



US Army Corps  
of Engineers®  
St. Paul District

## Commercial/Industrial Development General Permit for City of Superior SAMP

PERMIT: Commercial/Industrial Development, City of Superior Special Area Management Plan General Permit

PERMIT NUMBER: 1996-06788-SDE

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

PERMITTEE: General Public within the City of Superior

EFFECTIVE DATE: July 10, 2019

EXPIRATION DATE: July 9, 2024

### A. Authorization

Authorization pursuant to Section 404 of the Clean Water Act is granted for the placement of dredged and/or fill materials impacting a maximum of 75.0 acres of wetlands identified for commercial/industrial development in accordance with the City of Superior Special Area Management Plan (SAMP) and City of Superior zoning code or ordinances. This SAMP III—General Permit (GP) includes wetland fill for building pads, parking lots, on-site stormwater detention, and warehouse facilities. Projects involving speculative fills are not authorized by this GP.

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

**No GP authorizations are valid until a project proponent obtains a Clean Water Act Section 401 water quality certification or waiver from the Wisconsin Department of Natural Resources.** In addition, some GP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This GP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

### B. Applicability

The Commercial/Industrial Development, City of Superior SAMP General Permit applies to certain activities in certain wetlands, as described below, within the municipal boundaries of the City of Superior, Douglas County, Wisconsin. Wetlands eligible for SAMP III—GP verifications are identified in Attachment A.

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

2. Eligible Activities: Regulated activities associated with minor discharges of dredged or fill material into waters of the United States for a single and complete commercial/industrial development project.

3. Activity Restrictions: This GP authorization shall be limited to 10.0 acres of adverse impacts to wetlands for each "single and complete project," meaning those proposed or accomplished under a specific development plan by one owner/developer, or association of owners/developers (33 CFR 330.2(i)). For phased development, each phase may constitute a single and complete project if it has independent utility and would accomplish its intended purpose whether or not other phases were constructed. Adverse impacts include, but are not limited to, mechanized landclearing (bulldozing or grading), filling, excavating, flooding or draining of wetlands. Adverse impacts also include activities that damage or destroy threatened, endangered or special concern species. The accounting of adverse impacts includes impacts to all waters and wetlands regardless of their jurisdictional status.

4. Pre-Construction Notification (PCN): A PCN to the Corps is required prior to the start of work. Applicants must meet all the terms and conditions of this permit.

### **C. Requirements for SAMP III-GP Authorizations**

1. The City of Superior shall facilitate the SAMP III—GPs via the Superior SAMP III Technical, Implementation, and Administration Document (SAMP III—TIA). This shall include adoption of the terms and conditions of this GP. Since issuance of this GP is predicated on the terms of the SAMP III Ordinance, any proposed substantive changes to the ordinance shall be reviewed and approved by the District Engineer or such changes shall invalidate the continued use of this GP.

2. Prospective permittees shall submit to the City of Superior the information required by the SAMP III—TIA document. The Director of Public Works shall ensure that the application is complete and determine that the proposed activity conforms to the SAMP III and the terms of this GP. The City shall send this information to the U.S. Army Corps of Engineers (Corps) office in Hayward, Wisconsin (overnight mail delivery) and the Superior, Wisconsin office of the Wisconsin Department of Natural Resources (WDNR) (hand delivered). An email notification summarizing the permit application shall be sent to the Superior SAMP Technical and Advisory Committee members at the U.S. Environmental Protection Agency (USEPA) in Chicago, Illinois and the U.S. Fish and Wildlife Service (USFWS) in Green Bay, Wisconsin.

3. The City shall conduct an initial review of applications for SAMP III—GP authorizations using the Wisconsin Historic Preservation Database (WHPD), which is maintained by the State Historic Preservation Office (SHPO). Applications for SAMP III—GPs sent to the Corps and the

WDNR would also be screened to determine the proposed activity's potential effect on historic properties. Depending on the outcome of that review, cultural resource surveys and coordination with the SHPO and other consulting parties may be required.

4. The Corps will consider this a pre-construction notification (PCN) as outlined at 33 CFR 330.1(e), and will promptly initiate an evaluation to:

- a. Ensure that the project conforms to this GP; or
- b. Determine that the project must be evaluated under the Corps individual Section 404 permit process; or
- c. Determine whether site-specific special conditions are required to ensure that the direct, secondary, and cumulative impacts of the proposed project are minimal. If substantive special conditions are necessary, the Corps may determine that the project must be evaluated under the Corps individual Section 404 permit process.

If the Corps determines that the project does not qualify under this GP, the Corps will provide written justification for its determination to the applicant and the City so that the applicant may be advised of deficiencies in the permit application. Upon such determination, the 20-day/30-day default provision, described below, will be suspended.

If within 20 calendar days (for projects with less than or equal to 5 acres of wetland impacts) or 30 calendar days (for projects with greater than 5 acres of wetland impacts) of receipt of the PCN by the Corps, the prospective permittee does not receive confirmation of this GP authorization, or notice from the Corps that the project does not qualify for this GP, or that site-specific conditions must be implemented, then the prospective permittee may proceed pursuant to this GP authorization. The WDNR will utilize the same 20-day/30-day default provision to review the application for purposes of Section 401 Water Quality Certification and/or State GP.

5. Each application for this GP shall include the results of a wetland delineation, conducted by a qualified wetland delineator, according to the most current *Corps of Engineers Wetlands Delineation Manual* and the most current version of the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral/Northeast Region*. The delineation shall be conducted between May 15 and October 1. Exceptions to this time frame shall be at the discretion of the Corps. Delineations are valid for 5 years.

6. An application for this GP shall include the results of a survey for Federal- and state-listed threatened (THR), endangered (END) and special concern (SC) plant species.

- a. The plant survey shall be conducted between 15 June and 15 September by a qualified wetland ecologist, plant ecologist or botanist. Surveys outside of this time frame may be permissible if approved in advance by the Corps after consultation with the WDNR.

- b. Site-specific THR/END/SC plant survey results are valid for 3 years.

- c. If state-listed THR/END/SC plant species are found within a proposed SAMP III—GP site, the applicant shall report the finding to the City of Superior administrator and the Wisconsin

Department of Natural Resources—Bureau of Endangered Resources (WDNR-BER). A completed WDNR Natural Inventory Rare Plant Report Form (DNR Form 1700-049) shall be submitted as part of the GP application package.

d. The WDNR-BER has the same 20-day/30-day review period as stated above to provide specific recommendations for protecting THR/END/SC plant species. Avoidance, minimization and/or compensation of impacts to THR/END/SC plant species shall be determined by using the flowcharts developed by the WDNR-BER.

e. If an applicant for this GP is unable or unwilling to implement the specified avoidance/minimization/compensation measures for state-listed THR/END/SC plant species, the applicant will be redirected to the Section 404 individual permit process.

f. If a Federally-listed plant species is found within a proposed SAMP III—GP site, the applicant shall report the finding to the City, WDNR-BER, Corps and USFWS. No activity that adversely impacts the Federally-listed species shall be taken.

7. On-site and off-site upland alternatives shall be considered as potential means to avoid/minimize impacts to aquatic resources and this consideration shall be documented in a statement included in the application.

8. Compensatory mitigation requirements for wetland impacts authorized under this GP shall be determined by the Corps. Compensatory mitigation shall be implemented as follows:

a. Compensatory mitigation shall be accomplished by the City of Superior through the City of Superior Wetland Mitigation Bank as approved by the Interagency Review Team (IRT), except as noted by g. below.

b. The City of Superior shall be responsible for any corrective or remedial measures the Corps deems necessary to achieve successful compensatory mitigation under the City of Superior Wetland Mitigation Bank.

c. The minimum ratio for debiting Corps-approved banking credits shall be 1.2:1 (1.2 credits for every acre of wetland impact). The City of Superior shall track credits and debits used for SAMP III—GPs.

d. This GP authorization shall be temporarily suspended if the City of Superior Wetland Mitigation Bank reaches a zero or negative balance of credits. Suspension of this GP shall be maintained until a positive balance of credits is restored.

f. The City of Superior shall assist the IRT in monitoring and evaluating the long-term and cumulative impacts of wetland losses within its municipal boundaries.

g. Independent of the City of Superior Wetland Mitigation Bank, a permittee may also purchase credits from any bank with Corps-approved credits within the Lake Superior Watershed.

h. Project-specific compensation, if determined by the Corps to be environmentally

preferable in a specific case, may also be approved. Compensation may be on-site and/or off-site. If permittee responsible compensation is proposed, the site shall be protected in perpetuity by adoption of a conservation easement, or other legally binding mechanism. The legal mechanism for protecting a particular site in perpetuity shall be submitted to the Corps for review and approval.

#### **D. General Conditions**

1. Compliance: The permittee is responsible for ensuring that whomever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the GP and any special (permit-specific) conditions included in any written verification letter from the Corps. The activity must also comply with any special conditions added by the state in its Section 401 Water Quality Certification. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the GP. Any authorized fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable GP general conditions, as well as any activity-specific conditions added by the Corps to a GP 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. 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.

4. Historic properties: No activity is authorized under this GP which has the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, until the requirements of Section 106 of the National Historic Preservation Act have been satisfied.

5. Federally-listed Threatened and Endangered Species

- a. No activity is authorized under this GP 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 GP 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 GP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the GP activity and are later in time, but still are reasonably certain to occur.

- b. As a result of formal or informal consultation with the USFWS, the Corps may add species-specific permit conditions to the GP 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 USFWS or their web page at [www.fws.gov/ipac](http://www.fws.gov/ipac).

6. 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 US Fish and Wildlife Service 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.

7. Burial Sites: Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70). 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 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 the work.

8. The project shall implement erosion and sediment control measures in accordance with the WDNR technical standards of NR 151.11 and 151.12, Wis. Admin. Code. The technical standards are found at: <http://dnr.wi.gov/topic/stormwater>. Any areas of exposed soils due to the project shall be immediately seeded and mulched to stabilize the site and prevent soils from being eroded and washed into waters or wetlands.

9. Prospective permittees shall obtain plat approval, building permit approval, and complete the pre-construction notification process prior to commencement of wetland fill activities.

10. Only clean fill material shall be used. Discharges of unsuitable material including trash, construction debris, asphalt, and any contaminated materials (e.g., soils contaminated by petroleum products), are not authorized by this GP.

11. All equipment used for the project shall be decontaminated to remove invasive species and viruses prior to and after each use on the project site by using best management practices as outlined in NR 40, Wis. Admin. Code. For more information, refer to: <http://dnr.wi.gov/topic/Invasives/bmp.html>.

12. General permittees shall maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit.

13. General permittees shall allow representatives from the Corps, WDNR, and City of Superior, to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of this GP.

## **E. Further Information**

1. Congressional Authorities. General permittees have 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 this GP based on concern for the aquatic environment or for any other factor of the public interest.

3. Limits of this Authorization.

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

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

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

d. This permit 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 the Corps that issuance of this permit is not contrary to the public interest was made in reliance on the information provided by the general permittee.

6. Re-evaluation of Decision. This office may reevaluate its decision for an individual verification under this GP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. General permittee(s) fail to comply with the terms and conditions of this permit;
- b. The information provided by general permittee(s) proves to have been false, incomplete, or inaccurate (see 5 above);
- 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 general permittee(s) to comply with the terms and conditions of the general permit and for the initiation of legal action where appropriate. General permittee(s) will be required to pay for any corrective measures ordered by this office, and if general permittee(s) fail to comply with such directive, this office may in certain situations (such as this specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill general permittees for the cost.

7. This office may also reevaluate its decision to issue this SAMP III—GP at any time the circumstances warrant. Circumstances that could require 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 suspension, modification, and revocation procedures contained in 33 CFR 325.

## **F. Corps Decision**

In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the GP would 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 this GP, the Corps should issue the GP verification for that activity if it meets the terms and conditions of the GP, unless the Corps determines, after considering mitigation, that the proposed activity would result in more than minimal individual and cumulative adverse impacts on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity.

When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the GP activity. The Corps will also consider the cumulative adverse effects caused by activities authorized by the GP 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 GP activity, the type of resource that would be affected by the GP activity, the functions provided by the aquatic



resources that would be affected by the GP activity, the degree or magnitude to which the aquatic resource would be lost as a result of the GP activity (e.g., partial or complete loss), the duration of the adverse impacts (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 GP authorization to address site-specific environmental concerns.

If the Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant and direct the applicant to the individual permit process.

July 10, 2019

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Chad Konickson, Chief  
Regulatory Branch

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Date

For Samuel L. Calkins  
Colonel, Corps of Engineers  
District Commander

# **ATTACHMENT A**

## Wetlands Potentially Eligible for SAMP III—GP Authorizations

(On-line map available at: <http://douglascowi.wgxtreme.com/>. Select “Dept Maps” and then “Land Use/Zoning.” Select the layer, “SAMP Wetlands.”)