

DEPARTMENT OF THE ARMY PERMIT
Regional Permit 34
Conservation Reserve Enhancement Program (CREP) Structures,
Wetland Reserve Enhancement Program (WREP) Structures, and
Conservation Reserve Program (CRP) 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-2010-0207 (Regional Permit 34)

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 primary purpose of the projects is to improve water quality by limiting the amount of agricultural pollutants (mainly nitrates) entering the nation's rivers and ultimately, the Gulf of Mexico. The earthen embankments will slow storm water and agricultural drain tile water runoff which will allow a large percentage of nitrates to fall out and break down before they enter larger waterways. Other benefits include erosion control and wildlife habitat.
- This Regional Permit will authorize the placement of fill materials in waters of the U.S. in Iowa to create wetlands and ponded water through the construction of earthen embankments and/or dams when funding or technical assistance is being provided through the Conservation Reserve Enhancement Program (CREP) when the Farm Service Agency (FSA) is the lead Federal Agency or under the Wetland Reserve Enhancement Program (WREP) administered by NRCS, or under the Conservation Reserve Program (CRP) administered by the Farm Service Agency (FSA), except within the exterior boundaries of Federally recognized Indian Reservations or Lands. **Projects located within the exterior boundaries of Federally recognized Indian Reservation or Lands are excluded from authorization under this Regional Permit.**

NOTE: 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 Special Waters must be included in the project plans before authorization under the Regional Permit is issued.

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:

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

1. The Department of Agriculture's Farm Service Agency (FSA) or the Natural Resource Conservation Service (NRCS) must be the Lead Federal Agency for all projects authorized under this Regional Permit.
2. The projects will be constructed on small streams and waterways with drainage areas of 4,000 acres or less.
3. The structures will be strategically located and designed to pool tile drainage water which will remove nitrates and herbicides from that water.
4. The typical size of the pool that will form above the structure will be between ½ and 2 percent of the size of the watershed.

5. Water depths must be 3 feet or less in at least 75 percent of the pool.

6. The area between the maximum flood pool elevation and the normal pool elevation will be vegetated in grass. With the exception of structures and steep slopes, all areas without an established vegetative cover will be seeded to native grasses.

7. Specific criteria for use in designing the structures are found in the *Iowa Field Office Technical Guide* on the web at <http://www.ia.nrcs.usda.gov/technical/permitmaterials.html>. Standards 378 and 410 are pertinent. Additional criteria for the design of dams are found in *Technical Release 60, Earth Dams and Reservoirs*. This Technical Release may also be found on the web at <http://www.ia.nrcs.usda.gov/technical/permitmaterials.html>.

8. This permit authorizes any future discharge of dredged or fill material associated with periodic maintenance and the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities) even if the original construction of the structure did not require a Department of the Army permit. The reversion must occur per the Iowa Conservation Reserve Enhancement Program Easement, or the Wetland Reserve Enhancement Program Easement, or the Conservation Reserve Program Easement executed between the Soil and Water Conservation District and the landowner, even if the discharge occurs after this permit expires. This permit authorizes the reversion of the area, including wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned in accordance with binding agreements involving the landowner, NRCS, and the Soil and Water Conservation District in the county in which the wetland is located. The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity, the permittee or the appropriate Federal or State agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps' regulatory requirements will be at that future date.

9. This Regional Permit authorizes all activities related to the repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill provided that the structure or fill is not to be put to uses differing from those originally specified. Minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit. This permit does not authorize new stream channelization or stream relocation. This permit does not authorize more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increased flooding.

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

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

12. Where project plans include armoring, acceptable material will include clean: riprap, field stone, quarry rock, and broken Portland Cement Concrete (PCC). When using broken PCC, all exposed reinforcing steel rod or mesh must be completely removed. If removal is not possible, the reinforcement material shall be cut flush with the surface of the concrete prior to placement. 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 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.

14. Historical/Archaeological.

a. As Lead Federal Agency, FSA or the NRCS will fulfill the collective responsibilities set forth in the National Historic Preservation Act (NHPA) and will achieve compliance with Section 106 of the NHPA utilizing established agency procedures and processes. 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 (FSA) compliance with the requirements of the NHPA. Compliance with NHPA will be considered complete when FSA or NRCS completes the 106 process and provides written documentation of its compliance to the U.S. Army Corps of Engineers' Rock Island District office.

b. 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.

15. Endangered Species.

- As lead Federal agency, the FSA or the NRCS will fulfill the collective responsibilities set forth in the Endangered Species Act (ESA) and will achieve compliance with that Act. This permit does not authorize the take of an endangered species. 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 (FSA) compliance with the requirements of that Act. Compliance with the ESA will be considered complete when FSA 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.
- The Farm Service Agency prepared a Programmatic Biological Assessment for the Conservation Reserve and Enhancement Program for Central Iowa. By letter dated February 24, 2006, the United States Department of the Interior, Fish and Wildlife Service, stated that consultation outlined in the request was complete.

Mitigation: The wetland mitigation actions contained in the project plans must be implemented/completed concurrently with the project construction.

1. Practicable measures must be taken to avoid and minimize adverse impacts to waters of the United States by both temporary and permanent fills. Mitigation for unavoidable adverse impacts to waters of the U.S. must be adequate to offset lost functions. Unavoidable wetland losses typically will be fully replaced in the 75 percent of the pool with water depths of 3 feet or less. It is expected that most of the pool area with water depths of 3 feet or less will develop emergent wetland characteristics. Additional wetland mitigation is required if the acreage of wetland impacted by the structure and deep water exceeds the proposed acreage of pool with water depths of 3 feet or less. Additional wetland mitigation may also be required for out-of-kind mitigation. The Corps will determine if the proposed mitigation is adequate.

2. All mitigation must be completed prior to or concurrent with project construction. If mitigation is required beyond what is provided in the shallow areas of the pool, it may include:

a. Increasing the size of shallow water areas with excavation or raising the height of the structure to create 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 days of the growing season);

b. Creating or restoring wetland at another location;

c. Lining shallow water areas in the pool with hydric soils;

d. Providing native wetland seedings/plantings in shallow parts of the pool and/or in areas that will be saturated within 12 inches of the surface;

e. Increasing the width of the native upland buffers around the pool and mitigation wetlands;

f. Fencing the pools to protect the mitigation wetlands, the shoreline, and the upland buffers from livestock disturbance;

g. Leaving woody vegetation standing in pools to provide temporary fish and wildlife habitat;

h. Enhancing/protecting the stream below the structure and/or nearby streams with bank stabilization, plantings, stream bed stabilization, riffles, or other habitat structures/improvements, etc;

i. Or other measures appropriate to the site conditions. More mitigation guidance can be found in the Federal Register (see 33 CFR 332) dated April 10, 2008, which contains "**Compensatory Mitigation for Losses of Aquatic Resources**" (the Mitigation Rule). The guidelines can be found on the US Army Corps of Engineers web site. Go to http://www.usace.army.mil/cecw/pages/final_cmr.aspx and click on "Final Rule".

j) Purchase of credits at a mitigation bank.

If, in the opinion of the Corps of Engineers, mitigation areas do not fully replace the aquatic functions that will be lost due to the installation of the structure or project features, further mitigation measures may be deemed necessary on a case-by-case basis. To insure that there is no net loss of aquatic functions and values, additional project specific mitigation at either the project location or an alternative location within the same watershed may be required prior to issuance of authorization under this Regional Permit.

3. **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.

4. **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 dated March 7, 2011, are considered to be part of this Regional Permit.

- 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.
- 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.
- 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:

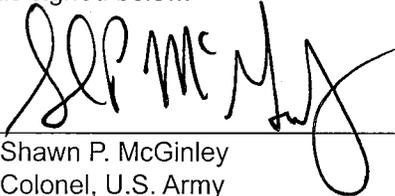
- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

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.



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



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,

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

Christine M. Schwake
Environmental Specialist