

DEPARTMENT OF THE ARMY PERMIT
Regional Permit
Targeted Water Quality Improvement Constructed/Restored Wetlands
In Waters of the United States
In the State of Iowa

Permittee: General public meeting the terms and conditions herein.

Number: CEMVR-OD-P-2017-525 - Regional Permit 39

Expiration Date: July 31, 2021

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 these projects are for activities in Waters of the U.S., including jurisdictional wetlands, that are part of an acceptable watershed strategy whose purpose is to identify implementation activities needed to improve water quality by limiting the amount of agricultural pollutants (mainly nitrates) entering the nation’s rivers and ultimately, the Gulf of Mexico, and restore functions that support and/or enhance aquatic biological resources at the project site. The constructed or restored wetlands will slow storm water and agricultural drain tile water runoff and provide habitat for microorganisms which will allow a large percentage of nitrates to denitrify before they enter larger waterways, control erosion and improve wildlife habitat. Wetlands, through the accumulation of organic matter, also act as sinks for nutrients and other chemical compounds, reducing the amounts of these substances in the water column. The activity must be designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the U.S. to the maximum extent practicable at the project site.
- This Regional Permit will authorize the placement of fill material in waters of the U.S. in 45 Iowa Counties (see attached map) 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 Iowa Department of Agriculture and Land Stewardship (IDALS) with Corps approval in conjunction with a provided watershed plan where IDALS assumes the lead agency role and is ultimately responsible for the project’s

success, except within the exterior boundaries of Federally recognized Indian Reservations or Lands.

Projects located within the exterior boundaries of Federally recognized Indian reservations or Lands are excluded from authorization under this Regional Permit.

Permit Conditions

- **General Conditions**

1. The time limit for completing the work authorized ends when Regional General Permit 39 expires, unless otherwise specified. If you have started the work or are under contract to begin this activity before the general permit expires, you will have twelve (12) months from that expiration date to complete the activity under the terms and conditions of this general permit.
2. The permittee must notify the District Engineer, Rock Island District, for authorization of this general permit. The notification must include detailed drawings and sufficient information to determine if the proposed work conforms to the criteria and conditions of the general permit, as well as a mitigation plan (see special condition 18), if unavoidable stream or wetland impacts will occur as a part of the project. Department of the Army (DA) permit application (ENG Form 4345) may be used for this purpose. If the Corps determines that the work meets the provisions of the general permit and no extraordinary conditions exist that warrant evaluation as an individual permit, the proponent will be notified to proceed.
3. 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 5 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.
4. 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 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.
5. 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.
6. If a conditioned Individual Section 401 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.
7. 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. Corps personnel will notify the landowner and/or IDALS a minimum of 48 hours prior to a planned on-site inspection.

8. Activities done for the sole purpose of nutrient and sediment reduction are not eligible under this regional permit.

- **Special Conditions:**

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

1. IDALS must be the Lead Agency for all projects authorized under this Regional Permit.
2. The projects will be constructed on agricultural land, drainage ditches, and waterways with drainage areas of 4,000 acres or less located within the counties identified on the attached map (Figure 1).
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. The size of the wetland pool will not exceed 50 acres.
5. Water depths must be 3 feet or less in at least 75% of the pool area.
6. The area between the maximum flood pool elevation and the normal pool elevation will be vegetated with a native wetland seed mix. With the exception of structures and steep slopes, all areas without an established vegetative cover will be seeded to native grasses and forbs, including mesic or hydric seeding where applicable. Seeding's will not include any species identified by the most up to date "Iowa Noxious Weeds" list and/or those listed on the Corps "Excluded Species Plant List". No more than 15% of the total vegetative cover shall be vegetated with non-native and/or invasive species.
7. Adverse effects on the aquatic system due to temporarily accelerating the passage of water and/or restricting its flow during the construction of an impoundment must be minimized to the maximum extent practicable. Construction activities are encouraged to be completed during dry periods when low flows are expected.
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 Easement or the Easement executed between the Drainage District and the landowner, even if the discharge occurs after this permit expires. Reversion of the area, includes wetlands that were restored, enhanced, or created on prior converted cropland that has not been abandoned in accordance with binding agreements involving the landowner, IDALS, and the Drainage 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 Corps as they are executing the permit. Before any reversion activity, the permittee or IDALS 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 are 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 in the application. 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 effects resulting from such repair, rehabilitation, or replacement and are minimal are authorized by this permit. 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.
10. This permit does not authorize new stream channelization or stream relocation. This permit does not authorize more than minimal temporary degradation of water quality, more than minimal changes to the flow characteristics of the stream or increased flooding.
11. 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 non-wetland site.
12. 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.
13. 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.
14. 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.
15. Fencing the pools to protect the pooled area, the shoreline, and the upland buffers from livestock disturbance shall be included in any site protection agreement when on-site mitigation is replacing wetlands that were lost during the construction of the project.
16. Historical/Archaeological.
 - a. As Lead Federal Agency, the Corps 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.
 - 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 the cost associated with identification and recovery.

17. Endangered Species.

- a. As Lead Federal Agency the Corps 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. Compliance with the ESA will be considered complete when the Corps completes the necessary Section 7 compliance process.

18. Mitigation:

- a. The wetland mitigation actions contained in the project plans must be implemented/completed concurrently with the project construction. 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.
- b. 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 shall be required for forested wetland impacts. The Corps will determine if the proposed mitigation is adequate.
- c. Stream Mitigation: Impacts to jurisdictional streams with flow regimes that are perennial or contain permanent pools will require compensatory mitigation. The necessity and amount of stream mitigation to be required will be determined pursuant to the Compensatory Mitigation Rule found at 33 CFR 332.3.
- d. If it is determined that additional stream mitigation is required to offset adverse impacts, activities to achieve sufficient stream mitigation may include:
 - I. Purchase of credits from mitigation bank or ILF program;
 - II. Restoring meanders in previously straightened stream segments’
 - III. Constructing a series of professionally-designed streambed stabilization structures (i.e., rock riffles)
 - IV. Establishing stream side vegetative buffers (i.e. tree plantings or native grass filter strips)

- V. Preserving “at-risk” or abandoned creek channel segments;
 - VI. Creating or restoring additional fish and wildlife habitat;
 - VII. Re-sloping and stabilizing stream banks;
 - VIII. Creating additional floodplain or reconnecting a stream with its floodplain.
- e. 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:
- I. 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);
 - II. Creating or restoring wetland at another location;
 - III. Increasing the width of the native upland buffers around the pool and mitigation wetlands;
 - IV. 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.;
 - V. Or other measures appropriate to the site conditions. More mitigation guidance can be found in the Federal Register at 33 CFR 332, dated April 10, 2008. 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.
19. 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.
20. 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.
21. Compliance Certification. Each Permittee who receives a verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the District Engineer. The Corps will provide the Permittee the certification document with the RGP 39 verification letter.
22. Water Quality Certification. The following conditions are considered to be part of this Regional Permit for Section 401 Water Quality Certification.

- a. 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 Concern can be found on the IDNR website.
- b. 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.
- c. 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 (33U.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 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 offices, 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 District Engineer, has signed below.

Ward Lenz
Ward Lenz
Chief, Regulatory Branch
Rock Island District

6/July/2017
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) 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
GOVERNOR KIM REYNOLDS ★ LT. GOVERNOR ADAM GREGG
DIRECTOR OF DNR, CHUCK GIPP

June 21, 2017

Mr. Ward Lenz
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 Permit 39
Targeted Water Quality Improvement Constructed/Restored Wetlands in Waters of the
United States in the State of Iowa (CEMVR-OD-P-2017-0525)

Dear Mr. Lenz,

The Iowa Department of Natural Resources (Iowa DNR) has examined the information furnished by the Rock Island District Corps of Engineers in the April 25, 2017 Joint Public Notice and the final Regional Permit 39. This conditional Section 401 Water Quality Certification is hereby granted for Regional Permit 39 by the Iowa DNR under the authority of Section 401 of the Clean Water Act. The Iowa DNR certifies RP 39 (CEMVR-OD-P-2017-0525) because there is reasonable expectation that the activities identified within it will be conducted in a manner that will not violate Iowa's water quality standards.

Conditions

1. For any project that occurs on a water body listed in the Iowa Department of Natural Resources (Iowa DNR) "Special Waters of Concern" list, the Corps of Engineers will contact the Iowa DNR for project-specific comments/conditions to protect the water quality/aquatic resources of the site prior to finalizing the permit decision. The list of Special Waters of Concern is attached.
2. 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 Iowa DNR website.
3. An individual Section 401 water quality certification will be required for projects that impact fens, bogs, seeps, or sedge meadows.

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) 725-8399.

Sincerely,



Christine M. Schwake
Environmental Specialist