

DEPARTMENT OF THE ARMY PERMIT
Regional General Permit 39
Iowa Department of Agriculture and Land Stewardship
Targeted Water Quality Improvement Created/Restored Wetlands
In Waters of the United States
In the State of Iowa

Permittee: General public meeting the terms and conditions herein.

Number: CEMVR-RD-2021-0498 (Regional Permit 39)

Date: December 31, 2027

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.

1. **Project Description.**

- A. Regional General Permit 39 (RP39) authorizes the discharge of dredged and/or fill material in waters of the U.S. (WOTUS) in the State of Iowa to create/restore wetlands 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.
- B. The purpose of these projects is for activities in WOTUS including jurisdictional wetlands, that are part of a watershed strategy to improve water quality. This will be implemented by limiting the number 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/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 WOTUS to the maximum extent practicable at the project site.
- C. Permanent impacts to WOTUS authorized by this permit shall not result in the permanent loss of greater than 1500 linear feet of streambed or 2 acres of wetland. The combined loss of all waters shall not exceed 2 acres in total.

2. **Project Location:** RP39 authorizes work associated with the discharge of dredged and/or fill material into all WOTUS, including wetlands, under the jurisdiction of the Rock Island District located within the State of Iowa. This permit may be used on tribal lands within the state of Iowa; however, an individual 401 Water Quality Certification must be obtained from the Meskwaki Nation - Sac and Fox Tribe of the Mississippi in Iowa and the Winnebago Tribe of Nebraska in Iowa, as applicable, for the use on tribal lands, prior to authorization.

3. Permit Conditions

A. General Conditions

- 1) 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 RP39 and no extraordinary conditions exist that warrant evaluation as an individual permit, the proponent will be notified to proceed.
- 2) The time limit for completing the work authorized ends when RP39 expires, unless otherwise specified. If you have started the work or are under contract to begin this activity before RP39 expires, you will have twelve (12) months from that expiration date to complete the activity under the terms and conditions of this general permit.
- 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 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.
- 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) 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.

B. Special Conditions: These general specifications/restrictions must be met for all individual projects to be authorized under RP39.

- 1) The Corps or NRCS must be the Lead Federal Agency for NEPA for all projects authorized under RP39. (Example: if additional funding or technical assistance is being provided by NRCS, then they would be the Lead Federal Agency).
- 2) The structures will be strategically located and designed to pool tile drainage water which will remove nitrates and herbicides from that water.
- 3) Water quality testing must be completed prior to construction and again within two years post construction and submitted to the Corps in order to demonstrate success in nutrient reduction. Testing must be done in accordance with a Corps approved plan.
- 4) Wetlands that are inundated with water greater than 3 feet in depth are considered conversion, therefore, those wetlands will be considered lost.
- 5) 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. Seedings 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".

- 6) No more than 15% of the total vegetative cover shall be vegetated with non-native and/or invasive species.
- 7) Applicants must identify and notify the Rock Island District, Corps of Engineers of all impacts to fens, bogs, seeps or sedge meadows. Fill that will adversely impact these resources are not authorized.
- 8) Applicants must identify and notify the Rock Island District, Corps of Engineers of all impacts to Outstanding Iowa Waters. Fill that will adversely impact these resources are not authorized.
- 9) RP39 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.
- 10) RP39 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.
- 11) RP39 does not authorize new stream channelization or stream relocation. RP39 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.
- 12) 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.
- 13) 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.
- 14) Clearing of vegetation, including trees located in or immediately adjacent to WOTUS 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.
- 15) Where project plans include armoring, acceptable material will include clean: riprap, field stone, quarry rock, or 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.
- 16) 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.
- 17) If livestock are anticipated or proposed to be in the vicinity of the project: Fencing 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.

C. Mitigation:

- 1) The project area is defined as the location of WOTUS that will be impacted by the discharge of fill material, involving the use of this RP39. Examples of project area include WOTUS that will be inundated by the conversion of one aquatic resource type to another (i.e. a stream to wetland or open water) and/or the placement of earthen embankments/dams in WOTUS.
- 2) The activity must be designed and constructed to avoid and minimize adverse effects to Waters of the U.S., both temporary and permanent, to the maximum extent practicable at the project area. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
- 3) Compensatory mitigation may be required for stream or wetland impacts associated with a project which requires notification to the Corps. In general, compensatory mitigation will be required for all wetland losses that exceed 1/10-acre (See Mitigation Condition C.6) and for streambed losses greater than 300 linear feet and/or streambed losses greater than 0.03 acres. Compensatory mitigation projects provided to offset losses of aquatic resources must follow the regulations published in the Federal Register dated April 10, 2008, under 33 CFR Parts 332 and 40 CFR Part 230 – Subpart J entitled “Compensatory Mitigation for Losses of Aquatic Resources” (Mitigation Rule), and any such Corps regulation/guidance that would supplement these mitigation requirements such as the Rock Island District Mitigation and Monitoring Guidelines.
- 4) Impacts to streams will be evaluated on a case-by-case basis. There are some situations in which mitigation may not be required for losses in excess of 300 linear feet of stream. The use of aerial imagery and GIS data must be provided along with justification for these situations. If the stream is natural and unaltered, impacts to this resource will require compensatory mitigation if impacts exceed the thresholds above.
- 5) **Mitigation is not required when:** documentation is provided showing that the stream has been channelized or straightened over time and the stream’s sinuosity is measured at 1.1 or less within the project area.

And the stream segment meets two or more of the following criteria

- a. The riparian corridor has a perennial vegetated buffer width of less than 25 feet on each side of the stream, measured outward from top of bank.
- b. The stream contains active head cuts, failing banks, extremely eroded banks (i.e., with tree roots showing, soil abutments hanging over the water, etc.), or bank sloughing throughout a majority of the project area.
- c. The stream’s 2-year floodplain is confined in channel and its banks are steeper than a 2:1 slope; within majority of the project area.
- d. The stream has four or more stream impacts within 0.5 miles upstream of the proposed stream impact area (culverts, pipes, or other manmade modifications), and these stream impacts individually or cumulatively exceed 100 feet in length.
- e. The project area is located within 1 mile of where the main stem of the impacted stream is formed. An example would be the stream forms from tile outlets, 1 mile or less from the project area.

***The Corps will make the final decision if compensatory mitigation will be required using the above factors and site visits if necessary.**

- 6) It is expected that most of the pool area with water depths of three 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 three feet or less.
 - 7) The applicant is responsible for proposing an appropriate compensatory mitigation option to ensure that the activity results in less than minimal adverse effects to the aquatic environment. Applicants may propose the use of mitigation banks, in-lieu fee (ILF) programs or separate permittee-responsible mitigation. Applicants must adhere to the mitigation hierarchy found in the 2008 mitigation rule (33 CFR 332) when selecting appropriate methods for mitigation. A conceptual permittee-responsible mitigation plan may be submitted for initial review, however, a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the District Engineer before RGP 39 may be authorized for the proposed project.
 - 8) All mitigation must be completed prior to or concurrent with project construction. If, in the opinion of the Corps, 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 USDA Conservation Reserve Program (CRP) or the USDA Wetland Reserve Program (WRP).
 - 9) The amount of mitigation required will be determined during review for authorization under this permit as per the mitigation rule requirements. Mitigation must be adequate to offset unavoidable impacts or losses to regulated WOTUS. The Corps has the final approval in determining the appropriate and practicable mitigation necessary.
- D. **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 ensure compliance with the terms and conditions in this permit.
- E. **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.
- F. **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.
- G. **Historical Properties/Archaeological:** The Lead Federal Agency for NEPA (Corps or 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. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the lead Federal agency. Authorization under this RGP 39 is not considered effective until Section 106 compliance is achieved.
- H. **Endangered Species.** The Lead Federal Agency for NEPA (Corps or NRCS) will fulfill the collective responsibilities set forth in the Endangered Species Act (ESA) and will achieve compliance with that Act.

Expires December 31, 2027

This permit does not authorize the taking of a threatened or endangered species or its critical habitat. If an activity may result in take of 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 or an unauthorized take would constitute non-compliance with this permit. Authorization under this RP39 is not considered effective until ESA compliance is achieved.

- I. **Water Quality Certification**. By letter dated May 6, 2022, the Iowa Department of Natural Resources issued a Section 401 water quality certification for RP39.

<<<<< 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 Secretary of the Army, has signed below.

G. Ward Lenz Digitally signed by G. Ward Lenz
 Date: 2022.09.16 06:51:02 -05'00'

16/Sep/2022

 Ward Lenz
 Chief, Regulatory Division
 U.S. Army Corps of Engineers, Rock Island District

 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



May 6, 2022

Mr. Ward Lenz
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 (Fill Material Placed in Waters of the United States for Targeted Water Quality Improvement Constructed/Restored Wetlands in Waters of the United States in the State of Iowa) CEMVR-OD-P-2021-0498

Dear Mr. Lenz,

The Iowa Department of Natural Resources (DNR) has examined the information furnished by the Rock Island District Corps of Engineers in the June 22, 2021 Joint Public Notice and the draft Regional Permit 39.

This conditional Section 401 Water Quality Certification is hereby granted for Regional Permit 39 by the DNR under the authority of Section 401 of the Federal Water Pollution Control Act (40 C.F.R. Part 121, effective September 11, 2020). The DNR certifies RP 39 (CEMVR-OD-P-2021-0498) because there is reasonable expectation that the discharge from the proposed projects will comply with Iowa's water quality requirements with the following conditions:

- (1) During construction and upon completion of the project, actions must be taken to prevent pollution affecting public health, fish, shellfish, wildlife, and recreation due to turbidity, pH, nutrients, suspended solids, floating debris, visible oil and grease, or other pollutants entering a water of the state. This condition will ensure permittees comply with Iowa's narrative water quality standards found at 567 IAC 61.3(2);
- (2) Equipment used in waters of the state shall be cleaned of all hazardous materials, pesticides, fuels, lubricants, oils, hydraulic fluids, or other construction-related, potentially hazardous substances before arriving on site. Wash water shall not be discharged into a water of the state. This condition will ensure permittees comply with Iowa's narrative water quality standards found at 567 IAC 61.3(2);
- (3) All cleared vegetative material shall be properly managed in such a manner that it cannot enter a water of the state and cause a violation of water quality standards. This condition will ensure permittees comply with Iowa's narrative water quality standards found at 567 IAC 61.3(2);
- (4) All construction debris shall be properly managed in such a manner that it cannot enter a water of the state. This condition will ensure permittees comply with Iowa's narrative water quality standards found at 567 IAC 61.3(2);

(5) Erosion shall be managed so that sediment is not discharged to a water of the state in a manner that causes a violation of water quality standards. This condition will ensure permittees comply with Iowa's narrative water quality standards found at 567 IAC 61.3(2);

(6) Riprap, treated lumber products, and temporary crossings shall consist of clean material free of coatings of potentially hazardous substances. No asphalt or petroleum-based material shall be used as or included in material placed in any water of the state or within the high-water table. This condition will ensure permittees comply with Iowa's narrative water quality standards found at 567 IAC 61.3(2); and

(7) Stockpiled dredged materials on the shore shall be managed so that sediment is not discharged in a manner that causes a violation of water quality requirements. This condition will ensure permittees comply with Iowa's narrative water quality standards found at 567 IAC 61.3(2).

If you have any questions about the certification or any conditions contained therein, please contact me at Christine.schwake@dnr.iowa.gov or call (515) 725-8399.

Sincerely,

**Christine
Schwake**

 Digitally signed by Christine
Schwake
Date: 2022.05.06 08:19:20 -05'00'

Christine Schwake
Environmental Specialist