DEPARTMENT OF THE ARMY PERMIT

Regional Permit 26
Emergency Reconstruction and Repair Activities for Flood Damaged Areas
in All Waters of the United States
In the State of Illinois

Permittee: General public meeting the terms and conditions herein.

Number: CEMVR-OD-P-2010-0114 (Regional Permit 26)

Expiration Date: December 31, 2015

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. Work is authorized to excavate or place fill material for protection and/or repair of existing flood damaged structures, damaged land areas and/or damaged fills as follows:

1. Repair of levees to existing elevations and cross-section, including breach closures and borrow operations
2. Bridge embankment protection (armoring) and/or repair
3. Repair of pre-existing highway or railroad embankments and the addition or repair of stone (armoring) protection
4. Repair of pre-existing utility protection structures
5. Placement of rock and/or earth materials for stream/ditch bank protection and/or stream/ditch bank restoration
6. Drainage channel/ditch restoration to pre-flood capacity and flow line unless the flow line must be altered due to other damage associated with the flood event
7. Restoration of creek channels to pre-flooding alignment and capacity
8. Construction of temporary roads and temporary fills to facilitate the completion of any of the listed activities

Note: Maintenance of existing flood damaged structures and/or flood damaged fills, which have been previously authorized, may be authorized by Nationwide Permit No. 3 or exempted by Part 323.4 of Federal regulations 33 CFR 320-331. The repair of uplands damaged by storms, floods or other discrete events may be authorized by Nationwide Permit No. 45 upon notification and review by the appropriate Corps of Engineers District, Regulatory Branch.

Project Location. This regional permits will authorize work in waters of the United States (including rivers, lakes, streams and wetland areas) associated with emergency reconstruction and repair activities in counties declared flood disaster areas by the State of Illinois.

Permit Conditions:

❖ **General Conditions:**

1. The time limit for completing the work authorized ends 180 days 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:**

1. This regional permit authorizes the discharge of dredged or fill material and other work associated with emergency restoration, repair, or reconstruction measures performed in waters of the United States within the State of Illinois as a result of damages recently incurred during flooding. Work will be limited to that necessary to restore damaged areas to pre-flood conditions. The time period for completing the proposed work is 180 days from each permit determination.

2. All channel restoration work will be limited to restoring the area to pre-flood conditions and verified using United States Department of Agriculture, Natural Resource Conservation Service, aerial photographs, or other qualifiable data, plans, etc. Channel restoration of areas not caused by the recent flooding or otherwise not verifiable, is not authorized under these regional permits.

3. Clean, uncontaminated materials must be used for fill in order to minimize excessive turbidity by leaching of fines, as well as to preclude the entrance of deleterious and/or toxic materials into waters of the United States by natural runoff or by leaching. All fill materials must be obtained from upland nonwetland sources or authorized excavation sites. Use of small aggregate materials, such as creek gravel, for stabilization and erosion control is prohibited under these regional permits.

4. Temporary levees, accesses, and other fills must involve the least damaging and minimum disturbance/impacts to waters of the United States. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials and placed in a manner that will not be eroded by expected high flows. Temporary fill (including sandbags) must be entirely removed to upland nonwetland areas following completion of the construction activity and the affected areas restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas so as to change their use.

5. Any construction debris or waste materials may not be disposed of below the ordinary high water mark of any water body, in a wetland area, or at any location where the material could be introduced into the water body or an adjacent wetland as a result of run off, flooding, wind, or other natural forces.

6. All dredged or excavated materials, with the exception of that authorized herein, will be placed on an upland site above the ordinary high water line in a confined area, not classified as a wetland, to prevent the return of such material to the waterway.

7. All excavation, dredging, and/or filling in the watercourse must be conducted in a manner that will minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation.

8. All debris during every phase of the project must be immediately removed and properly disposed of in order to prevent accumulation of unsightly, deleterious and/or toxic material in or near the water body.

9. All construction materials, equipment, and/or petroleum products, when not in use, must be stored above anticipated high water levels.

10. All structures will be designed and constructed in such a way that they do not result in stream channel constriction or in redirection of flows in such a way as to cause upstream or downstream erosion, or other property damage.

11. The clearing of timber and other vegetation will be restricted to the absolute minimum required to accomplish the work. The removal of mature trees must be avoided to prevent potential impacts to bald eagle roost sites and Indiana bats.

12. Upon completion of earthwork operations, all fills in the water or on shore, and other areas on shore disturbed during construction must be seeded, replanted, or otherwise protected from erosion. The use of crown vetch should be avoided. If seeding does not successfully vegetate the disturbed areas by the end of the first growing season, alternate measures, such as placing riprap, slope terracing with untreated railroad ties, gabions or concrete blocks, or additional vegetative plantings to protect the disturbed areas from further erosion must be implemented. You must contact the Corps of Engineers prior to beginning work on any additional erosion control measures so that we can determine if further authorization will be required.

13. Only graded rock, quarry-run rock and/or clean concrete rubble may be used for riprap. The material must be reasonably well graded, consisting of pieces varying in size from 20 pounds up to and including at least some 150-pound pieces. Generally, the maximum weight of any piece should not be more than 500 pounds. Gravel and dirt should not exceed 15 percent of the total fill volume. If concrete rubble is used, all large slabs must be broken to conform to the well-graded requirement. All exposed reinforcement rods, trash, asphalt, and other extraneous materials must be removed before the rubble is placed in waters of the United States.

14. All temporary fills, including sand bags, in the waters of the United States must be completely removed within 30 days of the end of the flood emergency and disposed of in accordance with special conditions included in the regional permit.

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

16. 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.

17. 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.

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

19. Appropriate soil erosion and sediment control measures must be used and maintained during project construction.

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

21. The United States shall not be responsible for damage to property or injuries to persons which may arise from or be incident to the work herein authorized, and the permittee shall hold the United States harmless from any and all such claims, except to the extent that the damage or injury is caused solely by the negligence of the United States.

22. The project proponent must notify the appropriate public or private utility in advance of any work within 250 feet of an underground utility so that the utility is not damaged during construction activities.

23. **Water quality certification**. By letter dated July 20, 2010, the Illinois Environmental Protection Agency issued Section 401 water quality certification for the regional permit under terms and conditions specified in the Public Notice. These terms and conditions have been incorporated into this regional permit.

24. **Mitigation**. Mitigation may be required on a case-by-case basis for all completed and/or proposed wetland fill activities authorized by these regional permits. The following requirements are applicable for projects requiring mitigation:

a. Mitigation: The wetland mitigation plan will include adequate wetland mitigation acreage to mitigate for the loss of any wetland area. A summary of the approved acres and performance measures for the mitigation plan will be incorporated into the Regional Permit as follows:

Mitigation Design Objectives/Performance Measures

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

* Replace "Other" with actual type of mitigation ("Upland", "Woodland", etc.)

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 the wetland mitigation sites shall be identified clearly by the placement of permanent markers.
- An as-built plan shall be submitted to the Corps of Engineers upon project completion.
- 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.

b. Mitigation Monitoring.

- Mitigation work shall begin concurrent with the initiation of project construction. The mitigation work shall be completed within one year of the initiation of project construction on the site.
- The permittee shall notify this office in writing upon the completion of the wetland mitigation plan. The permittee shall be responsible to perform any corrective actions deemed necessary by this district to insure wetland success.

c. Reporting. The permittee shall provide an annual report to the Corps of Engineers documenting the extent of the mitigation completed.

- The permittee shall conduct an annual survey of the mitigation area to monitor the survival rate of the plantings, and soil and hydrology conditions at the site. The results of the survey will be documented annually on the enclosed Rock Island District Standard Mitigation Reporting Form also available at: http://www2.mvr.usace.army.mil/Regulatory/ or in an annual progress report as specified in RGL 08-03, http://www2.mvr.usace.army.mil/Regulatory/Documents/Regulatory. These annual reports are due no later than August 31 of each year for the 5-year period. All annual monitoring reports shall be formatted for an 8.5 x 11 inch piece of paper. The mitigation monitoring reports shall be submitted to the Corps of Engineers. Reports are due as follows:
    - Year 1 – due August 31 1 year after construction is initiated .
    - Years 2 through 5 – due of each succeeding year

- These reports shall include the following information at a minimum:
    - Information concerning the survival rate of all plant species which were to be established at the mitigation site. This information shall be collected by a qualified biologist.
    - Annual photographs (taken during the growing season) showing representative areas of the site.
    - Additional guidance on the monitoring reports may be found in the attached Regulatory Guidance Letter 08-03 dated October 10, 2008.
    - Vegetative cover map indicating dominant cover species in each area.
    - Wetland hydrology assessment utilizing the procedures in the following documents:
        - *Wetlands Research Program Technical Report Y-87-1 Corps of Engineers Wetlands Delineation Manual, January 1987.*
        - *Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Midwest Region, September 2008.*
    - Monthly surface water elevations at the site.

d. Survival of plantings. All newly planted trees and emergent plant species will be guaranteed for 85 percent survival for five growing seasons. Any newly planted tree or shrub (including replacements), which dies to the point that the main leader has died back or where there is 25 percent or more of the crown dead, will be replaced. All replacements will be of the same kind and size of equal wildlife value and function as originally planted. Damages incurred in making replacements will be repaired.

e. Liability. The permittee shall assume all liability for accomplishing any needed corrective work should the District Engineer determine that the mitigation is not satisfactory. Remedial work may include regrading and/or replanting the mitigation site. This responsibility shall extend for a period of 5 years upon completion of the mitigation work. The permittee shall take immediate proactive steps necessary to correct any deficiencies outlined in the monitoring reports and shall coordinate with this office during implementation to insure compliance with the terms and conditions in this permit.

f. 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.

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

Further information:

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

(**X**) 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

6 Dec 2010
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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

217/782-3362

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RECEIVED
JUL 22 2010
CEMVR-OD-P

Rock Island District
Corps of Engineers
Regulatory Branch
Post Office Box 2004
Clock Tower Building
Rock Island, IL 61204-2004

Re: US Army Corps of Engineers (Various Counties)
Regional Permit 26 – Various Waterbodies
Log # C-0046-10 [CoE appl. # 2010-0114]

Gentlemen:

This Agency received and reviewed the February 25, 2010 public notice regarding the US Army Corps of Engineers Regional Permit 26 from for emergency repairs and construction related to flood damage that have and will occur in those counties in Illinois declared disaster areas.

Section 401 water quality certification is hereby issued for this regional permit, under the terms and conditions specified in the Public Notice received by the Agency on February 25, 2010.

If you have any questions concerning this matter, please contact Thaddeus Faught at 217-782-3362.

Sincerely,

Alan Keller

Alan Keller, P.E.
Manager, Permit Section
Division of Water Pollution Control

SAK:TJF:0046-10.docx

cc: IEPA, Records Unit
IEPA, DWPC, FOS, All Regions
IDNR, OWR, Springfield
USEPA, Region 5
CoE, St. Louis District
CoE, Louisville District
CoE, Louisville District (Newburg Regulatory Office)
CoE, Chicago District
CoE, Memphis District