

## **PUBLIC NOTICE**

The U.S. Army Corps of Engineers (St. Paul District) has proposed to issue RGP-15-R, a Regional General Permit (RGP) applicable within the exterior boundaries of Indian Reservations in Minnesota and Wisconsin.

In accordance with Section 401 of the Clean Water Act (CWA), the Bad River Band of Lake Superior Tribe of Chippewa Indians is examining the application of the RGP-15-R and is evaluating if there is reasonable assurance—with conditions attached—that the activities associated with this general permit will be consistent with relevant water quality considerations. Additional information is provided in the attached document and at the following webpage:

<http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/MN-Special/2015000159P.pdf?ver=2016-12-27-093128-143>

The Tribe seeks comments on its CWA Section 401 Certification decision associated with the issuance of RGP-15-R. Written comments can be sent via email or post office to:

Naomi Tillison  
Bad River Tribe's Natural Resources Department  
P.O. Box 39  
Odanah, WI 54861  
[wqs@badriver-nsn.gov](mailto:wqs@badriver-nsn.gov)

**Comment deadline is February 12, 2017.**



US Army Corps  
of Engineers  
St Paul District

# Public Notice

ISSUED: December 27, 2016

EXPIRES: January 27, 2017

REFER TO: RGP-15-R  
(2015-00159)

Section 404 Clean Water Act and  
Section 10 Rivers and Harbors Act

## PROPOSED ISSUANCE OF RGP-15-R, A REGIONAL GENERAL PERMIT APPLICABLE WITHIN THE EXTERIOR BOUNDARIES OF INDIAN RESERVATIONS IN MINNESOTA AND WISCONSIN

### 1. BACKGROUND

In the year 2000, the United States Army Corps of Engineers, St. Paul District (Corps) replaced all of the Corps Section 404 nationwide permits (NWP) on Indian Reservations in Minnesota and Wisconsin with a combined Regional General Permit (RGP) and Letter of Permission (LOP) evaluation procedure. These combined procedures resulted in issuance of RGP/LOP-98-R, which was valid until 2005.

In 2005, the combined RGP/LOP-05-R was reissued for a five-year period. The RGP/LOP-05-R was not applicable within the Mole Lake Band of Sokaogon Chippewa Reservation and the Fond du Lac Band of Lake Superior Chippewa Reservation, at their request.

In 2010, the Corps separated the Section 404 RGP from the LOP procedures, resulting in the issuance of RGP-10-R. RGP-10-R authorized two activities (maintenance activities, and oil spill/hazardous substances cleanup) without a requirement to notify the Corps prior to construction. The RGP-10-R also authorized three activities (fish and wildlife enhancement and attraction activities, stream and wetland restoration/stream habitat improvement work, and wildlife scrapes and ponds) that required the submittal of a pre-construction notification to the Corps for verification of the activity under RGP-10-R. The RGP-10-R was not applicable within the exterior boundaries of the Mole Lake Band of Sokaogon Chippewa Reservation and the Fond du Lac Band of Lake Superior Chippewa Reservation, at their request. RGP-10-R expired on June 18, 2015.

In 2014, the Corps began developing RGP-15-R as a replacement to RGP-10-R; however, it became apparent RGP-15-R would not be issued prior to the expiration of RGP-10-R. The lack of a regional general permit authorizing minor activities was not acceptable to the Corps, the public and Tribes. As a result, in June 2015 the Corps reissued RGP-10-R for an additional five years. The reissuance of RGP-10-R provides the Corps, Tribes and the public ample time and opportunity to develop and refine RGP-15-R. RGP-15-R will replace RGP-10-R upon issuance.

Concurrent with the RGP-15-R issuance, the St. Paul District is also working on the possible issuance of NWPs in Minnesota. Like RGP-15-R, NWPs are general permits that authorize certain categories of activities that result in no more than minimal individual and cumulative adverse environmental effects. Unlike RGP-15-R however, NWPs are issued by Corps of Engineers Headquarters with the St. Paul District making decisions on whether to issue, issue with regional condition(s) or revoke any of the 52 proposed NWPs. On October 14, the

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District issued a public notice clarifying our draft decisions related to NWP. The Corps has clarified how regional general permits will be used in conjunction with the NWPs. Tribal consultation on the NWP issuance is on-going. For more information on the Corps NWP please go to: <http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

#### **2. PURPOSE OF THIS PUBLIC NOTICE**

This public notice announces the Corps request for public comment on the proposed issuance of RGP-15-R. The proposed RGP-15-R allows the Corps to continue the use of RGPs within the exterior boundaries of Indian Reservations in Minnesota and Wisconsin, but would eventually replace RGP-10-R.

#### **3. PROPOSED ACTION**

RGP-15-R is currently proposed to be applicable within the exterior boundaries of all Indian Reservations in Minnesota and Wisconsin; but any final RGP-15-R issued may limit applicability based on coordination with Tribes. The major changes proposed in RGP-15-R, compared to RGP-10-R, are summarized below:

1. *Applicability:* We are proposing RGP-15-R to be applicable within the exterior boundaries of all Indian Reservations in Minnesota and Wisconsin. This is an expansion of coverage compared to RGP-10-R, which restricts applicability within the Mole Lake Band of Sokaogon Chippewa Reservation and the Fond du Lac Band of Lake Superior Chippewa Reservation.
2. *Authorities:* We are proposing to include Section 10 of the Rivers and Harbors Act (Section 10) authority under RGP-15-R, which would allow the Corps to provide authorization for certain categories of work in navigable waters using the RGP.
3. *Formatting:* RGP-15-R has been re-formatted to more closely resemble the Corps NWPs. Currently RGP-10-R has separate non-reporting and reporting sections of the permit; the first portion of the permit includes non-reporting activities and the second portion of the permit includes reporting activities. RGP-15-R has been re-formatted to identify categories based on activity, with pre-construction notification (PCN) requirements described at the end of each activity description under a header labeled as "PCN Requirements".
4. *Proposed Permit Categories:*
  - i. *Maintenance:* The language proposed in RGP-15-R is similar to RGP-10-R, but permanent impacts to waters of the United States allowed under this category would be increased from 0.33 to 0.50 acre. Applicants would be required to submit a PCN to the Corps, and receive written confirmation that the project is authorized under RGP-15-R, if impacts to waters of the U.S. exceed 0.10 acre. This PCN would allow the Corps the chance to review each proposal to ensure compliance with RGP-15-R General Conditions, including the condition requiring impact minimization, and the conditions regarding historic

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properties and endangered species, prior to authorization. Currently the maintenance category in RGP-10-R does not require the submittal of a PCN. The proposed category is similar to NWP 3. Temporary fill would be authorized under this category, but would be required to be removed in its entirety following construction. Language was inserted to clarify that this category does not authorize maintenance dredging for navigation, beach restoration, new stream channelization, or stream relocation.

- ii. *Oil Spill/Hazardous Substances Cleanup:* RGP-15-R includes additional language to clarify the types of work eligible for authorization. These authorized activities are similar in scope to work eligible for authorization via NWP 20.
- iii. *Minor Activities:* This category would authorize Corps regulated impacts up to 400 square feet in waters of the United States, as part of a single and complete project. We included language in this category to limit structures in Section 10 waters to 400 square feet in size, and all structures in Section 10 waters would require the submittal of a PCN.
- iv. *Watercourse and Wetland Restoration Activities, and Watercourse and Lake Habitat Improvement Activities:* This category combines the Fish and Wildlife Enhancement and Attraction Activities category and the Stream and Wetland Restoration Activities category, which are currently separate categories in RGP-10-R. This category has been modified to include language from the NWP 27; restoration activities conducted in accordance with the terms of a binding agreement with the U.S. Fish and Wildlife Service (USFWS), Natural Resources Conservation Service (NRCS), Farm Service Agency (FSA), etc. would not require submittal of a PCN, but applicants must submit specific documentation to the Corps 30 days prior to starting the restoration project. All restoration projects without a federally sponsored partner would require the submittal of a PCN, which would allow the Corps the chance to review each proposal to ensure compliance with RGP-15-R General Conditions, prior to authorization.
- v. *Wildlife Scrapes and Ponds:* Language from RGP-10-R that required the project to be sponsored by a federal, state, county or tribal agency and to receive tribal approval was not included in the proposed RGP-15-R. Language was added to RGP-15-R which limits the project impacts to no more than 1/3 of an acre of permanent fill and no more than 1.0 acre of wetland/water area impacted by excavation or inundation. Language was added to RGP-15-R to not allow any impacts to tributaries under this category. All projects eligible for this category would require the submittal of a PCN, which would allow the Corps the chance to review each proposal to ensure compliance with the RGP-15-R General Conditions, prior to authorization.
- vi. *Temporary Construction, Access, and Dewatering:* This category would allow up to 2.0 acres of temporary impacts to wetlands and waters, excluding sedge

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meadow and forested wetlands. It is similar to NWP 33. All projects eligible for this category would require the submittal of a PCN, which would allow the Corps the chance to review each proposal to ensure compliance with RGP-15-R General Conditions, prior to authorization.

- vii. Bank Stabilization:* This category would authorize bank stabilization projects, with limitations. All projects eligible for this category would require the submittal of a PCN, which would allow the Corps the chance to review each proposal to ensure compliance with RGP-15-R General Conditions, prior to authorization.
  - viii. Residential Developments:* This is a new category that would be used to authorize Corps regulated activities for the construction or expansion of residential developments. Aquatic resource impacts may not exceed 0.25 acre (10,890 square feet) or 500 linear feet of stream. Stream channelization or relocation would not be allowed. This category is similar to NWP 29. All projects eligible for this category would require the submittal of a PCN, which would allow the Corps the chance to review each proposal to ensure compliance with RGP-15-R General Conditions, prior to authorization.
  - ix. Commercial and Institutional Developments:* This is a new category that would be used to authorize Corps regulated activities for the construction or expansion of commercial and institutional developments. Aquatic resource impacts may not exceed 0.25 acre (10,890 square feet) or 500 linear feet of stream. Stream channelization or relocation is not allowed. This category is similar to NWP 39. All projects eligible for this category would require the submittal of a PCN, which would allow the Corps the chance to review each proposal to ensure compliance with RGP-15-R General Conditions, prior to authorization.
5. *Exclusions:* The exclusions are similar to RGP-10-R, and have been updated to reflect the following: The Corps proposes to allow the cleanup of oil spills and hazardous substances near and within wild rice beds and calcareous fens, to prevent any delay in remediation efforts. In addition, the exclusion for activities within 300 feet of wild rice beds would not be applicable to Category D, to allow wetland and stream restoration and enhancement projects to proceed near these areas.
  6. *General Conditions:* RGP-15-R includes general conditions not included in RGP-10-R. Specifically, RGP-15-R has added more information regarding the following conditions: RGP duration of authorization, maintenance and transfer, site access, navigation, fills within the floodplain, and bald and golden eagle protection act and migratory bird treaty act. Text is slightly modified in general standard conditions to more closely align RGP-15-R with the NWPs.
  7. *Definitions:* RGP-10-R does not include any definitions. We have included definitions for the following terms in the proposed RGP-15-R: Calculation of Aquatic Impact Thresholds; Compensatory Mitigation; Currently Serviceable; Discharge; Fill Material;

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Historic Property; Independent Utility; Ordinary High Water Mark; Practicable; Pre-Construction Notification (PCN); Single and Complete Project; and, Structure. These definitions all align with our regulations and the NWP's.

**4. REPLIES/COMMENTS**

The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Interested parties are invited to submit to this office written facts, arguments, or objections within 30 days of the date of this notice. These statements should bear upon the suitability of the location and the adequacy of RGP-15-R and should, if appropriate, suggest any changes believed to be desirable. Written replies may be addressed to Regulatory Branch, St. Paul District, Corps of Engineers, 180 Fifth Street East, Suite 700, Saint Paul, MN 55101-1678, ATTENTION: Melissa Jenny. Questions about RGP-15-R may also be directed to Ms. Jenny at 651-290-5363 or via email at [Melissa.m.jenny@usace.army.mil](mailto:Melissa.m.jenny@usace.army.mil)

**5. JURISDICTION AND REGULATORY AUTHORITY**

All work eligible for authorization under the proposed RGP-15-R must be comprised of activities which are subject to the regulatory jurisdiction of the Corps of Engineers under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act.

**6. FEDERALLY-LISTED THREATENED OR ENDANGERED SPECIES OR THEIR CRITICAL HABITAT**

This RGP is being coordinated with the U.S. Fish and Wildlife Service. Any comments it may have concerning Federally-listed threatened or endangered wildlife or plants or their critical habitat will be considered in deciding whether to issue RGP-15-R.

**7. SECTION 401 WATER QUALITY CERTIFICATION**

Valid Section 404 permits cannot be issued for any activity unless water quality certification for the activity is granted or waived pursuant to Section 401 of the Clean Water Act (Section 401). The following five Tribes have assumed Section 401 Authority: Bad River Band of Lake Superior Chippewa, Grand Portage Band of Lake Superior Chippewa, the Fond du Lac Band of Lake Superior Chippewa, the Sokaogon Chippewa Community of Wisconsin, and the Lac du Flambeau Band of Lake Superior Chippewa. Section 401 authority within the exterior boundaries of the remaining Indian Reservations in Wisconsin and Minnesota resides with the United States Environmental Protection Agency (EPA). The Corps has provided this public notice and a copy of the proposed RGP-15-R to the appropriate Section 401 authorities. If those authorities require additional information to complete their review, the Section 401 authority may request such information from the Corps.

**8. HISTORICAL/ARCHAEOLOGICAL**

This public notice is being sent to the National Park Service, Tribal Historic Preservation Officers, the State Archaeologists and the State Historic Preservation Officer for comment. Implementation of RGP-15-R would not affect the Corps responsibility to ensure that all Section 404 and Section 10 authorizations comply with Section 106 of the National Historic Preservation Act. Unknown archaeological, scientific, or historical data could potentially be

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lost or destroyed by work authorized by the general permit. However, as described in RGP-15-R, General Condition 4. Historic Properties, activities in RGP-15-R that do not require a PCN may not affect known sites or historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP) or other previously recorded cultural resources. And in cases where the Corps determines that activities in RGP-15-R may affect known sites, properties listed, eligible for listing, or potentially eligible for listing in the NRHP, the activity will not be authorized until the requirements of section 106 of the NHPA have been satisfied.

**9. PUBLIC HEARING REQUESTS**

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposal. Requests for public hearings shall state, in detail, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served.

**10. PUBLIC INTEREST REVIEW**

The decision whether to issue RGP-15-R will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people. Environmental and other documents will be available for review in the Corps District Office.

FOR THE DISTRICT COMMANDER:

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Chad Konickson  
Chief, Regulatory Branch

**DEPARTMENT OF THE ARMY PERMIT**

**Permittee:** [Proposed to] include the general public on all lands within the exterior boundaries of Indian Reservations in Minnesota and Wisconsin.

**Permit No.** RGP-15-R

**Issuing Office:** Final decision will be issued by the St. Paul District, United States Army Corps of Engineers.

**Issuance Date:** Not issued – advance draft.

**Expiration Date:** Five years after date of issuance.

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "Corps" refers to the St. Paul District, United States Army Corps of Engineers.

**REGIONAL GENERAL PERMIT AUTHORIZATIONS:** The regional general public is authorized to perform work in accordance with the terms and conditions of the regional general permit (RGP) categories specified below. Some RGP verifications require pre-construction notification (PCN) to the Corps and verification of coverage from the Corps to be eligible. Corps verifications of coverage are provided in writing, and may be subject to project-specific special conditions to protect the public interest. Refer to the appropriate sections of this permit for a description of RGP eligible activities, exclusions, conditions, definitions and PCN instructions.

**PROJECT DESCRIPTION AND LOCATION:** RGP-15-R applies to certain activities in waters of the United States, including wetlands, as described herein, within the exterior boundaries of federally recognized Indian Reservations in Minnesota and Wisconsin. In general, RGP-15-R may be used for activities whose purposes include maintenance, oil or hazardous substance cleanup, minor activities, watercourse and wetland restoration activities, watercourse and lake habitat improvement activities, wildlife ponds, temporary discharges, bank stabilization, residential developments, and commercial and institutional developments (see RGP categories described below). RGP-15-R may be used to authorize these activities pursuant to the following authorities:

Section 404 of the Clean Water Act (33 U.S.C. 1344): for discharges of dredged and fill material into waters of the United States; and

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403): for work and structures that are located in, under or over any navigable water of the United States that affect the course, location, condition, or capacity of such waters, or the excavating from or depositing of material in such waters.

Further Information:

1. Bridges over navigable waters of the United States also require authorization from the United States Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899.
2. Limits of the RGP-15-R Authorization:
  - (a) This RGP does not obviate the need to obtain other tribal, 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.
- (d) This RGP does not authorize interference with any existing or proposed federal project.

3. In authorizing work using RGP-15-R, the Federal Government does not assume any liability, including damages to, or due to, the following:

- (a) The permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- (b) 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) 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) Claims associated with any future modification, suspension, or revocation of this permit.

4. The determination by the Corps that an activity is not contrary to the public interest will be made in reliance on the information provided by the applicant.

5. The Corps may re-evaluate its decision on an authorization at any time the circumstances warrant. Circumstances that could require a re-evaluation 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 proves to have been false, misleading, incomplete, or inaccurate.
- (c) Significant new information surfaces which the Corps did not consider in reaching the original public interest decision.

A re-evaluation may result in a determination 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 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. The Corps may also re-evaluate its decision to issue RGP-15-R at any time the circumstances warrant. Such a re-evaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7.

**HOW TO CONFIRM AND APPLY FOR AUTHORIZATION UNDER RGP-15-R:** The RGP-15-R categories listed below include activities that do not require the submittal of a Pre-Construction Notification (PCN) to the Corps, and activities that do require the submittal of a PCN, as described below:

**Activities not requiring a PCN:** An activity that does not require a PCN may commence when prospective permittees have carefully confirmed that the activity will be conducted in compliance with all of the applicable RGP-15-R General Conditions, listed below. Preconstruction notification to, and verification of coverage from, the Corps is not required for these activities, unless required by General Conditions. Persons proposing to do work should note that RGP-15-R conditions require that adverse impacts to water and wetland resources be avoided and minimized to the maximum extent practicable.

**Activities requiring a PCN:** Where required by the terms of RGP-15-R, or a General Condition, prospective permittees must notify the Corps by submitting a PCN prior to beginning the activity and shall not begin the activity until written confirmation that the project is authorized by RGP-15-R is provided by the Corps.

**Pre-construction notification (PCN):** A PCN submitted to the Corps should minimally include: a) the name, address, and telephone number of the prospective permittee; b) location of the proposed project; c) a description of the proposed project and scope of work; d) all direct and indirect adverse environmental effects the proposed project would cause; e) identification of aquatic resources in the project area (in some cases the Corps may require a delineation of the project area prepared in accordance with the Corps of Engineers Wetland Delineation Manual and Regional Supplements); f) a statement regarding compensatory mitigation; g) drawings or sketches and textual information should be provided as necessary to demonstrate that the activity complies with the terms of RGP-15-R; h) a list of all other authorizations required for the proposed activity; k) any information necessary to document compliance with applicable general conditions of RGP-15-R. The Department of the Army permit application form may be used, and is available from Corps offices or online at: <http://www.mvp.usace.army.mil/Missions/Regulatory>.

The Corps will transmit a copy of the PCN to the appropriate Tribal government with a 30-calendar-day period in which to review and comment on the proposed project. The Tribal government may request an additional 30 days to comment on the project if necessary. All Tribal comment period extension requests shall be submitted to the Corps within the initial 30-day comment period. After the Tribal comment period has elapsed (or sooner if a Tribal response is received earlier), the Corps will complete its review and provide notification of the review outcome to the prospective permittee.

**RGP-15-R EXCLUSIONS:** With the exception of the majority of Category B. Oil Spill/Hazardous Substances Cleanup, (training exercises are included in these exclusions), RGP-15-R does not authorize projects where any of the following may apply:

- a. Activities that are in or within 300 feet of areas of established dormant or growing wild rice beds or harvest areas. (This exclusion does not apply to activities authorized under RGP-15-R Category D.)
- b. Activities that are in a calcareous fen, or in waters of the United States adjacent to and within 300 feet of a calcareous fen.
- c. Activities that are part of a project that would divert more than 10,000 gallons per day of surface or ground water into or out of the Great Lakes Basin (Lake Superior and Lake Michigan Hydrologic Unit Code 4).

**RGP-15-R GENERAL PERMIT CONDITIONS:** All activities authorized under this permit must comply with the RGP-15-R general conditions, including the conditions specific to Section 106 of the National Historic Preservation Act (see General Condition 4. Historic Properties), and Section 7 of the Endangered Species Act (see General Condition 7. Endangered Species). All activities that could potentially affect historic properties or endangered species should be coordinated through the Corps to ensure compliance with these laws.

#### **ACTIVITIES AUTHORIZED UNDER RGP-15-R:**

- A. **Maintenance activities impacting no more than 0.50 acre of waters of the United States.** The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the

original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. Any watercourse channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the watercourse channel, must be immediately adjacent to the project or within the boundaries of the structure or fill. This category also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage.

This category also authorizes temporary structures, fills, and work necessary to conduct the maintenance activity. Temporary impacts to waters of the United States must be avoided when practicable and be the minimum necessary to complete the work, but may not exceed 2 acres of impact. Appropriate measures must be taken to maintain normal down watercourse flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The areas affected by temporary fills must be re-vegetated, as appropriate. See RGP-15-R General Condition # 20 for more information.

This category does not authorize maintenance dredging for the primary purpose of navigation. This category does not authorize beach restoration, new watercourse channelization, or watercourse relocation projects.

Cat. A. PCN requirements: Applicants must submit a PCN to the Corps and receive written confirmation that the project is authorized by RGP-15-R if any of the following are met:

- i. Impacts to waters of the U.S., including jurisdictional wetlands, exceed 0.10 acre;
- ii. The structure or fill being maintained or repaired is more than 50 years old; or
- iii. Activities are conducted in waters covered by Section 10 of the Rivers and Harbors Act of 1899.

Note: This category authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

- B. Oil Spill/Hazardous Substances Cleanup.** Corps regulated activities in waters of the United States conducted in response to a discharge or release of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) including containment, cleanup, and mitigation efforts, provided that the activities are done under either: (1) the Spill Control and Countermeasure Plan required by 40 CFR 112.3; (2) the direction or oversight of the federal on-scene coordinator designated by 40 CFR part 300; or (3) any approved existing state, regional or local contingency plan provided that the Regional Response Team concurs with the

proposed response efforts. This category also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by the U.S. Environmental Protection Agency's polychlorinated biphenyl spill response regulations at 40 CFR part 761. This category also authorizes the use of temporary structures and fills in waters of the United States for spill response training exercises, so long as they do not occur in the waters listed in the abovelisted RGP-15-R Exclusions. All practicable steps to avoid and minimize impacts to wetlands and restore impacted wetlands shall be implemented.

Cat. B. PCN requirements: Activities authorized under this category do not require a PCN, so long as the proposed activity complies with the following RGP-15-R General Conditions (specifically General Condition #30).

- C. Minor Activities.** Discharges of dredged or fill material in waters of the United States for a single and complete project that would result in filling, draining, excavating or inundating not more than 400 square feet of waters of the United States, including wetlands; or structures in Section 10 waters up to 400 square feet. These projects must also obtain appropriate Tribal approval, if necessary.

Cat. C. PCN requirements: The majority of activities authorized under this category do not require a PCN, so long as the proposed activity complies with the following RGP-15-R General Conditions. However, if the proposed minor activity involves a structure in a Section 10 water applicants must submit a PCN to the Corps prior to beginning the activity, and shall not begin the activity until written confirmation that the project is authorized by RGP-15-R is provided.

- D. Watercourse and Wetland Restoration Activities, and Watercourse and Lake Habitat Improvement Activities.** This category may be used for Corps regulated activities in waters of the United States associated with the restoration and enhancement of wetlands and riparian areas, the creation of wetlands and riparian areas, and the restoration, enhancement and habitat improvement of watercourses and open water areas, provided those activities result in net increases in aquatic resource functions and services.

Activities authorized by this category include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; as well as the restoration of appropriate watercourse channel configurations after small water control structures, dikes, and berms, are removed; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool watercourse structure; the placement of in-watercourse and lake habitat structures (such as fish cribs, rock or gravel fish spawning reefs, tree drops, and other minor activities that enhance or attract fish or other wildlife); modifications of the watercourse bed and/or banks to restore or establish watercourse meanders; the backfilling of artificial channels; the removal of existing drainage structures; and the filling, blocking, or reshaping of channelized waters to restore wetland hydrology; the installation of structures or fills necessary to establish or re-establish wetland or watercourse hydrology; the construction of small nesting islands; the construction of open water areas; shellfish seeding; activities needed to re-establish native, non-invasive vegetation; re-establishment of submerged aquatic vegetation in areas where those plant communities previously existed; re-establishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native, invasive, exotic, or nuisance vegetation; and other related activities.

Except for the establishment or restoration of watercourse meanders, the creation of small nesting islands, the re-establishment of tidal wetlands, or backfilling of artificial channels to restore wetland hydrology, this RGP category does not authorize the conversion of a watercourse or natural wetlands to another aquatic habitat type (i.e., watercourse to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This RGP category cannot be used to authorize activities for the conversion of natural watercourses to another aquatic use, such as the creation of an impoundment for waterfowl habitat. This RGP cannot be used to authorize channelization of a watercourse. This RGP category may not be used to convert sedge meadow or forested wetland to other wetland community types.

Cat. D. PCN requirements: Applicants must submit a PCN to the Corps prior to beginning the activity, and shall not begin the activity until written confirmation that the project is authorized by RGP-15-R is provided, except for the following activities:

- (1) Activities conducted on non-Federal public lands and Tribal lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies;
- (2) Voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards.

For the activities listed above that do not require PCN, the Applicant must submit to the Corps a copy of: (1) The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action. The report must also include information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats. These documents must be submitted to the Corps at least 30 days prior to commencing activities in waters of the United States authorized by this category.

- E. Wildlife Scrapes and Ponds.** This RGP-15-R category may not be used to convert sedge meadow or forested wetland to other wetland community types. This category may be used for Corps regulated activities in waters of the United States associated with the construction of shallow wildlife scrapes or wildlife ponds no deeper than 5 feet. These excavations shall be constructed with irregular shorelines and shallow side-slopes (e.g. 8-foot horizontal to 1-foot vertical or flatter). All excavated material must be removed to an upland location unless authorized, for example as part of a low-head dike or berm if required as part of the design. The primary purpose of this activity must be to improve wildlife habitat, and is not appropriate in areas with high functioning wetlands. This RGP category may be used for projects which would result in no more than one-third acre of permanent fill and no more than one acre of wetland/water area impacted by excavation or inundation. This category may not be used to authorize projects that involve impacts to tributaries. Also, this category may not be used more than once by a permittee or property owner.

Cat. E. PCN requirements: Applicants must submit a PCN to the Corps and receive written confirmation that the project is authorized by RGP-15-R.

**F. Temporary Construction, Access, and Dewatering.** This RGP-15-R category may be used to authorize Corps regulated activities in waters of the United States necessary for construction activities or access fills or dewatering of construction sites. Impacts to waters of the United States must be avoided when practicable and be the minimum necessary to complete the work, but may not exceed 2 acres of impact. Activities authorized include, but are not limited to, trench excavation/backfill, temporary stockpiles, cofferdams and construction mats. Appropriate measures must be taken to maintain normal down watercourse flows and minimize flooding to the maximum extent practicable. Fill material must be clean and be placed in a manner that will not be eroded by expected high flows. Following construction, the fill and structures authorized by this RGP must be removed from waters of the United States in their entirety and the affected areas returned to preconstruction contours and elevations indicated in the Corps verification letter. The areas affected by the fill or structures must be re-vegetated with native, non-invasive plant species, as appropriate. This RGP category may not be used to authorize projects which may convert sedge meadows or forested wetlands.

Cat. F. PCN requirements: Applicants must submit a PCN to the Corps and receive written confirmation that the project is authorized by RGP-15-R.

**G. Bank Stabilization.** This RGP-15-R category may be used to authorize Corps regulated activities in waters of the United States for bank stabilization projects impacting up to 500 linear feet of a watercourse, required to prevent erosion, provided the activity meets all of the following criteria:

- i. No material in waters of the United States may be placed in excess of the minimum needed for erosion protection;
- ii. Material discharged in waters of the United States may not exceed an average of one cubic yard per running foot along the bank below the plane of the ordinary high water mark. This threshold does not apply if the stabilization activity consists primarily of utilizing bioengineering techniques.
- iii. Riparian woody and herbaceous vegetation removal must be limited to the minimum necessary to accomplish the proposed project;
- iv. No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;
- v. No material may be placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and
- vi. All excavation in waters of the United States must be the minimum needed, and may be proposed only to provide a stable slope.
- vii. The project is completed during periods of low flow, if practicable.

This RGP category also authorizes temporary structures, fills, and work in waters of the United States necessary to construct the bank stabilization activity up to a maximum temporary impact of 4,000 square feet. Appropriate measures shall be taken to maintain normal down watercourse flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges in waters of the United States are necessary for construction activities, access fills or dewatering of construction sites. Temporary fills must consist of appropriate materials placed in a manner that will not be eroded by expected high flows. Temporary fills in waters of the United States must be removed in their entirety and the affected areas returned to preconstruction elevations. Exposed soils must be vegetated prior to project completion. Native, non-invasive plants appropriate for site conditions shall be used for bioengineering or vegetative bank stabilization. See RGP-15-R General Condition 15 below for more information. The Corps may request additional information to aid in the review of projects authorized under this category, such as

engineered drawings and plans, in order to confirm project compliance with the RGP-15-R General Conditions.

Cat. G. PCN requirements: Applicants must submit a PCN to the Corps and receive written confirmation that the project is authorized by RGP-15-R.

- H. Residential Developments.** Discharges of dredged or fill material in waters of the U.S. or structures or work in Section 10 waters for a single and complete project for the construction or expansion of residential developments that do not result in impacts to more than 0.25 acre of waters of the U.S. or 500 linear feet of a watercourse. Activities authorized include building foundations, building pads, and attendant features. Attendant features include, but are not limited to: roads, parking lots, garages, utility lines, geothermal systems, yards, storm water management facilities, culvert installation, and recreational facilities that are integral to the development. For any development or subdivision, the aggregate total loss of waters of the U.S. authorized under this category cannot exceed 0.25 acre. This RGP category does not authorize maintenance dredging for the primary purpose of navigation. The disposal of excavated or dredged material into a water of the U.S. obtained from a maintenance dredging operation is not authorized under this RGP category. No new watercourse channelization or watercourse relocation work is authorized under this RGP category.

Cat. H. PCN requirements: Applicants must submit a PCN to the Corps and receive written confirmation that the project is authorized by RGP-15-R.

- I. Commercial and Institutional Developments.** Discharges of dredged or fill material in waters of the U.S. or structures or work in Section 10 waters for a single and complete project for the construction or expansion of commercial or institutional developments that do not result in impacts to more than 0.25 acre of waters of the U.S. or 500 linear feet of a watercourse. Activities authorized include building foundations and building pads and attendant features. Attendant features include, but are not limited to: roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. For any development, the aggregate total loss of waters of the U.S. authorized under this category cannot exceed 0.25 acre. This RGP category does not authorize maintenance dredging for the primary purpose of navigation. The disposal of excavated or dredged material into a water of the U.S. obtained from a maintenance dredging operation is not authorized under this RGP category. No new watercourse channelization or watercourse relocation work is authorized under this RGP category.

Cat. I. PCN requirements: Applicants must submit a PCN to the Corps and receive written confirmation that the project is authorized by RGP-15-R.

## **RGP-15-R GENERAL CONDITIONS**

RGP-15-R authorizations are subject to the following general conditions, as applicable. These conditions must be followed in order for any RGP-15-R authorization to be valid:

1. Mitigation. The Corps will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity 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).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332, and the current St. Paul District Mitigation Policy for Minnesota and Wisconsin, found here:

<http://www.mvp.usace.army.mil/Missions/Regulatory/Mitigation.aspx>.

2. Special Conditions. The Corps may impose additional conditions, including compensatory mitigation requirements, on any project requiring PCN authorized under RGP-15-R to avoid or minimize adverse effects on navigation or the environment, and ensure that the project is not contrary to the public interest. Such conditions will be specifically identified in any Corps verification letter. Failure to comply with all conditions and limitations of the authorization, including special conditions incorporated into the Corps' verification letter, constitutes a permit violation and may subject the permittee to criminal, civil or administrative penalties, and appropriate environmental remediation (which could include restoration of the site to its pre-violation condition).
3. Section 401 Water Quality Certification determination. To be addressed in any final RGP-15-R issued.
4. Historic Properties. RGP-15-R does not affect the Corps responsibility to ensure that all authorizations comply with section 106 of the National Historic Preservation Act (NHPA). Activities in RGP-15-R that do not require a PCN may not affect known sites or historic properties listed, or eligible for listing, in the National Register of Historic Places (NRHP) or other previously recorded cultural resources. In cases where the Corps determines that activities in RGP-15-R may affect known sites, properties listed, eligible for listing, or potentially eligible for listing in the NRHP, the activity will not be authorized until the requirements of section 106 of the NHPA have been satisfied. Assistance regarding information on the location of, or potential for, the presence of historic resources can be sought from the Tribal Historic Preservation Officer (THPO) or State Historic Preservation Office (SHPO), as appropriate, and the NRHP (see 33 CFR 330.4(g)).
  - a. Federal applicants for RGP-15-R activities should follow their own procedures for complying with the requirements of section 106 of the NHPA. Federal applicants must provide the appropriate documentation to demonstrate compliance with those requirements in their preconstruction notification to the Corps. The Corps will review the documentation and determine whether it is sufficient to address section 106 NHPA compliance for the RGP activity, or whether additional section 106 NHPA consultations are necessary.
  - b. Non-federal applicants for RGP-15-R activities should provide information with their PCN regarding any known cultural resources, historic properties listed, or potentially eligible for listing, in the NRHP that they are aware of which may be affected by the proposed work. This information may include a vicinity map indicating the location of the known site, historic properties or areas with the potential for the presence of historic properties. The Corps will comply with the current procedures for addressing the requirements of section 106 of the NHPA. Based on the information submitted and the Corps review of available information, the Corps shall determine whether the proposed activity has the potential to cause an effect on the historic properties.
  - c. Section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit

or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, THPO, the appropriate Indian tribes, SHPO, and other parties known to have a legitimate interest in the impacts of the permitted activity on historic properties.

5. Tribal rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights or treaty fishing and hunting rights.
6. Discovery of Previously Unknown Cultural Resources. If you discover any previously unknown historical or archeological resources while accomplishing the activity authorized by this permit, you must stop work in the vicinity of the find and immediately notify the Corps of what you have found. The Corps will provide instruction and initiate the Tribal, Federal, and/or State coordination required to determine if the items or remains warrant a recovery effort or if the site or property is eligible for listing in the National Register of Historic Places. No work in the vicinity of the find may resume without written notice from the Corps.
7. Endangered Species. (a) No activity is authorized under any RGP-15-R which 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. No activity is authorized under RGP-15-R which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.  
(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the Corps with the appropriate documentation to demonstrate compliance with those requirements. The Corps will review the documentation and determine whether it is sufficient to address ESA compliance for the RGP-15-R activity, or whether additional ESA consultation is necessary.  
(c) Non-federal permittees must submit a pre-construction notification to the Corps if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, 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. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The Corps will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete preconstruction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7

consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) Authorization of an activity by a RGP-15-R does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(e) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html>, respectively.

8. Migratory Birds and Bald and Golden Eagles. RGP-15-R activities that do not require a PCN shall not occur within 0.5 mile (2,640 feet) of an eagle nest, with the exception of Category B. Oil Spill/Hazardous Substances Cleanup. RGP-15-R activities that require a PCN should identify eagle nests within 0.5 mile of the project area. Bald eagles typically nest in old, large diameter trees within approximately 500 feet of a water body. It is recommended that the prospective permittees also contact the USFWS Twin Cities Field Office (612) 725-3548 if the proposed project will disturb a bald eagle or a bald eagle nest. Projects involving the placement of potentially lethal infrastructure (communication towers, wind turbines, transmission lines, etc) within two miles of a bald eagle nest may warrant additional review. For more information concerning the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act refer to the USFWS website at <http://www.fws.gov>.
9. Migratory Bird breeding areas. Activities in waters of the U.S. that serve as breeding areas for migratory birds, including waterfowl, must be avoided to the maximum extent practicable.
10. Spawning areas. Discharges 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 turbidity) of an important spawning area are not authorized.
11. Use of Multiple Categories. The use of more than one RGP-15-R category for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the RGP-15-R category does not exceed the acreage limit of the RGP-15-R category with the highest specified acreage limit.
12. Duration of Authorization. Unless otherwise specified in the Corps letter confirming your project complies with the requirements of this RGP, the time limit for completing work authorized by RGP-15-R ends upon the expiration date of this RGP-15-R. Activities authorized under the RGP-15-R that have commenced construction or are under contract to commence construction, will remain authorized provided the activity is completed within 12 months of the date of the RGP-15-R expiration, suspension, or revocation; whichever is sooner. If you find that you need more time to complete the authorized activity, submit your request for a time extension to the Corps for consideration at least three months before the expiration date is reached.
13. Maintenance and Transfer. You must maintain the activity authorized by RGP-15-R 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, although you may make a good faith transfer to a third party. Should you wish to cease to maintain an activity verified under RGP-15-R, or abandon it without a good faith transfer; you must obtain a modification of the verification from the Corps, which may require restoration of the area. If you sell the property associated with a RGP-15-R verification, the permittee may transfer the permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the RGP-15-R 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 RGP-15-R are still in existence at the time the property is transferred, the terms and conditions of this general permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this general permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

\_\_\_\_\_  
(Transferee printed name)

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

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

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

14. Site Access. You must allow representatives from the Corps to inspect the proposed project site and the authorized activity at any time deemed necessary to ensure that it is being, or has been, constructed and maintained in accordance with the terms and conditions of RGP-15-R.
15. Navigation. The following conditions are part of all Corps of Engineers permits that provide authorization under Section 10 of the Rivers and Harbors Act:
  - a. No activity may cause more than a minimal adverse effect on navigation and there shall be no unreasonable interference with navigation by use of the activity authorized herein.
  - b. Any safety lights and signals prescribed by the United States Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
  - c. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
16. Discretionary Authority. The Corps retains discretionary authority to require a standard individual permit review of any activity eligible for authorization under RGP-15-R based on concern for navigation, the aquatic environment, or any public interest factor.
17. Suitable material. No discharge of dredged or fill material may contain unsuitable material (e.g. trash, debris, car bodies, asphalt, etc.,) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307, Clean Water Act).

18. Proper maintenance. Any authorized structure or fill shall be properly maintained, including maintenance required to ensure public safety and compliance with applicable RGP-15-R conditions, as well as any activity-specific conditions added by the Corps to a RGP-15-R verification letter.
19. 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. 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. If coffer dams are constructed, they shall be maintained so as to prevent erosion into the water. If earthen material is used for coffer dam construction, sheet piling, riprap, or a synthetic cover must be used to prevent dam erosion.
20. Removal of temporary fills. Temporary fills in waters of the United States must be removed in their entirety and the affected areas returned to preconstruction elevations. Exposed soils must be re-vegetated with native, non-invasive species. The timeframe for completing this work shall be:
  - a. No later than the timeframe stipulated in the applicable RGP-15-R category (unless otherwise stipulated in the Corps RGP-15-R verification letter);
  - b. No later than the timeframe stipulated in the Corps RGP-15-R verification letter; or
  - c. No longer than three months 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.
20. 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).
21. Adverse effects from impoundments. If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.
22. 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. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
23. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
24. Wild and Scenic Rivers. Unless the activity is determined in writing to have no adverse effect upon a designated Wild and Scenic River or "study river" by the Federal agency with direct management responsibility over the waterway, RGP-15-R may not be used to authorize any activity in a component of the National Wild and Scenic River System or 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. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

25. Water quality standards. All work or discharges to a watercourse resulting from permitted construction activities, particularly hydraulic dredging, must meet applicable Federal or Tribal water quality and effluent standards on a continuing basis.
26. Preventative 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 manner that would allow them to enter the watercourse as a result of spillage, natural runoff, or flooding.
27. 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 some other acceptable method that prevents the return of potentially polluting materials to the watercourse by surface runoff or by leaching. The containment area, whether bulkhead or upland disposal site, must be fully completed prior to the placement of any dredged material.
28. 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.
29. 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 Duty Officer at 1-800-422-0798 in Minnesota, or at 1-800-943-0003 in Wisconsin, and the National Response Center at telephone number 1-800-424-8802, or web page [www.nrc.uscg.mil](http://www.nrc.uscg.mil).
30. Site restoration and equipment standards for oil spill/hazardous substance cleanup. Disturbed areas shall be stabilized immediately after construction to prevent erosion. Re-vegetation of site shall begin as soon as site conditions allow and in the same growing season as the disturbance unless climatic conditions warrant additional time and is approved by the Corps. Native vegetation and soils removed for project construction shall be stockpiled separately and used for site rehabilitation. If soil and/or organic materials are not available from the projects site for rehabilitation, other locally-obtained native materials may be used. Other topsoil or organic materials (including seed) may be used if identified in the cleanup action plan. Species to be used for seeding and planting shall follow this order of preference: 1) species native to the site; 2) species native to the area; 3) species native to the state. Re-vegetated areas eventually shall have enough cover to sufficiently control erosion without silt fences, hay bales, or other mechanical means. Excavation or significant disturbance to wetlands may require a site specific restoration plan as required by the Corps to minimize long term impacts to wetland functions and values.
31. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
32. Single and Complete Project. The activity must be a single and complete project. The same RGP-15-R category cannot be used more than once for the same single and complete project.

33. Other permit requirements. No Corps RGP-15-R authorization eliminates the need for other local, tribal, state, or Federal authorization, including but not limited to National Pollutant Discharge Elimination System (NPDES) or State Disposal System (SDS) permits.

This general permit becomes effective when the federal official, designated to act for the Secretary of the Army, has signed below.

\_\_\_\_\_  
Samuel L. Calkins  
Colonel, Corps of Engineers  
District Engineer

\_\_\_\_\_  
Date

### **RGP-15-R DEFINITIONS**

1. Bioengineering: Bioengineering is the combination of biological, mechanical, and ecological concepts to control erosion and stabilize stream banks through the use of vegetation or a combination of it and construction materials. Some examples of bioengineering techniques include: coir fascines, rootwad revetments, live pole cuttings, brush mattresses, vegetated reinforced soil slope (VRSS), etc.
2. Calculation of Aquatic Impact Thresholds: Impacts shall be calculated using the units of measure specified in each permitting category (i.e. area, linear footage, and/or volume) of waters of the United States temporarily and permanently occupied by a structure, plus the area (or other measure as required by the category) of waters of the United States temporarily and permanently filled, excavated, inundated, drained, or converted to a different cover type (unless otherwise indicated). Waters of the United States converted to another wetland cover type may be considered a permanent impact. Activities must meet all limitations contained in a permit category (for example: linear and area threshold limits).
3. 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 measures have been incorporated into the project.
4. Currently Serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.
5. Discharge: The term discharge (as defined in 33 CFR 323.2) means any discharge of dredged or fill material in waters of the United States.
6. Fill Material: Fill material (as defined in 33 CFR 323.2) means material placed in waters of the United States where the material has the effect of:
  - (a) Replacing any portion of a water of the United States with dry land; or
  - (b) Changing the bottom elevation of any portion of a water of the United States.Examples of fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to

create any structure or infrastructure in the waters of the United States. The term fill material does not include trash or garbage.

7. 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 (NRHP) 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 or Native Hawaiian organization that also meet the National Register criteria (36 CFR 60).
8. Independent Utility: A test to determine what constitutes a single and complete 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, complete projects with independent utility.
9. Loss of waters: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.
10. Ordinary High Water Mark: The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter or debris, or other appropriate means that consider the characteristics of the surrounding areas (33 CFR 328.3(c)(6)).
11. Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose.
12. Preconstruction Notification (PCN): A written request submitted by the prospective permittee to the Corps for confirmation that a particular activity is authorized by a general permit. The request may be a permit application, letter, or similar document that includes information about the proposed scope of work, location, extent of resources in the project area, and the projects anticipated environmental effects. A PCN may be voluntarily submitted in cases where PCN is not required but the prospective permittee wants Corps confirmation that the activity is authorized by a general permit.

A PCN submitted to the Corps should minimally include: a) the name, address, and telephone

number of the prospective permittee; b) location of the proposed project; c) a description of the proposed project and scope of work; d) all direct and indirect adverse environmental effects the proposed project would cause; e) identification of aquatic resources in the project area (in some cases the Corps may require a delineation of the project area prepared in accordance with the Corps of Engineers Wetland Delineation Manual and Regional Supplements); f) a statement regarding compensatory mitigation; g) drawings or sketches and textual information should be provided as necessary to demonstrate that the activity complies with the terms of RGP-15-R; h) a list of all other authorizations required for the proposed activity; k) any information necessary to document compliance with applicable general conditions.

13. Single and Complete Project: The sum of waters of the United States proposed to be impacted by the prospective permittee. For "phased" developments, each phase may constitute a single and complete project if it has independent utility.
14. Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.