

DEPARTMENT OF THE ARMY PERMIT
Regional Permit 7
Fill Material Placed in Waters of the U. S. for Road Crossings
in the State of Iowa

Permittee: General public meeting the terms and conditions herein.

Number: CEMVR-OD-P-2007-1349 (Regional Permit 7)

Issue Date: February 2, 2009

Expiration Date: December 31, 2013

Issuing Office: U.S. Army Corps of Engineers, Rock Island District
Clock Tower Building - P.O. Box 2004
Rock Island, Illinois 61204-2004

You are authorized to perform work in accordance with the terms and conditions specified below.

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

Permit Conditions:

❖ **General Conditions:**

1. The time limit for completing the work authorized ends 2 years from the date of issuance. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before that date is reached.
2. You must maintain the activity authorized by this permit 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, in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We 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. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions. (Condition is not applicable for Section 10 Permits.)

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

❖ **Special Conditions:**

1. The intended use of work authorized under this regional permit will be in association with bridge, culvert, and roadway construction across waters of the United States.

2. This regional permit is limited to excavation activities and fill material placed in wetlands or below the ordinary high water mark of other waters for bridge and/or culvert construction or replacement associated with bridge and/or culvert removal, or culvert extension. Bridge and/or culvert construction on new alignments must be located within 500 feet of either side of the centerline of existing structures. New bridge, culvert, or roadway alignments must be based upon sound conservation and safety bases.

3. Riprap shall be clean native fieldstone, clean quarry run rock, or appropriately graded clean broken concrete with all reinforcing rods and / or wire cut flush with the surface of the concrete. It shall be the permittee's responsibility to maintain the riprap such that any reinforcement material that becomes exposed in the future is removed. The concrete pieces shall be appropriately graded and no piece shall be larger than 3 feet across the longest flat surface. No riprap shall be placed at a distance greater than 4 feet horizontally from the toe of the bank. Asphalt, broken concrete containing asphalt, petroleum based material, and items such as car bodies are specifically excluded from this authorization.

4. Material used as temporary fill for access, cofferdams, or other temporary structures required for the construction of highway crossings shall be included in the project plans or specifications shall be clean, appropriately sized material (less than 15% fines passing a Number 200 sieve) and shall be free of loam, sod, and other deleterious materials.

5. All temporary structures and fill will be removed completely by mechanical means no later than 30 days after they are no longer needed for construction activities. Temporary fill materials, cleared vegetative materials, construction debris, including old bridge materials, and other fill not necessary for meeting the project purpose must be disposed of at an upland area or licensed landfill as appropriate.

6. Permittees must take all practicable measures to avoid and minimize impacts to waters of the United States by both temporary and permanent fills. Once such measures are taken, up to 1 acre of regulated wetland area may be filled in conjunction with each road crossing project. Compensatory wetland mitigation is required at a ratio of 1.5:1 or more (depending on wetland quality, location, management, etc.) if the loss of wetland exceeds 0.10 acre. Mitigation must be adequate to offset unavoidable impacts or losses to regulated waters of the United States. The Corps of Engineers will determine if the proposed mitigation is adequate.

7. This permit does not authorize construction in environmentally sensitive areas, such as mussel beds, fish spawning areas, waterfowl nesting areas, etc.

8. Minor stream shaping and channel realignment is authorized where necessary to provide adequate flow conveyance and proper alignment of the channel through the bridge or culvert. Such activities must occur within 300 feet upstream and downstream of the centerline of the pre-existing roadway (existing channel length), with a maximum distance of existing channel length impacted (filled or abandoned) not to exceed 500 feet). In-stream and riparian mitigation measures will be required for any project that involves channel shortening as well as other projects on a case-by-case basis. Mitigation required for any stream shaping and channel realignment may include but not be limited to:

- a. Side slopes of a newly constructed or modified channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if it is not armored.
- b. Native grass filter strips a minimum of 35 feet in width (measured from the top of the bank landward) shall be established along both sides of the realigned or modified channel unless there is a physical reason for not including one (such as a rock ledge). Filter strip establishment will be considered successful when there is at least 50% aerial coverage of native grasses and forbs in each 100 square foot area. Land ownership is not an acceptable reason for limiting filter strips.
- c. Native trees and/or shrubs shall be planted along both sides of the realigned or modified channel. A survival rate of 80% of desirable species shall be achieved within 3 years of establishment of the buffer strip.
- d. Stream banks shall be stabilized with planted vegetation or riprap to the limits of stream bank disturbance. Plantings of native prairie grasses are recommended where appropriate to diversify the stream bank protection.
- e. The proposed channel shall have the same or greater carrying capacity as the existing channel.
- f. If the proposed channel grade is steeper than the grade of the existing channel, grade control structures are required at the upstream and downstream ends of the proposed channel. The downstream slopes of the grade control structures shall be no steeper than 20H:1V, and upstream slopes shall be no steeper than 4H:1V. All structures must be keyed into the channel bed and banks and must be able to withstand and pass expected high flows. The structures must be V-shaped with the point of the V pointing upstream. The sides of the V must be angled upstream (approximately 30 degrees measured along the shoreline). The center section will be lower in elevation than the outer sections to concentrate flows to the stream middle during periods of low flow. The structures must be submerged at normal stream flow (75% of the year). The structures must be fish passable at all times.
- g. In-stream habitat structures and / or the use of rock riffles may be used to enhance aquatic habitat in the stream stretch modified by stream shaping or channel alignment. In-stream habitat structures should be constructed similar to grade control structures.
- h. In areas where the stream channel is relocated, by-passed meanders must be preserved if they will not be a safety or structural hazard. The preserved meanders will remain as oxbow wetlands or pools.
- i. Lowering the immediate floodplain through excavation.

9. Measures must be taken for heavy equipment usage in wetland areas to minimize soil disturbance and compaction. All exposed soils and other fills as well as any work below the ordinary high water mark must be permanently stabilized at the earliest practicable date using permanent native vegetation, bioengineering methods, or armoring.

10. Any excavation or placement of temporary or permanent fill must be performed in a way that would not result in the physical destruction of important fish spawning areas, including smothering of downstream spawning areas via turbidity.

11. Petroleum products, other chemicals, and other unsuitable materials (e.g. trash, debris, asphalt, etc.) will be prevented from entering water bodies, streams, and wetlands.

12. Appropriate soil erosion and sediment control measures must be used and maintained during project construction. Erosion control features (i.e., silt fences, silt ditches, silt dikes, silt basins, etc.) must be installed to provide continuous erosion control throughout the construction and post construction period as well as the revegetation of all disturbed areas upon project completion. Where siltation control features have been reduced in capacity by 50% or more, the features shall be restored to their original condition with a minimum of delay.

13. Temporary and permanent structures must be installed to maintain low flow conditions and to pass normal and expected high flows.

14. Historic Properties. [NOTE: This condition is the same as that required for Nationwide Permits.]

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA Section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 16470h-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 created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining 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, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

15. Endangered Species.

a. No activity is authorized under this Regional Permit which is likely to adversely affect the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the Corps of Engineers if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the Corps of Engineers that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work.

b. Authorization of an activity by this regional permit does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. 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. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their World Wide Web pages at <http://www.fws.gov/r9endspp/endspp.html> and <http://www.nfms.gov/protocols/esahome.html>, respectively.

16. **Mitigation.** The mitigation plan must include acres of emergent, forested, etc., wetland and stream channel to be created, restored, enhanced, or preserved as a result of the project. The mitigation plan shall include a purpose. A summary of the approved acres and performance measures for the mitigation plan in the format that follows will be included in the letter authorizing the individual project:

Mitigation Design Objectives / Performance Measures

Type:	Mitigation					Stream Channel Length (feet)
	Emergent wetland (acres)	Forested wetland (acres)	Open-Water (acres)	Other * (acres)	Total (acres)	
Restoration:						
Creation:						
Enhancement:						
Preservation:						
Total:						

* Replace "Other" with actual type of mitigation ("Upland", "Woodland", "Scrub/shrub wetland", "grade control structures", "instream habitat structures", etc.)

Mitigation shall be constructed prior to or concurrent with the construction of the main project. If excavation and construction are completed outside an optimal seeding period, temporary erosion control protection shall be implemented immediately upon completion of excavation and construction and shall be maintained until such time as wetland plantings can be completed during an optimal period. The permanent wetland plantings shall then be completed during the next optimal seeding period. In addition:

- The boundaries of wetland mitigation sites shall be identified clearly by the placement of permanent markers.
- If tiling is present in the wetland mitigation site, the tile must not detract from the function of the wetland.
- Mitigation sites shall be fenced with a permanent fence if any domestic livestock are to be allowed to graze adjacent areas.
- An as-built plan shall be submitted to the Corps of Engineers and Iowa Department of Natural Resources upon project completion. This information will use GPS coordinates for location information.
- Your responsibility to complete the required mitigation as set forth in the project details will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the Corps of Engineers.
- The wetland mitigation site shall be protected from future activities that may interfere with or be detrimental to wetland functions and values.

17. An as-built mitigation plan must be submitted to the Corps of Engineers and the Iowa Department of Natural Resources by December 31 in the year that the mitigation is complete. The as-built plan must include details, plan view drawings, and cross sectional drawings of all excavations and fills at the mitigation site(s). It must also include planting plans, planting lists, and maps showing the locations of all areas that were wetland prior to construction, all areas that are to be created wetland, all preserved stream channel segments, relocated stream channels, all filter strips, all splash basins, and all other structures (including all streambed stabilization structures).

18. Annual monitoring reports shall be submitted to the Corps of Engineers and the IDNR by December 31 for at least five years following planting. The annual reports must include photos, a map with drawn boundaries indicating exactly what areas are wetland according to the 1987 Corps of Engineers Wetland Delineation Manual (the '87 manual), a vegetative cover map of created wetlands indicating dominant species in each vegetative community, and an assessment of wetland hydrology (according to the '87 manual) in each vegetative community. The reports must also include assessments of the functionality of each splash basin, rock riffle, and streambed stabilization structure, and aerial coverage calculations of native vegetation within each filter strip area and any corrective actions taken or needed. The results of the reports will be documented annually on the Rock Island District Standard Mitigation Reporting Form available at: <http://www2.mvr.usace.army.mil/Regulatory/> or in an annual progress report as specified in RGL 06-03, <http://www2.mvr.usace.army.mil/Regulatory/Documents/Regulatory>. All annual monitoring reports shall be formatted for 8.5 x 11-inch paper.

19. The permittee (in a timely manner) will perform any corrective measures and monitoring deemed necessary by the Corps of Engineers to insure the success of the project (including mitigation). The permittee will assume all liability for accomplishing this corrective work. The corrective actions may include such modifications to the mitigation site as re-grading, re-planting, additional erosion control, etc., or may involve relocating the mitigation to another location. The permittee must accomplish corrective measures involving re-grading or erosion control within 60 days from the date that they are notified of a need. Deadlines for corrective measures involving re-planting will be determined based on best planting

dates. Deadlines for corrective measures involving the relocation of mitigation will be determined by the Corps of Engineers. Corrective action may also involve additional monitoring to insure success.

20. Your responsibility to complete the required compensatory mitigation will not be considered fulfilled until you have demonstrated mitigation success and have received written verification from the Corps of Engineers.

21. Any future development or land-use conversion of the wetland mitigation area for any purpose which may interfere with or be detrimental to wetland functions is prohibited without prior written approval from the Corps of Engineers.

22. Projects with mitigation require recording of the permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property and provide proof of recording to the Corps of Engineers. If the permit cannot be recorded in the manner indicated, the permittee shall provide the Corps of Engineers and the Iowa Department of Natural Resources with documentation of agreements, contracts, etc., demonstrating to the Corps of Engineers and the Iowa Department of Natural Resources' satisfaction that the wetland mitigation site will be protected from future activities that may interfere with or be detrimental to wetland functions and values to a level of assurance equivalent to that provided by the aforementioned recording process.

18. **Water quality certification.** The conditions listed in the Section 401 water quality certification from the Iowa Department of Natural Resources dated December 29, 2008, are considered to be part of this regional permit. An individual Section 401 water quality certification will be required for projects that impact fens, bogs, seeps, or sedge meadows.

<<<<< END OF SPECIAL CONDITIONS >>>>>

Further information:

1. **Congressional Authorities:** You have been authorized to undertake the activity described above pursuant to:

- () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
- () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. **Limits of this authorization.**

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

3. **Limits of Federal Liability.** In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data.** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

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

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your 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.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions.** General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

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



Robert A. Sinkler
Colonel, U.S. Army
District Engineer, Rock Island District

2 FEB 09

Date

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

Transferee

Date



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
RICHARD A. LEOPOLD, DIRECTOR

December 29, 2008

Mr. Daniel Johnson, P.E.
Chief, Regulatory Branch
Rock Island District Corps of Engineers
Clock Tower Building – PO BOX 2004
Rock Island, IL 61204-2004

JAN 12 2009

Subject: Section 401 Water Quality Certification for Regional Permit 7

Dear Mr. Johnson,

The Environmental Protection Commission granted Section 401 Water Quality Certification for Regional Permits 7 on September 9, 2008. An administrative rule reflecting the Commission's actions was adopted and has an effective date of October 29, 2008.

For any project requiring a Regional Permit 7, and will impact a water body listed in the Iowa Department of Natural Resources (IDNR) "Special Waters of Concern" list, the Corps of Engineers will contact the IDNR for project-specific comments/conditions to protect the water quality/aquatic resources of the site. The IDNR appreciates the on-going interagency coordination and would like it to continue.

If you have any questions or comments regarding this Section 401 Water Quality Certification, please contact me at the address shown below or call (515) 281-6615.

Sincerely,

A handwritten signature in cursive script that reads "Christine M. Schwake".

Christine M. Schwake
Environmental Specialist