DEPARTMENT OF THE ARMY PERMIT

Regional Permit 33
Small Ponds, Dams, and Grade Stabilization Structures
In Waters of the United States
In the State of Iowa

Permittee: General public meeting the terms and conditions herein.

Number: CEMVR-OD-P-2010-0206 (Regional Permit 33)

Expiration Date: March 7, 2016

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 having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

Project Description.

- The purpose of the Regional Permit is to authorize the placement of fill material into waters of the US for the purposes of constructing small U.S. Department of Agriculture, Natural Resources Conservation Service, (NRCS) ponds, dams, and grade stabilization structures.

- The purpose of the individual projects is to reduce erosion, sediment deposition, and/or flooding on agricultural lands and/or to provide water sources for livestock. Incidental wildlife habitat and recreation benefits may accrue to landowners from the sediment pools associated with installation of structures under this permit, but such benefits are not part of the primary purpose of the projects.

Project Location. This Regional Permit will authorize the discharge of fill material into waters of the United States in the upper reaches of their watersheds, which are located outside the exterior boundaries of Federally recognized Indian Reservation or Lands. **Projects located within the exterior boundaries of Federally recognized Indian Reservation or Lands are excluded from authorization under this Regional Permit.**

Permit Conditions:

❖ **General Conditions:**

1. The time limit for completing the work authorized ends 3 years from the date of each individual project determination. 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:**

General Design Criteria.

1. Ponds. A pond is defined as a water impoundment made by constructing a dam, an embankment, or by excavating a pit or dugout. The primary purpose of a pond is to provide water for livestock. Secondary benefits may include providing fish and wildlife habitat, recreation, fire control, and/or other related uses, and serve to maintain or improve water quality. Specific criteria for use in designing ponds may be found in the *Iowa Field Office Technical Guide Standard 378, Pond*, at http://www.ia.nrcs.usda.gov/technical/permitmaterials.html.

2. Dams. A dam is defined as a structure which generally forms a water impoundment. In addition to providing for the purposes shown under ponds, dams may be used to provide flood control, water supply, grade stabilization, erosion control, and / or sediment control. Specific criteria for use in designing dams may be found in the *Iowa Field Office Technical Guide Standard 378, Pond, and Standard 410, Grade Stabilization Structure* at the web address shown above. Additional criteria for the design of dams is found in *Technical Release 60, Earth Dams and Reservoirs* found at http://www.ia.nrcs.usda.gov/technical/permitmaterials.html.

3. Grade Stabilization Structures: A grade stabilization structure is installed to stabilize the channel grade in natural or constructed watercourses. They also may reduce gully erosion and improve water quality. Specific criteria for use in designing grade stabilization structures may be found in the *Iowa Field Office Technical Guide Standard 410, Grade Stabilization Structure*, at the web address at http://www.ia.nrcs.usda.gov/technical/permitmaterials.html.

General Restrictions. These general restrictions must be met for all individual projects to be authorized under this Regional Permit.

1. This Regional Permit will authorize work in upper watershed reaches in waters of the United States associated with the construction of small ponds, dams and grade stabilization structures where the NRCS plans, installs, funds, and/or provides technical assistance, and is the lead Federal agency in the undertaking. Projects authorized under this Regional Permit must be in accordance with a binding agreement or a conservation plan between the Landowner, and / or a Sponsor and / or the NRCS. Sponsors will either be State governmental authorities (such as the Iowa Department of Agriculture and Land Stewardship) or local authorities (such as Soil and Water Conservation Districts). The NRCS must be the Lead Federal Agency in this undertaking.

2. Streams. For the purposes of this Regional Permit, "streams" are channels with continuous flow for three months or more in a typical year. They do not include channels that generally only flow following precipitation events, upland gullies, or constructed drainage ditches. If a project will be on a stream, a habitat analysis must be completed at and above the project site. The stream habitat analysis will record the presence or absence of naturally-occurring sorting of bed material, and the presence or absence of naturally-occurring pools with a depth of 12 inches or greater. The stream habitat analysis will encompass the reach of channel from the proposed dam centerline to a point 200 feet upstream. Projects affecting streams that exhibit bed sorting or pool characteristics will require mitigation. The final determination as to how much and what kind of mitigation will be required will be made by the Rock Island District based on the habitat analysis and other information gathered during the permit process.

3. The following categories are applicable to this Regional Permit:

- Structures with less than maximum drainage area for landscape region w/o perennial flow in the stream.

- Structures with less than maximum drainage area for landscape region with perennial flow AND there are no pools ≥12 inches deep during low flow conditions within the footprint of the dam and pool AND there is a nick point/overfall of ≥12 inches or there is an excessively incised channel AND it is within Landscape Region 1.

- Structures with less than maximum drainage area for landscape region with perennial flow AND there are no pools ≥12 inches deep during low flow conditions within the footprint of the dam and pool AND perennial flow is solely from tile outlets and there is no flow upstream of those tile outlets.

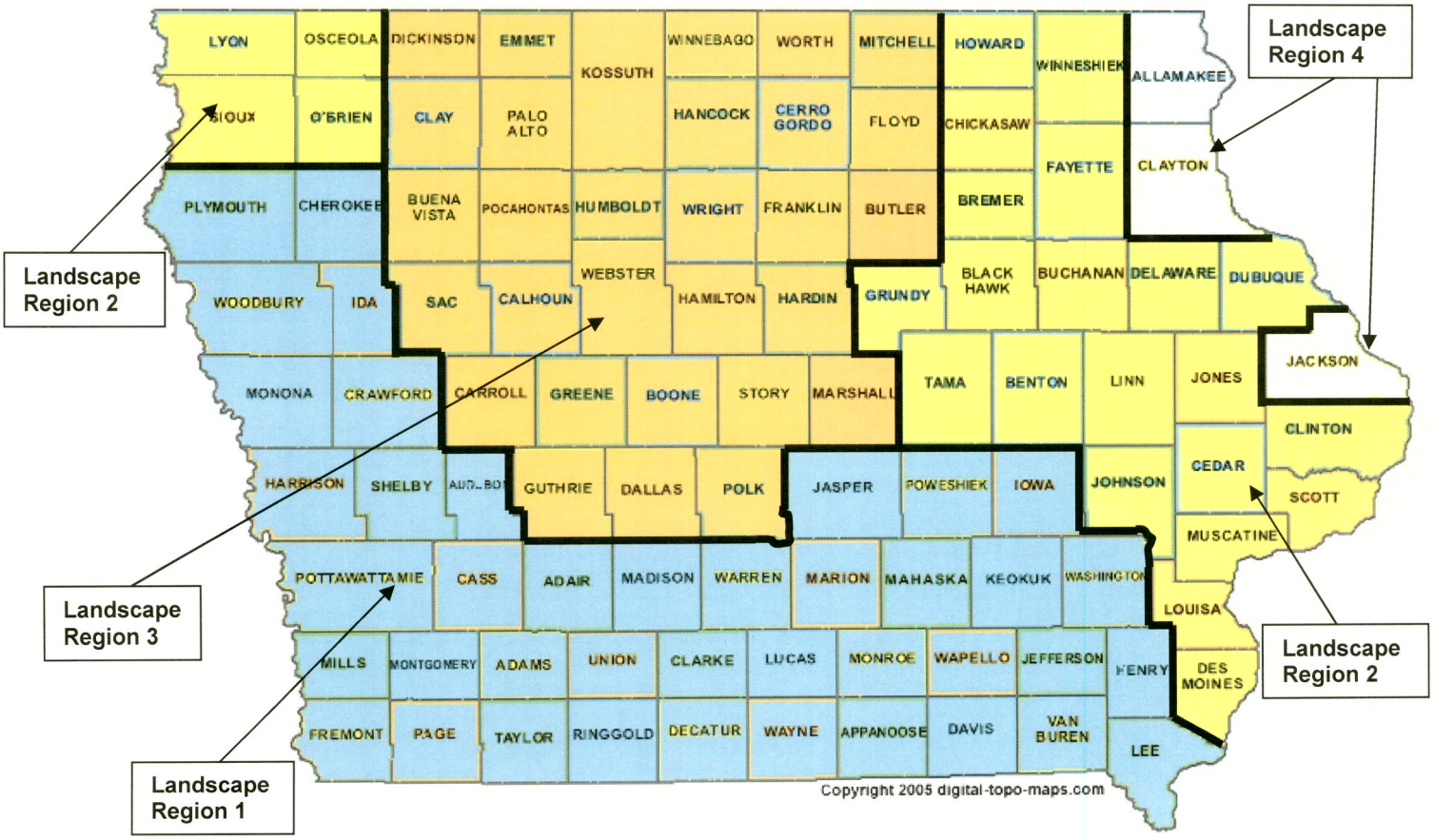
4. Fills in or across drainage ways with perennial flow in a normal year will not be covered under this Regional Permit except in cases where there is a documented nick point in an excessively incised stream or gully. Such nick points must be documented with a survey and a plotted drainage profile in the permit application.

5. Fills that will adversely impact fens, bogs, seeps, or sedge meadows will not be authorized under this Regional Permit.

6. If a project is on a stream listed on the Outstanding Iowa Waters list, coordination with the Iowa Department of Natural Resources must occur and appropriate measures deemed necessary to protect the integrity of the Special Water must be included in the project plans.

7. Generally, the projects will be constructed in upper watershed reaches in areas where there is little base flow in the channel. The structures will be strategically located to reduce downstream peak flows and upstream erosion so that damages are reduced to acceptable levels. The structures described under the Project Description may be authorized within the landscape areas shown below when they fall within the following drainage area size limits:

Landscape Regions for Regional Permit 33



Landscape Region and Upper Limit of Drainage Area

Landscape Region 1 – 1270 acres	Landscape Region 3 – 640 acres
Landscape Region 2 – 1000 acres	Landscape Region 4 – 1280 acres

8. Except for the structure and upland borrow areas, all disturbed areas not covered with riprap shall be seeded with native grasses, excluding Reed Canarygrass (Phalaris arundinacea), during an optimal seeding period. 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 seeding can be completed during an optimal period. The applicant shall monitor revegetated areas continuously to assure success of revegetation. If rye is initially planted to stabilize the soil then native warm season grasses shall be planted during the following growing season. Erosion control features (i.e., silt fences, silt ditches, silt dikes, silt basins, revegetation, etc.) must be installed to provide continuous erosion control throughout the construction and post construction period. 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.

9. All construction within the waterway shall be conducted during zero to low flow conditions.

10. Any spoil material excavated, dredged or otherwise produced by the activity will not be returned to the waterway but will be deposited in a self-contained upland area or in a non-wetland area of the proposed pool.

11. Clearing of vegetation, including trees located in or immediately adjacent to waters of the U.S., shall be limited to that which is absolutely necessary for construction of the project. All vegetative clearing material shall be removed to an upland, non-wetland disposal site or shall be buried in a non-wetland area within the proposed pool.

12. Where project plans include armoring, acceptable material will include clean: riprap, field stone, quarry rock, and broken Portland Cement Concrete (PCC). Neither shot rock nor ungraded stone will be used. When using broken PCC, all exposed reinforcing steel rod or mesh must be completely removed or cut flush with the surface of the concrete prior to placement. It shall be the applicant's responsibility to maintain the riprap such that any reinforcement material that becomes exposed in the future is removed. The use of asphalt or other solid waste is not authorized.

13. If, at the discretion of the District Engineer, corrective measures are deemed necessary to protect the public interest before, during, and after completion of project construction, permittees shall complete such corrective actions as directed by the District Engineer on a case-by-case basis.

Historical/Archaeological.

1. As Lead Federal Agency, the NRCS will fulfill the collective responsibilities set forth in the NHPA, and will achieve compliance with Section 106 of the NHPA utilizing established agency procedures. Authorization under this Regional Permit is not considered effective until Section 106 compliance is achieved. As Section 106 compliance should not be duplicated by agencies, the Corps of Engineers will accept the lead Federal agency's (NRCS) compliance with the requirements of the NHPA. Compliance with NHPA will be considered complete when the NRCS completes the 106 process by providing written documentation demonstrating compliance with Section 106.

2. If construction work uncovers an item or items that may be of historic or archaeological interest or if important new historical data comes to light in the project area, the work must be delayed sufficient time to notify the U.S. Army Corps of Engineers, Rock Island District, Clock Tower Building, Post Office Box 2004, Rock Island, Illinois 61204-2004 (telephone 309/794-5384) and the State Historical Society of Iowa, Bureau of Historic Preservation, Historical Building/Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-8744) and to allow the significance of the discovery to be determined. The permittee may be held responsible for cost associated with identification and recovery.

Endangered Species. As lead Federal agency, the NRCS will fulfill the collective responsibilities set forth in the ESA and will achieve compliance with that Act. This permit does not authorize the take of an endangered species or its habitat. In order to legally take a listed species, separate authorization under the ESA is required. If authorization under the ESA contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with an "incidental take", such terms and conditions become part of this permit. Failure to comply with the ESA terms and conditions would constitute an unauthorized take, and would also constitute non-compliance with this permit. This permit is not considered effective until ESA compliance is achieved. As ESA compliance should not be duplicated by agencies, the Corps of Engineers will accept the lead Federal agency's compliance with the requirements of that Act. Compliance with the ESA will be considered complete when the NRCS completes the necessary Section 7 compliance process and provides documentation of said compliance to the U.S. Army Corps of Engineers' Rock Island District office.

Mitigation. Practicable measures must be taken to avoid and minimize adverse impacts to waters of the United States by both temporary and permanent fills. Any unavoidable impacts to wetlands will be mitigated onsite through the restoration of creation or wetland at a minimum ratio of 1.5:1 provided the mitigation is in-kind (out-of-kind mitigation shall be mitigated at a minimum ratio of 2:1). On-site mitigation may include the following:

1. Creating fringe/pool area conditions conducive to wetland development and establishment of desirable wetland vegetation (Successful wetland mitigation requires inundation of 2 feet or less and/or soil saturation within 12 inches of the surface for at least 14 consecutive days during the growing season);
2. Lining shallow water areas in the pool with hydric soils;
3. Providing native wetland seedings/plantings in shallow parts of the pool and in areas that will be saturated within 12 inches of the surface;
4. Creating native upland buffers around the pool and mitigation wetlands;
5. Fencing to protect the pools, mitigation wetlands, the shoreline, and the upland buffers from livestock disturbance;
6. Leaving woody vegetation standing in pools to provide temporary fish and wildlife habitat;
7. Enhancing and/or preserving existing wetland.

Unavoidable impacts to streams that exhibit bed sorting or pool characteristics, or to other waters of the U.S. must be adequate to offset lost functions. At a minimum when required, stream impacts should be mitigated by providing foot-for-foot replacement of stream length. Other possible stream mitigation may include:

1. Restoring meanders in previously straightened stream segments;
2. Constructing a series of professionally-designed streambed stabilization structures (rock riffles);
3. Tree plantings;
4. Establishing stream-side vegetative buffers (native grass filter strips);
5. Preserving "at-risk" or abandoned creek channel segments;
6. Creating or restoring fish and wildlife habitat;
7. Re-sloping and stabilizing stream banks;
8. Creating additional floodplain;
9. Reconnecting a stream with its floodplain.

The Corps of Engineers will determine if the proposed mitigation is adequate. All mitigation must be completed prior to or concurrent with project construction. If, in the opinion of the Corps of Engineers, mitigation areas do not fully replace the aquatic functions that are lost due to the installation of the structure or project features, further mitigation measures may be deemed necessary on a case-by-case basis. Proposed mitigation areas may not be located in areas that are enrolled in programs such as the Conservation Reserve Program (CRP) or the Wetland Reserve Program (WRP).

As-built plan. An as-built plan shall be submitted to the Corps of Engineers and the Iowa Department of Natural Resources upon project completion.

Liability. The Permittee shall notify the District Engineer within 60 days if the compensatory mitigation project is not achieving its performance standards as anticipated. The Permittee shall provide 60-day advance notification to the District Engineer if any action is taken to modify the approved mitigation plan. Remedial work may include re-grading and/or replanting the mitigation site. The Permittee shall take immediate proactive steps necessary to correct any deficiencies and shall coordinate with this office during implementation to insure compliance with the terms and conditions in this permit.

Fulfillment. 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 U.S. Army Corps of Engineers.

Water quality certification. The conditions listed in the attached Section 401 water quality certification from the Iowa Department of Natural Resources 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 Decisio**n. 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.

Shawn P. McGinley
Colonel, U.S. Army
Commander & District Engineer

28 MAR 2011
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

Fields of Opportunities

STATE OF IOWA

TERRY E. BRANSTAD, GOVERNOR
KIM REYNOLDS, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
ROGER L. LANDE, DIRECTOR

March 7, 2011

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

Subject: Section 401 Water Quality Certification for Regional Permits 27, 33 & 34

Dear Mr. Johnson,

The Environmental Protection Commission granted Section 401 Water Quality Certification for Regional Permits 27, 33 & 34 on December 21, 2010. An administrative rule reflecting the Commission's actions was adopted and has an effective date of February 16, 2011.

For any project that occurs on 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 prior to finalizing the permit decision. The list and maps of Special Waters of Concern can be found on the IDNR website.

In accordance with the Iowa antidegradation rules, an individual Section 401 Water Quality Certification will be required for any project occurring within an Outstanding Iowa Water or its designated watershed/drainage area. The list and maps of the Outstanding Iowa Waters and their designated watersheds/drainage areas can be found on the IDNR website.

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,

Christine M. Schwake

Christine M. Schwake
Environmental Specialist

WALLACE STATE OFFICE BUILDING / 502 EAST 9th STREET / DES MOINES, IOWA 50319-0034
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