



DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
180 FIFTH STREET EAST, SUITE 700
ST. PAUL MN 55101-1678

9 December 2011

Operations
Regulatory (2011-5289-BCN)

Tom Oldenburg
Wisconsin Department of Transportation
3550 Mormon Coulee Road
La Crosse, Wisconsin 54601

Dear Mr. Oldenburg:

We have completed our review of your permit application to discharge fill material into Dellamater Hollow Creek for the replacement of bridge B-41-0618 on State Highway 131 and to discharge rock riprap into the Kickapoo River to replace the riprap that was lost during the flooding of 2007 and 2008 (Project ID: 5783-03-00). The project site is in Sec. 22 and 28, T. 10N, R. 4W, in Crawford County, Wisconsin.

This work is authorized by Department of the Army General Permit (GP-002-WI) **PROVIDED THE ENCLOSED CONDITIONS ARE FOLLOWED AND YOU OBTAIN CONFIRMATION THAT SECTION 401 WATER QUALITY CERTIFICATION HAS BEEN GRANTED OR WAIVED FOR THE PROJECT** from the Wisconsin Department of Natural Resources (WDNR). Your project **IS NOT** authorized by this **General Permit** until you obtain this confirmation of water quality certification from the WDNR.

You should contact **Karen Kalvelage** of the WDNR office in **La Crosse** (608)785-9115, concerning water quality certification for your project.

If your project will require off-site fill material that is **not** obtained from a licensed commercial facility, you must notify us at least five working days before start of work. A cultural resources survey may be required if a licensed commercial facility is not used.

This General Permit is valid until May 31, 2016, unless reissued, or revoked. The time limit for completing the work described above ends or two years from the date of this letter. It is the permittee's responsibility to remain informed of changes to the General Permit program. If this authorized work is not undertaken within the above time period, or the project specifications have changed, our office must be contacted to determine the need for further approval or re-verification.

It is your responsibility to ensure that the work complies with the terms of this letter and the enclosures **AND TO OBTAIN ALL REQUIRED STATE AND LOCAL PERMITS AND APPROVALS BEFORE YOU PROCEED WITH YOUR PROJECT.**

A preliminary jurisdictional determination (JD) has been prepared for the site of your project. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps representative identified in the final paragraph of this letter. You also may provide new information for further consideration by the Corps to reevaluate the JD. If this JD is acceptable, please sign and date both copies of the Preliminary Jurisdictional Determination form and return one copy to the address below within 15 days from the date of this letter.

U.S. Army Corps of Engineers
St. Paul District
1114 South Oak Street
La Crescent, Minnesota 55947
Attn: (Bruce Norton)

If you have any questions, contact Bruce Norton in our La Crescent field office at (507) 895-8059. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely,

Tamara E. Cameron
Chief, Regulatory Branch

Copy furnished to:
WDNR: Karen Kalvelage

GENERAL INFORMATION

Persons proposing to do work should note that, in ALL cases, GP-002-WI requires that adverse impacts on water and wetland resources be avoided and minimized to the maximum extent practicable. Also, activities that would adversely affect federal endangered plant or animal species or certain cultural or archaeological resources, or that would impair reserved Native American tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights, are not eligible for authorization under GP-002-WI.

Department of the Army Permit General Conditions:

1. GP-002-WI expires on May 31, 2016. Unless otherwise specified in the St. Paul District's letter confirming your project complies with the requirements of this GP, the time limit for completing work ends upon the expiration date of GP-002-WI. If you find that you require additional time to complete authorized activities, submit your time extension request to this office for consideration at least three months before the expiration date is reached.

2. You must maintain the activity authorized by GP-002-WI in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity. Should you wish to cease to maintain an activity authorized by the reporting GP (2.a), or abandon it without a good faith transfer; you must obtain a modification of the authorization from this office, which may require restoration of the area. If you wish to transfer responsibility for completion or maintenance of the project to another, please contact this office so we may provide you with the necessary documentation to transfer the authorization.

3. If you discover any previously unknown historic or archaeological remains while accomplishing any activity authorized by GP-002-WI, you must immediately stop work and notify this office of what you have found. The St. Paul District will initiate the federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. You must allow representatives from this office and the WDNR to inspect the proposed project site and the authorized activity at any time deemed necessary to ensure that it is

GP-002-WI CONDITIONS

being or has been accomplished in accordance with the terms and conditions of GP-002-WI.

5. If a conditioned water quality certification has been issued for your project by the WDNR, you must comply with the conditions specified in the certification as special conditions to this permit.

6. You must also comply with the other GP-002-WI terms and conditions specified below as well as any project specific conditions imposed by the St. Paul District.

Further Information:

1. Congressional Authorities: Authorization to undertake the activities described above is pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), **only**. Work that also requires authorization under Section 10 of the Rivers and Harbors Act must be authorized separately through other GPs or individual permits.

2. Limits of this Authorization:

- a. GP-002-WI does not obviate the need to obtain other federal, state, or local authorizations required by law.
- b. GP-002-WI does not grant any property rights or exclusive privileges.
- c. GP-002-WI does not authorize any injury to the property or rights of others.
- d. GP-002-WI does not authorize interference with any existing or proposed federal project.

3. Limits of Federal Liability. In authorizing work, the Federal Government does not assume any liability, including 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.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination by this office that an activity is not contrary to the public interest will be made in reliance on the information provided by the applicant.

5. Reevaluation of Decision. This office may reevaluate its decision on an authorization at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. The applicant fails to comply with the terms and conditions of this general permit.
- b. The information provided by the applicant in support of the permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision. 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 the permit and for the initiation of legal action where appropriate.

6. This office may also reevaluate its decision to issue GP-002-WI at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following: 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 325.7.

GP-002-WI STANDARD CONDITIONS

1. Discretionary Authority.

The Corps retains discretionary authority to require a standard individual permit review of any activity eligible for authorization under GP-002-WI based on concern for the aquatic environment.

2. Federal Trust Responsibility to Indian Tribes.

Projects the Corps finds to have potential to affect tribal interests will be coordinated with the appropriate Indian Tribal governments. The Tribe's views and the federal trust responsibility will be considered in the Corps evaluation. Based on treaty rights, no activity or its operation may impair reserved treaty rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

3. Form and Confirmation of Authorization.

Every GP-002-WI authorization that requires submission of an application will be confirmed in writing by the Corps. Any confirmation issued may include required special conditions.

4. Grandfather Provision.

Activities that were determined to be non-reporting under GP-002-WI prior to May 31, 2011 AND that had commenced prior to that date shall be completed no later than April 16, 2013. Reporting activities previously confirmed by our office in writing as authorized under GP-002-WI (expiration dates April 16, 2011 or May 31, 2011), continue to be authorized under the terms of the Corps project verification letter.

5. Case-by-Case Conditions.

The authorized activity must comply with any special conditions that may have been added by the Corps or by a state, tribe, or the United States Environmental Protection Agency in its Section 401 Water Quality Certification or consistency determination under the Coastal Zone Management Act. Such conditions will be specifically identified in any Corps authorization.

6. Avoidance and Minimization.

Discharges of dredged or fill material into waters of the United States must be avoided and minimized to the maximum extent practicable).

7. State Water quality Certification and Coastal Zone Management (CZM) Consistency Determination.

Some GP-002-WI authorizations may not be valid unless and until the WDNR has confirmed that the activity complies with state water quality certification and/or CZM consistency determination is obtained from or waived by the Wisconsin Coastal Management Program. If such a condition applies, it will be noted in the Corps authorization letter for the project. Refer to conditions 27 and 28 at the end of this document.

8. Proper Maintenance.

Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

9. Erosion and Siltation Controls.

Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark must be permanently stabilized at the earliest practicable date. Work should be done in

accordance with state-approved published practices.

Upon completion of earthwork operations, all exposed slopes, fills, and disturbed areas must be given sufficient protection by appropriate means such as landscaping, or planting and maintaining vegetative cover, to prevent subsequent erosion. Cofferdams shall be constructed and maintained so as to prevent erosion into the water. If earthen material is used for cofferdam construction, sheet piling, riprap or a synthetic cover must be used to prevent dam erosion. All non-biodegradable erosion controls must be removed within two weeks of site stabilization unless otherwise conditioned in the Corps project confirmation letter.

10. Removal of Temporary Fills.

Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation. The timeframe for completing this removal shall be:

- a. Not later than the timeframe stipulated in the activity description (unless extended in writing by our office);
- b. Not later than the timeframe stipulated in our office's confirmation letter; or
- c. Not longer than two weeks from the date the temporary fill was placed in waters of the United States (condition c. applies only if a timeframe is not otherwise established by applying a. or b. above).

11. Federal Threatened and Endangered Species.

GP-002-WI does not affect the Corps responsibility to insure that all Section 404 authorizations comply with Section 7 of the Federal Endangered Species Act (see Standard Condition 27a.x.(a) below for information regarding compliance with Chapter 29.604 Wisconsin State Statute).

a. No activity is authorized which is likely to 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 is likely to destroy or adversely modify the critical habitat of such species. Permittees shall notify the Corps if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is authorized.

b. Authorization of an activity under GP-002-WI does not authorize the take of a threatened or endangered species as defined under the federal ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with

incidental take provisions, etc.) from the United States Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal takes of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the United States Fish and Wildlife Service and National Marine Fisheries Service, WDNR or their world-wide web pages on the internet.

12. Historic Properties, Cultural Resources.

GP-002-WI does not affect the Corps responsibility to insure that all Section 404 authorizations comply with Section 106 of the National Historic Preservation Act (NHPA). No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP) is authorized, until the Corps has complied with the provisions of 33 CFR Part 325, Appendix C. The prospective permittee must include notification to the Corps in the permit application if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the NRHP, and shall not begin the activity until notified by the Corps that the requirements of the NHPA have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the NRHP. If cultural, archaeological, or historical resources are unearthed during activities authorized by this permit, work must be stopped immediately and the State Historic Preservation Office must be contacted for further instruction.

13. Spawning Areas.

Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

14. Obstruction of High Flows.

To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

15. Adverse Effects from Impoundments.

If the discharge creates an impoundment of water, adverse effects on the aquatic system due to the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

16. Waterfowl Breeding Areas.

Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

17. Navigation.

No activity may cause more than a minimal adverse effect on navigation.

18. Aquatic Life Movements.

No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

19. Equipment.

Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

20. Water Quality Standards.

All work or discharges to a watercourse resulting from permitted construction activities, particularly hydraulic dredging, must meet applicable federal, state, and local water quality and effluent standards on a continuing basis.

21. Preventive Measures.

Measures must be adopted to prevent potential pollutants from entering the watercourse. Construction materials and debris, including fuels, oil, and other liquid substances, will not be stored in the construction area in a way that allows them to enter the watercourse as a result of spillage, natural runoff, or flooding.

22. Disposal Sites.

If dredged or excavated material is placed on an upland disposal site (above the ordinary high-water mark), the site must be securely diked or contained by an acceptable method that prevents the return of potentially polluting materials to the watercourse by surface runoff or by leaching. Construction of containment areas, whether bulkhead or upland disposal site, must be complete prior to the placement of any dredged material.

23. Suitable Fill Material.

All fill (including riprap), if authorized under this permit, must consist of suitable material (e.g. no trash, debris, car bodies, asphalt, etc.) free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act). In addition, rock or fill material used for activities dependent upon this permit and obtained by excavation must either be obtained from existing quarries or, if a new borrow site is opened up to obtain fill material, the State Historic Preservation Office (SHPO) must be notified prior to the use of the new site. Evidence of this consultation with the SHPO will be forwarded to the Corps.

24. Water Intakes/Activities.

An investigation must be made to identify water intakes or other activities that may be affected by suspended solids and turbidity increases caused by work in the watercourse. Sufficient notice must be given to the owners of property where the activities would take place to allow them to prepare for any changes in water quality.

25. Spill Contingency Plan.

A contingency plan must be formulated that would be effective in the event of a spill. This requirement is particularly applicable in operations involving the handling of petroleum products. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, to minimize any contamination resulting from this spill, and to immediately notify the state Emergency Management Duty Officer at 1-800-943-0003 and the National Response Center at telephone number 1-800-424-8802.

26. Other Permit Requirements.

No Corps GP-002-WI authorization eliminates the need for other local, state or Federal authorizations, including but not limited to National Pollutant Discharge Elimination System (NPDES) or State Disposal System (SDS) permits.

27. State Section 401 Certification Conditions and Limitations (dated April 28, 2011):

a. GENERAL CONDITIONS:

i. The applicant shall allow the WDNR reasonable entry and access to the discharge site to inspect the proposed discharge for compliance with this certification and applicable laws and to inspect permitted discharges for compliance with this certification and applicable laws.

ii. Once wetland work commences, all wetland construction activities must be continuous (on a daily basis) until the project is completed and the site is stabilized.

iii. The removal of vegetative cover and exposure of bare ground must be restricted to the minimum amount mulching, sodding, diversion of surface runoff, installation of straw bales or silt screens, construction of settling basins, or similar methods as soon as possible after removal of the original ground cover as described in the Wisconsin Construction Site Handbook (BMP's).

iv. This permit has been issued with the understanding that any construction equipment used is the right size to do the job, and can be brought to and removed from the project's site without unreasonable harm to vegetative cover or fish or wildlife habitat.

v. Final site stabilization requires the re-establishment of native vegetation and must not

contain any exotic species.

vi. Flush all other equipment with hot water of 105° F. to 110° F. for a period of 30 minutes or hot water of 140° F. for a period of 5 minutes; or, instead of flushing equipment, leave the equipment in a sunny location so that it dries completely (at least five full days).

vii. Inspect all equipment surfaces, scrape off any attached mussels, remove any aquatic plant materials (fragments, stems, leaves, or roots), and dispose of removed mussels and plants in a garbage can prior to leaving the water access area.

viii. You must ensure that all equipment used for the project has been adequately decontaminated for zebra mussels prior to being used in other waters of the state. All equipment that comes in contact with infested waters including, but not limited to, tracked vehicles, barges, boats, turbidity curtain, sheet pile, and pumps must be thoroughly disinfected.

ix. If any conditions of this certification are found to be invalid or unenforceable, certification for all activities to which that condition applies is denied.

x. The following activities are not eligible for certification under this water quality certification action for GP-002-WI:

(a) Activities likely to jeopardize the continued existence of a state designated threatened or endangered species or a species proposed for such designation or which is likely to destroy or adversely modify the habitat of such species.

(b) Activities that result in adverse impacts to fishery spawning habitat or adversely affect avifauna breeding areas or substantially disrupt the movement of those species that normally migrate from open water to upland or vice versa (i.e. amphibians, reptiles and mammals).

(c) Activities detrimental to waters of the state, including wetlands, that would adversely affect designated areas of special natural resource interest as defined in NR 103.04, Wis. Adm. Code.

(d) Activities, individually or cumulatively, detrimental to waters of the state, including wetlands, that would further the substantial degradation of designated impaired waters of the state.

xi. Applicants seeking authorization under this regional general permit (except the non-reporting general permit) shall complete a Joint State/Federal Permit Application and submit two copies of each to the appropriate local COE office and the local WDNR Water Management Permit Intake Specialist. Applications for water quality certification must be complete as determined by the WDNR. Please note an application fee is required for state water quality certification activities identified under Section II below.

b. WATER QUALITY CERTIFICATION:

i. The WDNR grants water quality certification for the Non-Reporting GP subject to compliance with all applicable conditions in GP-002-WI and compliance with conditions 3.b.27(a)i. through xi. above.

ii. The WDNR grants water quality certification for projects that satisfy all applicable conditions of GP-002-WI under the Reporting GP subject to the General Conditions above, and:

iii. The applicant receives written confirmation from the department that their proposed activity(s) is consistent with the requirements of NR 299 Water Quality Certification, Wis. Adm. Code, and the Department confirms that the applicant has adequately demonstrated that no other practicable alternative exists which would not adversely impact wetlands and would not result in other significant adverse environmental consequences and the Department confirms that the activity is consistent with the requirements of NR 103.08, Wis. Adm. Code.

iv. Certification for Hydropower Projects under this General Permit is conditionally approved when the applicant has received State Individual Water Quality Certification under the FERC regulatory process.

NOTE: If additional information is needed, or if heavy snow or ice cover prevents WDNR from completing their review, the normal processing time for confirming activities eligible for authorization under this certification may be extended (by written notice from WDNR to the applicant).

c. 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, Stats., 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 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. This notice is provided pursuant to section 227.48(2), Stats.

28. Wisconsin Coastal Management Program (WCMP) Conditions.

The WCMP's Federal consistency determination for GP-002-WI provides that no GP-002-WI authorization for an activity taking place in coastal wetlands identified as ridge and swale complexes and/or wetlands adjacent to the Mink River (Door County), and the Kakagon and Bad Rivers (Ashland County) will be valid unless and until a Federal consistency determination is granted or waived by the WCMP. This requirement therefore is incorporated as a permit condition of GP-002-WI. Applicants will be notified of this condition in the Corps's GP reporting authorization for projects in these areas.