transportation Regional General Permit

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

EFFECTIVE DATE: To be announced

EXPIRATION DATE: Five years after the effective date

#### A. AUTHORIZATION AND APPLICABILITY

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 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.

1. **Regulatory 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. **Exclusions:** The following activities are **INELIGIBLE** for Transportation RGP authorization:
  - a. 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.
  - b. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
  - c. 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.
  - d. Regulated activities which would adversely affect public water supplies.
3. **Expiration:** 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.
4. **Section 401 Water Quality Certification:** Where Section 404 activities are proposed, 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 F below. 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.

## 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 authorized<sup>1</sup> 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 new stormwater ponds; tributary channelization; slope widening; road widening; and new lanes, trails, railways, and runways are NOT authorized by this category.** Activities authorized by this category are limited to:

- a. *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 placements<sup>2</sup>; including the use of temporary discharges necessary to conduct those activities;
- b. Removal of previously authorized structures or fills, including temporary discharges necessary to conduct those activities;
- c. 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
- d. Removal of accumulated sediment and debris within the vicinity of bridges and culverted crossings, including temporary discharges necessary to conduct those activities<sup>2</sup>.

### 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.

**A PCN is not required unless triggered by the terms and condition of this permit (See Section D. Pre-Construction Notification).**

<sup>1</sup> Previously authorized under 33 CFR 330.3 or by a Corps permit

<sup>2</sup> 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.



## CATEGORY 2: MODIFICATION - LINEAR TRANSPORTATION

**Eligible Activities:** Regulated activities required for crossings of waters of the US associated with the reconstruction, expansion, modification, or improvement of existing linear transportation project (e.g., roads, highways, attached frontage roads, railways, trails, airport runways, and taxiways), including temporary structures, fills, work, and temporary mats necessary to construct the modification activity. This RGP category also authorizes minor realignments of existing transportation projects where there is a demonstrated need to improve safety, durability, or capacity, such as vertical and horizontal curve corrections or improvements to existing roadway intersections and interchanges. This RGP category also authorizes the construction of new non-motorized pedestrian, bicycle, or multi-use sidewalks and trails that are directly associated with and whose purpose is to enhance the safety and mobility of an existing public road system.<sup>3</sup>

**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 (see definition of single and complete linear project), including the area of tributary loss. This limitation does not apply unless the overall project would result in the loss of 3.0 acres or less of waters of the US.
- b. All tributary channel losses, including bank stabilization, are limited to the minimum necessary to construct or protect the linear transportation project and cannot exceed 500 linear feet<sup>4</sup> for each single and complete project, unless the Corps waives the 500 linear foot loss 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:**

- a. If a single and complete linear project exceeds 0.1 acre of loss of waters of the US<sup>4</sup>;
- b. If a single and complete linear project exceeds 300 linear feet of tributary loss, including bank stabilization<sup>4</sup>;
- c. If a single and complete linear project exceeds 0.5 acre of temporary impact to waters of the US;
- d. 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);
- e. If triggered by the project's location or potential impacts as described in Section D. Pre-Construction Notification.

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<sup>3</sup> This RGP category does not authorize new construction of detached or "stand-alone" trails that are not directly associated with the reconstruction, expansion, modification, or improvement of an existing public road system, such as snowmobile, ATV, and other recreational trails, regardless of their proximity to a roadway. These activities may be considered new construction under Category 3.

<sup>4</sup> When calculating loss of a tributary for a culvert replacement, the linear foot length and area in square feet or acres of the existing structure does not count toward the linear foot limits or acres of loss of waters of the US. Rip-rap and other tributary impacts count towards the tributary loss limit. See Section C. Calculating Impacts to Waters of the United States for more information.

### CATEGORY 3: NEW CONSTRUCTION - LINEAR TRANSPORTATION

**Eligible Activities:** Regulated activities required for crossings of waters of the US associated with the construction of new linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways). Examples of eligible regulated activities include those necessary 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 to construct the linear transportation project.

**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 losses, 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 loss 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:**

- a. If a single and complete linear project exceeds 400 square feet of loss of waters of the US;
- b. If a single and complete linear project exceeds 300 linear feet of tributary loss, including bank stabilization;
- c. If a single and complete linear project exceeds 0.5 acre of temporary impact to waters of the US;
- d. 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);
- e. If triggered by the project's location or potential impacts as described in Section D. 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: stormwater management facilities, vehicle maintenance or storage buildings, weigh stations, rest-stops, parking lots, train stations, aircraft hangars, and associated infrastructure.

**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:**

- a. If the single and complete project exceeds 0.1 acre of loss of waters of the US;
- b. If the single and complete project exceeds 0.5 acre of temporary impact to waters of the US;

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- c. 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);
- d. If a waiver from the 300 linear foot tributary limit is requested by an applicant; or
- e. If triggered by the project's location or potential impacts as described in Section D. 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:**

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

## B. USE OF MULTIPLE RGP CATEGORIES

Single and complete non-linear projects may not be "piecemealed" to avoid the limits in a general permit (nationwide, programmatic, or regional general permit). For example, multiple category 4 non-linear activities may be authorized by the Transportation RGP for an overall project, provided the cumulative loss of waters of the US does not exceed 0.5 acre. To illustrate this, consider two category 4 activities proposed as part of a new overall light-rail project, a proposed 0.25 acre loss for a stormwater pond and a 0.25 acre loss for a train station. Both are eligible for category 4 authorization, because the cumulative loss of waters of the US does not exceed 0.5 acre.

Categories 4 and 5 (non-linear single and complete projects) can be used in conjunction with other categories of this general permit.

Multiple linear categories (categories 1, 2, and 3) of this RGP may be utilized for the same single and complete linear project, provided the cumulative loss of waters of the US does not exceed the loss limit of the general permit category with the *highest* specified limit.

When general permit limits are exceeded, projects may be eligible for review and authorization by an individual permit.

## C. 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 G).
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

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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. placement of riprap), 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 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 overall amount of linear loss to waters of the US.
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 contours and elevations 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 at multiple locations, temporary impacts must be added together to determine the overall amount of temporary linear impact.
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 G, provided the ditch does not abut a wetland. Sections of linear ditches in or abutting wetlands do contribute to loss and temporary impact thresholds.
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.

#### D. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

Projects that meet the terms and conditions of this RGP and do not require pre-construction notification, 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. See list below for additional PCN requirements.

**For all activities which require PCN, project proponents must obtain written Corps verification of RGP coverage before starting regulated work.** 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 individual permit is required for any one single and complete project, the overall project is ineligible for authorization under this permit.

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

**Except for all Category 1 activities, PCN is required for regulated activities proposed in these Aquatic Resources<sup>1</sup>:**

1. State-designated wild rice waters<sup>5, 6</sup>;
2. Bogs and fens<sup>5, 7</sup>;
3. Apostle Islands National Lakeshore and Madeline Island (WI only);
4. Coastal plain marshes, interdunal wetlands, and Great Lakes ridge and swale complexes (WI only)<sup>5</sup>;
5. 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

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Coastal wetlands, Chiwaukee Illinois Beach Lake Plain, and Lower Wisconsin Riverway), see <https://rsis Ramsar.org/> (WI only).

6. Areas of Special Natural Resources Interest (WI) or Outstanding Resource Value Waters (MN)<sup>8</sup>

**PCN is required for the following activities to comply with other federal laws:**

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 may 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.

**Other activities which require PCN include:**

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. 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.

**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. Generally, 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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<sup>5</sup> Information about Wisconsin plant community types for 1-3 above may be obtained from at <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.

<sup>6</sup> Information regarding wild rice waters and their extent may be obtained from at <https://www.dnr.state.mn.us/wildlife/shallowlakes/wildrice.html> and <https://gisdata.mn.gov/dataset/biotawild-rice-lakes-dnr-wld> in Minnesota, <https://dnr.wisconsin.gov/topic/wildlifehabitat/rice.html> in Wisconsin, and an interactive map is provided at: <http://maps.glifwc.org/> (under Treaty Resources – Gathering).

<sup>7</sup> Additional information on bog and fen communities can be found at <http://www.mvp.usace.army.mil/missions/regulatory.aspx> and in Minnesota at <http://www.dnr.state.mn.us/npc/classification.html>.

<sup>8</sup> Information about ASNRI waters can be found at <https://dnr.wisconsin.gov/topic/SurfaceWater/swdvw>. Information about ORVW can be found at <https://www.pca.state.mn.us/water/outstanding-resource-value-waters>.

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**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:

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 proposed 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 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 C).
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 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 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.
7. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section E 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 threatened or endangered species (or species proposed for listing) or proposed or designated critical habitat might be affected or is in the vicinity of the regulated activity, the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) 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. 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.”
12. 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

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conditions (see general conditions 14 and 15).

13. 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.
14. For an activity that requires permission from, or review by, 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 that the project proponent has submitted a written request for Section 408 permission from, or review by, the Corps office having jurisdiction over the Corps civil works project.

## E. 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, guidelines, and procedures 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 this 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 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, procedures, 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](http://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](http://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/](http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/).

## F. GENERAL CONDITIONS

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

1. **Compliance:**
  - a. The permittee is responsible for ensuring that whoever performs, supervises, or oversees any portion of the physical work associated with the construction of the project has a copy of 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.
  - b. 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.
  - c. 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. 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](http://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](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf).



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Information about calcareous fens in Wisconsin can be found at <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.

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 permittee must immediately notify the Corps of what they 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 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. **Safety of Impoundment Structures:** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications 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

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contained with appropriate erosion control or containment methods, be restored to pre-construction contours and elevations, and revegetated with native, non-invasive vegetation, unless otherwise conditioned in a Corps RGP verification. All temporary access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows. 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 include a request for 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 in their permit verification.
16. **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.
17. **Culverts and Crossings:** Unless an RGP verification authorizes otherwise, replacement and installation of culverts or crossings authorized by an 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. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic resources. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
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. **Hard Armoring:** For RGP categories that allow for the use of hard armoring for bank stabilization, only suitable material must be used and be of a size and configuration 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 [nrc.uscg.mil](mailto:nrc.uscg.mil) AND

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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:** To prevent the spread of invasive species, all construction equipment must be clean prior to entering and before leaving the work site.
23. **Navigation:**
- a. No activity may cause more than a minimal adverse effect on navigation.
  - b. 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.
  - c. For activities subject to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), 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. **Section 401 Clean Water Act, Water Quality Certification:** All regulated activities authorized by this RGP pursuant to Section 404 of the Clean Water Act require Section 401 Clean Water Act certification or waiver to be considered valid.
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)

## G. 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 regulated 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).

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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 regulated 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 (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 terms and conditions of this regional 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

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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 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.

## H. 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;

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- 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.

## **I. 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

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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.

**Enclosure G**

**Utility RGP**





US Army Corps  
of Engineers ®  
St. Paul District

## DEPARTMENT OF THE ARMY

### UTILITY REGIONAL GENERAL PERMIT

PERMIT: Utility Regional General Permit

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

EFFECTIVE DATE: To be announced

EXPIRATION DATE: Five years after the effective date

#### A. AUTHORIZATION AND APPLICABILITY

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 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.

1. **Regulatory 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<sup>1</sup> 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 this RGP. This 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.
  - 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.

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**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 G 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.

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.

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

**5. Exclusions:** The following activities are **INELIGIBLE** for Utility RGP authorization:

- a. 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.
- b. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
- c. 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.
- d. Regulated activities which would adversely affect public water supplies.
- e. 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.

**6. Expiration:** 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.

**7. Section 401 Water Quality Certification:** Where Section 404 activities are proposed, 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 F below. 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. 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). For example, multiple non-linear activities may be authorized by the Utility RGP for an overall project, provided the cumulative loss of waters of the US does not exceed 0.5 acre. To illustrate this, consider three new substations associated with an overall linear utility project, where each substation is proposed to result in a loss of 0.15 acre of waters of the US. All three substations are eligible for Utility RGP authorization because the cumulative loss to waters of the US proposed is 0.45 acre, below the 0.5-acre eligibility limit.

For an overall project, non-linear single and complete projects may be authorized in conjunction with linear single and complete projects.

When general permit limits are exceeded, projects may be eligible for review and authorization by an individual permit.

## C. 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 G).
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 wetlands must be reported in either acres or square feet, as appropriate. Regulated activities that are linear in nature must also be reported in linear feet of impact to waters of the US.
  - 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.
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 contours and elevations 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. Regulated activities that are linear in nature must also be reported in linear feet of impact to waters of the US.
  - 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 must be added together to determine the total amount of temporary linear impact.
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 G, provided the ditch does not abut a wetland. Sections of linear ditches in or abutting wetlands do contribute to loss and temporary impact thresholds.
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.

## D. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

Projects that meet the terms and conditions of this RGP and do not require pre-construction notification, 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 RGP coverage before starting regulated work.** 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.

**Reporting requirement:** For overall projects (defined in Section G) that do not require a PCN, but would result in the cumulative loss of 0.5 acre or greater of waters of the US, project proponents are required to report the overall project to the Corps. The project proponent must minimally provide items 1 through 6 below (Form and Content of PCN) to the Corps at least 30 days prior to starting work. Project proponents do not have to wait for written verification of coverage unless notified by the Corps.

**PCN is required for regulated activities proposed in these Aquatic Resources<sup>1</sup>:**

1. Section 10 waters;
2. State-designated wild rice waters<sup>1, 2</sup>;
3. Bogs and fens<sup>1, 3</sup>;
4. Apostle Islands National Lakeshore and Madeline Island (WI only);
5. Coastal plain marshes, interdunal wetlands, and Great Lakes ridge and swale complexes (WI only)<sup>1</sup>;
6. 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, Chiwaukee Illinois Beach Lake Plain, and Lower Wisconsin Riverway), see <https://rsis Ramsar.org/> (WI only).
7. Areas of Special Natural Resources Interest (WI) or Outstanding Resource Value Waters (MN)<sup>4</sup>

**PCN is required for the following activities to comply with other federal laws:**

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.

1 Information about Wisconsin plant community types may be obtained from at <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.

2 Information regarding wild rice waters and their extent may be obtained from at

<https://www.dnr.state.mn.us/wildlife/shallowlakes/wildrice.html> and <https://gisdata.mn.gov/dataset/biotawild-rice-lakes-dnr-wld> in Minnesota,

<https://dnr.wisconsin.gov/topic/wildlifehabitat/rice.html> in Wisconsin, and an interactive map is provided at: <http://maps.glifwc.org/> (under Treaty Resources – Gathering).

3 Additional information on bog and fen communities can be found at <http://www.mvp.usace.army.mil/missions/regulatory.aspx> and in Minnesota at

<http://www.dnr.state.mn.us/npc/classification.html>.

4 Information about ASNRI waters can be found at <https://dnr.wisconsin.gov/topic/SurfaceWater/swdw>. Information about ORVW can be found at

<https://www.pca.state.mn.us/water/outstanding-resource-value-waters>.

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3. Regulated activities which may 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.

**Other activities which require PCN include:**

1. All single and complete regulated activities, excluding overhead lines and construction matting, which exceed 500 linear feet in non-tributary waters of the US.
2. 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.
3. 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.
4. Regulated activities associated with mechanized land-clearing that exceeds 400 square feet in shrub or forested waters of the US.
5. 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 G) are not subject to this PCN requirement.
6. 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>.
7. 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.
8. Regulated temporary impacts remaining in place for longer than 90 days between May 15 and November 15.
9. 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 F. General Conditions).

**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. Generally, 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:

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

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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. 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 C).
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, 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.
7. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section E 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 threatened or endangered species (or species proposed for listing) or proposed or designated critical habitat might be affected or is in the vicinity of the regulated activity, the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) 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 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.
11. 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.”
12. 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 (see general conditions 14 and 15).
13. 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.

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14. For an activity that requires permission from, or review by, 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, or review by, the Corps office having jurisdiction over the Corps civil works project.

## E. 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, guidelines, and procedures 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 this 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 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, procedures, 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](http://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](http://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/](http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/).

## F. GENERAL CONDITIONS

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

1. **Compliance:**
  - a. The permittee is responsible for ensuring that whoever performs, supervises, or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and

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conditions of the RGP and any special (permit-specific) conditions included in any written verification letter from the Corps.

- b. 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.
  - c. 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 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 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](http://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](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf). Information about calcareous fens in Wisconsin can be found at <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.
  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



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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 permittee must immediately notify the Corps of what they 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 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. **Safety of Impoundment Structures:** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications 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 pre-construction contours and elevations, and revegetated with native, non-invasive vegetation, unless otherwise conditioned in a Corps RGP verification. All temporary access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows. 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

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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 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 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.
17. **Culverts and Crossings:** Unless an RGP verification authorizes otherwise, replacement and installation of culverts or crossings authorized by an 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. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic resources. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
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. **Hard Armoring:** For RGP categories that allow for the use of hard armoring for bank stabilization, only suitable material must be used and be of a size and configuration 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 [nrc.uscg.mil](http://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:** To prevent the spread of invasive species, all construction equipment must be clean prior to entering and before leaving the work site.
23. **Navigation:**
- a. No activity may cause more than a minimal adverse effect on navigation.
  - b. 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.

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- c. For activities subject to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), 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. **Section 401 Clean Water Act, Water Quality Certification:** All regulated activities authorized by the Utility RGP pursuant to Section 404 of the Clean Water Act require Section 401 Clean Water Act certification or waiver to be considered valid.
26. **Minimum Clearances for Aerial Lines over Navigable Waters:** Utility lines consisting of aerial electric power transmission lines crossing navigable waters of the U.S. (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).
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 it does not require Utility RGP verification prior to commencing remediation work.
30. **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."

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(Transferee)

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(Date)

## G. 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 regulated 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 regulated 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 (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 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.

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

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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.

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 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.

## H. 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).

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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 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.

## I. 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 325.2.

# **Enclosure H**

## **Wildlife Ponds RGP**





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: U.S. Army Corps of Engineers, St. Paul District

EFFECTIVE DATE: To be announced

EXPIRATION DATE: Five years after the effective date

#### A. AUTHORIZATION AND APPLICABILITY

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. Refer to the appropriate sections of this permit for a description of RGP procedures, eligible activities, conditions, exclusions, and application instructions.

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 (hereafter referred to as regulated activities).
2. **Eligible Activities:** Regulated activities, including losses and temporary impacts (see Section C, Calculating Impacts to Waters of the US), required for the construction of small ponds for wildlife habitat.
3. **Activity Restrictions:**
  - 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. See Section D below for additional information regarding PCN requirements.
5. **Exclusions:** The following activities are **INELIGIBLE** for Wildlife Ponds RGP authorization:
  - a. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
  - b. 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.
  - c. Regulated activities which would adversely affect public water supplies.
  - d. 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).

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6. **Expiration:** 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.
7. **Section 401 Water Quality Certification:** Where Section 404 activities are proposed, 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 22 in Section F below. 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. 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.

## C. 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 the Definitions Section G 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 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.
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 contours and elevations. 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.

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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.

#### D. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION

**Project proponents must obtain written Corps verification of RGP coverage before starting regulated work.** 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.

**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. Generally, the Corps will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all 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 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:

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 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 C).
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 E for more information.
8. If the proposed project would impact a calcareous fen, the PCN must include a copy of the WI DNR authorization

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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 threatened or endangered species (or species proposed for listing) or proposed or designated critical habitat might be affected or is in the vicinity of the regulated activity, the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) 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 14 or 15 is proposed (Section F, 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. General conditions 14 and 15 are the only waivers available for the Wildlife Ponds RGP.

## E. 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, guidelines, and procedures 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 this 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

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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, procedures, 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](http://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](http://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/](http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/).

## F. GENERAL CONDITIONS

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

1. **Compliance:**
  - a. The permittee is responsible for ensuring that whoever performs, supervises, or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP.
  - b. 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.
  - c. Any authorized structure or fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions.
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 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.

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- 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](http://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](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf). Information about calcareous fens in Wisconsin can be found at <http://dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland>.
7. **Wild and Scenic Rivers:** The permittee may not complete regulated activities which may affect or are located in a designated portion 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 any previously unknown historic, cultural or archeological remains and artifacts are discovered while accomplishing the activity authorized by this permit, the permittee must immediately notify the Corps of what they 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 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).
12. **Safety of Impoundment Structure:** To ensure that all impoundment structures are safely designed, the district

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engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications 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 pre-construction contours and elevations, and revegetated with native, non-invasive vegetation, unless otherwise conditioned in a Corps RGP verification. All temporary access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows. 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-construction contours and elevations. The permittee must remove the temporary impacts in their entirety in accordance with the activity authorized in their permit verification.
16. **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 regulated work.
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. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
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

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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 [nrc.uscg.mil](http://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:** To prevent the spread of invasive species, all construction equipment must be clean prior to entering and before leaving the work site.
21. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
22. **Section 401 Clean Water Act Water Quality Certification:** All regulated activities authorized by this 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 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)

## G. 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 regulated 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.



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Indirect effects: Effects that are caused by the regulated 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 terms and conditions of this regional 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.

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.

## H. 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 anytime 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.

## I. 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

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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.