



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

EFFECTIVE DATE: February 21, 2018

EXPIRATION DATE: February 20, 2023

## A. AUTHORIZATION

Regulated activities conducted in accordance with the terms and conditions of the 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.

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

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

## B. MINOR DISCHARGES REGIONAL GENERAL PERMIT APPLICABILITY

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

- Regulatory Authority:** The Minor Discharges RGP regional general permit may be used to authorize activities pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344, Section 404) for discharges of dredged and fill material into waters of the US. Activities subject to Section 404 regulatory requirements are hereafter referred to as regulated activities.
- 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.
- Activity Restrictions:**
  - The regulated discharge may not exceed 400 square feet of waters of the US. Losses of waters of the US and temporary impacts to waters of the US contribute toward the 400 square foot threshold (see Section D for additional information).
  - All tributary channel modifications are limited to the minimum necessary and cannot exceed 300 linear feet of loss (see Section D for additional information).

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- 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.

### C. MINOR DISCHARGES REGIONAL GENERAL PERMIT EXCLUSIONS

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

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

### D. CALCULATING IMPACTS TO WATERS OF THE UNITED STATES

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

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

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

PCN is not required prior to the start of work. The applicant must meet ALL the terms and conditions of this permit.

Though a PCN is not required, an applicant may request a verification letter from the Corps to confirm the proposed work would meet the terms and conditions of this permit. The PCN must be in writing and should utilize the Minnesota Joint Waters Wetlands Application, WI DNR application or the Corps 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 D).
5. Sketches, maps, drawings and plans must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale 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.

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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 F for more information.
8. The PCN must specify how long temporary impacts and structures will remain in place and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.

## F. MITIGATION

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

## G. USE OF MULTIPLE RGP CATEGORIES

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.

## H. GENERAL CONDITIONS

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

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

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

5. **Endangered Species:** No activity is authorized under this RGP which might affect a federally threatened or endangered species or a species proposed for such designation, or critical habitat as identified under the Endangered Species Act (ESA), 50 CFR 402. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS on their web page at [www.fws.gov/ipac](http://www.fws.gov/ipac).
6. **Calcareous Fens:** The permittee may not complete regulated activities in a calcareous fen. A list of known Minnesota calcareous fens can be found at: [http://files.dnr.state.mn.us/eco/wetlands/calcareous\\_fen\\_list.pdf](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf).
7. **Wild and Scenic Rivers:** The permittee may not complete regulated activities which may affect or are located in designated portions of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status.
8. **Historic Properties, Cultural Resources:** No activity which might affect historic properties listed or potentially eligible for listing on the National Register of Historic Places is authorized.
9. **Discovery of Previously Unknown Remains and Artifacts:** If any previously unknown historic, cultural or archeological remains and artifacts are discovered while accomplishing the activity authorized by this permit, the Corps must immediately be notified of the findings. To the maximum extent practicable, construction activities must avoided that may affect the remains and artifacts until the required coordination has been completed. The Corps will initiate the federal, tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
10. **Burial Sites:** Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70 and Minnesota Statutes 306 and 307.08). Native American burial sites on federal or tribal land are subject to the provisions of Native American Graves Protection and Repatriation Act (NAGPRA). Regulated activities may not result in disturbance or removal of human remains until disposition of the remains has been determined by the appropriate authority under these laws, and the work is authorized by the Corps. Regulated activities which result in an inadvertent discovery of human remains must stop immediately, and the Corps, as well as the appropriate state and tribal authority, must be notified. Regulated work at inadvertent discovery sites requires compliance with state law and NAGPRA, as appropriate, prior to re-starting work.
11. **Federally Authorized Corps Civil Works projects:** A permittee is not authorized to begin any regulated activities described in this RGP if activities will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project.
12. **Dam Safety:** Regulated activities that may affect a dam must comply with applicable state dam safety criteria and be designed by qualified persons.
13. **Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
14. **Restoration of Temporary Impacts:** All temporary impacts in waters of the US, including discharges resulting from side casting material excavated from trenching, that occur as a result of the regulated activity must be fully contained with appropriate erosion control or containment methods, be restored to preconstruction contours and elevations, and revegetated with native, non-invasive vegetation. In temporarily excavated wetlands, the top 6 to 12 inches of the excavation should normally be backfilled with topsoil originating from the wetland. No temporary excavation area, including, but not limited to trenches, may be constructed or backfilled in such a manner as to drain waters of the US (e.g., backfilling with extensive gravel layers, creating a French drain effect).
15. **Duration of Temporary Impacts:** Temporary impacts in waters of the U.S., including wetlands, must be avoided and limited to the smallest area and the shortest duration required to accomplish the project purpose. Temporary impacts may not remain in place longer than 90 days between May 15 and November 15. Before those 90 days have elapsed all temporary discharges must be removed in their entirety.

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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:** 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.
19. **Spawning Areas:** Activities in spawning areas, during spawning seasons, must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial sedimentation) of a designated or known spawning area are not authorized.
20. **Riprap:** Only rock rap must be used and it must be of a size sufficient to prevent its movement from the authorized alignment by natural forces under normal or high flows.
21. **Pollutant or Hazardous Waste Spills:** The permittee is responsible for removing pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with all applicable state, tribal, and federal laws. In accordance with applicable state, tribal, and federal laws and regulations, if a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or [www.nrc.uscg.mil](http://www.nrc.uscg.mil) AND  
IN WISCONSIN: the WI DNR Spills Team at 1-800-943-0003; or  
IN MINNESOTA: the Minnesota State Duty Officer at 1-800-422-0798.
22. **Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
23. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
24. **Access Roads:** Access roads must be sized appropriately and must be constructed in such a way to minimize adverse effects on waters of the US and elevations must be as near as practicable to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). All access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows.
25. **Section 401 Clean Water Act Water Quality Certification:** All regulated activities authorized by the Minor Discharges RGP 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

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conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional general permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

## I. DEFINITIONS

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

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

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

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

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

Independent utility: A test to determine what constitutes a single and complete **non-linear** project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

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

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

Ordinary high water mark (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. A PCN may be voluntarily submitted in cases where PCN is not required and the project proponent wants verification that the activity is authorized by the general permit.

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

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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.

## J. FURTHER INFORMATION

1. Congressional authorities: The permittee has been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C 1344).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by an RGP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this authorization:
  - a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
  - b. This RGP does not grant any property rights or exclusive privileges;
  - c. This RGP does not authorize any injury to the property or rights of others; and
  - d. This RGP does not authorize interference with any existing or proposed federal project.
4. Limits of federal liability: In issuing this permit, the Federal Government does not assume any liability for the following:
  - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
  - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
  - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
  - d. Design or construction deficiencies associated with the permitted work; or
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
5. Reliance on permittee’s data: The determination of this office that an activity is not contrary to the public interest will be made in reliance on the information provided by the project proponent.
6. Re-evaluation of decision: This office may reevaluate its decision for an individual verification under this general permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a. The permittee fails to comply with the terms and conditions of this permit;



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- 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.

**State of Wisconsin**  
DEPARTMENT OF NATURAL RESOURCES  
101 S. Webster Street  
Box 7921  
Madison WI 53707-7921

Scott Walker, Governor  
Daniel L. Meyer, Secretary  
Telephone 608-266-2621  
Toll Free 1-888-936-7463  
TTY Access via relay - 711



February 15, 2018

Chad Konickson  
U.S. Army Corps of Engineers  
St. Paul District - Regulatory  
180 5th St. East  
Suite 700  
St. Paul MN 55101

Subject: Water Quality Certification for the Regional General Permits in WI

Dear Mr. Konickson:

The Wisconsin Department of Natural Resources submits the attached water quality certification for U.S. Army Corps of Engineers' Regional General Permits for Beach Creation & Nourishment, Beach Raking, Minor Discharges, Piers and Docks, Wildlife Ponds, Transportation, and Utilities for projects in Wisconsin.

Please feel free to contact Cami Peterson or me with any questions.

Sincerely,

Benjamin Callan  
Chief, Integration Services Section

cc: Wendy Melgin, USEPA  
Jill Bathke, USACE  
Rebecca Graser, USACE

Attachment

## BEFORE THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Application of the United States Department of the Army,)
Corps of Engineers, for Water Quality Certification for the)
Final Regulations Pertaining to the Issuance
of Regional General Permits for Beach Creation & Nourishment, Beach Raking, Minor
Discharges, Piers and Docks, Transportation, Utilities, Wildlife Ponds)

On December 20, 2017, the United States Department of the Army, Corps of Engineers (COE), published its final notice regarding the Issuance of seven Regional General Permits (RGPs) in the Federal Register. The publication includes new RGPs. Publication of these RGPs serves as the Corps' application to the State for water quality certification (WQC) under Section 401 of the Federal Clean Water Act (CWA).

The Wisconsin Department of Natural Resources (WDNR) has examined the final regulations pursuant to Section 401, CWA, and Chapter NR 299, Wisconsin Administrative Code (Wis. Adm. Code).

The WDNR has determined the following conditions for the RGPs are required to ensure compliance with state water quality standards enumerated in s. 299.04, Wis. Adm. Code. The certification contained herein shall expire on February 16, 2023.

Section 401 Certification does not release the permittee from obtaining all other necessary federal, state, and local permits, licenses, certificates, approvals, registrations, charters, or similar forms of permission required by law. It does not limit any other state permit, license, certificate, approval, registration, charter, or similar form of permission required by law that imposes more restrictive requirements. It does not eliminate, waive, or vary the permittee's obligation to comply with all other laws and state statutes and rules throughout the construction, installation, and operation of the project. This Certification does not release the permittee from any liability, penalty, or duty imposed by Wisconsin or federal statutes, regulations, rules, or local ordinances, and it does not convey a property right or an exclusive privilege.

This Certification does not replace or satisfy any environmental review requirements, including those under the Wisconsin Environmental Policy Act (WEPA) or the National Environmental Policy Act (NEPA).

**Note:** The specific language in the RGPs is not included in this document. Copies of complete regional general permits published in the Federal Register on December 20, 2017, may be obtained from your local COE field office.

### STATE CONDITIONS AND LIMITATIONS OF CERTIFICATION

#### GENERAL CONDITIONS:

1. The permittee shall allow the WDNR reasonable entry and access to the discharge site to inspect the discharge for compliance with the certification and applicable laws.

2. If any of these §401 water quality certification conditions are found invalid or unenforceable, the water quality certification is denied for all activities to which that condition applies.

3. No discharges of dredged or fill material below the ordinary high water mark of a navigable stream as defined by s. 310.03(5), Wis. Adm. Code, may take place during fish spawning periods or times when nursery areas would be adversely impacted. These periods are:

- September 15<sup>th</sup> through May 15<sup>th</sup> for all trout streams and upstream to the first dam or barrier on the Root River (Racine County), the Kewaunee River (Kewaunee County), and Strawberry Creek (Door County). To determine if a waterway is a trout stream, you may use the WDNR website trout maps at <http://dnr.wi.gov/topic/fishing/trout/streammaps.html>.
- March 1<sup>st</sup> through June 15<sup>th</sup> for ALL OTHER waters.

4. Unless specifically exempt from state statute and federal Pre-Construction Notification (PCN) requirements, Applicants seeking authorization under these RGPs shall complete the Joint State/Federal Permit Application on the department e-permitting site at <http://dnr.wi.gov/Permits/Water/>.

Regional General Permits Granted Water Quality Certification:

- Beach Raking
- Minor Discharges
- Piers and Docks

Regional General Permits for which Water Quality Certification is Partially Denied

The specified activities authorized by the following RGP categories are denied WQC without prejudice and must apply to the WDNR for an individual 401 WQC. Activities that do not include the activities for which certification has been denied are certified subject to all applicable RGP general conditions.

- Utilities
  - WQC denied: Temporary access fill without PCN that is placed for 60 or more consecutive days between May 15 and November 15.
  - WQC certified: All other RGP activities.
- Transportation
  - WQC denied: Temporary access fill without PCN that is placed for 60 or more consecutive days between May 15 and November 15.
  - WQC certified: All other RGP activities.
- Beach Creation & Nourishment
  - WQC denied: Placement of sand for beach creation.
  - WQC certified: All other RGP activities.
- Wildlife Ponds
  - WQC denied: The project is located in a navigable water with stream history. (The Wisconsin Department of Natural Resources (WDNR) is responsible for interpretation of a navigable water with stream history. The point of contact for

questions relating to a navigable water with stream history is the local WDNR Water Management Specialist. Contact information can be found at <http://dnr.wi.gov/topic/Waterways/contacts.html> )

- WQC denied: If the project is located in existing wetland not in agricultural crops, not dominated by invasive species, or dominated by other than early successional hydrophyte species. (The WDNR is responsible for interpretation of these categories that are denied WQC. The point of contact for questions is the local WDNR Water Management Specialist. Contact information can be found at <http://dnr.wi.gov/topic/Waterways/contacts.html> )
- WQC certified: All other RGP activities.

#### NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to section 227.42, Wisconsin Statutes, you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources.

This determination becomes final in accordance with the provisions of s. NR 299.05(7), Wisconsin Administrative Code, and is judicially reviewable when final. For judicial review of a decision pursuant to Sections 227.52 and 227.53, Wisconsin Statutes, you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

Dated at Madison, Wisconsin

February 15, 2018

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By

Ed Elrke

*for* Daniel Meyer, Secretary