

DEPARTMENT OF THE ARMY PERMIT
Regional Permit 41
Fill Material Placed in Waters of the United States for Commercial and Institutional Developments
In the State of Iowa

Permittee: General Public meeting the terms and conditions herein.

Number: CEMVR-RD-2020-643 (Regional Permit 41)

Expiration Date: May 1, 2026

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 (Corps) having jurisdiction over the permitted activity, or the appropriate official of that office, acting under the authority of the Commanding Officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

1. Authorized Work Limits.

A. Activities required for the construction, expansion, modification, or improvement of commercial and institutional developments. Including associated infrastructure and attendant features, which result in a total loss of no more than 2.0 acres of waters of the United States. The activity may not result in the loss of more than 1,000 linear feet of stream bed. The loss of stream bed is calculated from the ordinary high-water mark (OHWM) from the right descending bank to the left descending bank. In total, the loss of stream bed (no greater than 1,000 linear feet) plus any other losses of jurisdictional wetlands and waters caused by the activity cannot exceed, in any combination, a combined total loss of 2.0 acres of waters of the U.S. Activities may include, but are not limited to, building foundations and pads, roads, parking lots, garages, yards, utility lines, stormwater management facilities, septic systems, and wastewater treatment facilities. Examples of commercial developments include (but are not limited to) retail stores, industrial facilities, restaurants, hotels, stadiums, arenas, business parks, and shopping centers. Examples of institutional developments include (but are not limited to) schools, fire stations, government office buildings, judicial buildings, public works building, libraries, hospitals, and places of worship.

B. The proposal must be a single and complete project. The maximum impact limitations will be applied on a cumulative basis for activities that are part of a larger common plan of development or sale.

2. Project Location. All waters of the United States, including wetlands, (WUS) located within the state boundary of Iowa and the regulatory boundaries of the Rock Island District. 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 use on tribal lands.

3. Permit Conditions:

A. General Conditions:

- 1) The permittee must notify the District Engineer (DE), Rock Island District, for authorization of this Regional General Permit (RP). The notification must include detailed drawings and sufficient information to determine if the proposed work conforms to the criteria and conditions of the RP, as well as a mitigation plan (see Section D), if unavoidable stream or wetland impacts will occur as a part of the project. Department of the Army permit application (ENG Form 4345) should be used for this purpose and is available to download at the Rock Island District Corps Regulatory (District) webpage. If the Corps determines that the work meets the provisions of the RP and no extraordinary conditions exist that warrant evaluation as an individual permit, the proponent will be notified to proceed.
- 2) The time limit for submittals ends 60 days prior to the expiration of the RP, unless the RP is modified, reissued or revoked. 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. If you commence or are under contract to commence this activity before the date the RP is modified or revoked, you will have twelve months from this date to complete your activity under the present terms and conditions of this RP.
- 3) If the project impacts an Outstanding Iowa Water, an individual 401 Water Quality Certification must be obtained and permittee shall not begin work on the activity until a 401 is issued by the State or waived by the DE.
- 4) 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. If you sell the property associated by 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. 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.
- 5) 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.
- 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.

B. Special Conditions:

- 1) Riprap, if used for bank stabilization, shall be clean native fieldstone, clean quarry rock, or appropriately graded clean broken concrete with all reinforcing rods and/or wire cut flush with the surface of the concrete. 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 concrete pieces shall be appropriately graded and no piece shall be larger than 3 feet across the longest flat surface. No riprap shall be placed at a distance greater than 4 feet horizontally within or below the elevation contour line of the OHWM. Asphalt, broken concrete containing asphalt, petroleum based material, liquid concrete, trash, debris, and items such as car bodies are specifically excluded from this authorization. The material used for construction or discharged must be free from toxic pollutants in toxic amounts. If bank stabilization is occurring, streambanks should be sloped back to no steeper than a 2H:1V ratio.

- 2) This regional permit also authorizes temporary structures, fill, and work necessary to construct, expand, modify, or improve, commercial, and institutional developments, including associated infrastructure and attendant features. Temporary impacts must be the minimum necessary to achieve project objectives.
 - a. All temporary structures and fill shall be removed entirely no later than 30 days after they are no longer needed for construction activities.
 - b. Temporary fill materials, cleared vegetative materials, construction debris, and other fill not necessary for meeting the project purpose, must be disposed of at an upland area or licensed landfill as appropriate. The discharge location must be provided to the Corps as part of the application packet.
 - c. Temporary fills must consist of materials that will not be eroded by expected high flows. If materials might erode they must be removed prior to high flow events.
 - d. Areas affected temporarily must be returned to pre-construction contours and must be re-vegetated with native vegetation.
- 3) Measures must be taken for heavy equipment usage in wetland areas to minimize soil disturbance and compaction.
- 4) Any spoil material excavated, dredged, or otherwise produced, must not be returned to the waterway or wetlands but must be deposited in a self-contained area in compliance with all state statutes. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
- 5) Construction of stormwater management facilities, including but not limited to stormwater detention and retention basins, are authorized; however, the construction of a stormwater management facility in a WUS does not change the regulatory authority/designation of the basin/stream. Stormwater basins cannot be used for compensatory mitigation.
- 6) No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterway, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.
- 7) Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. No activity may occur in areas of concentrated shellfish populations.
- 8) If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
- 9) To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossing. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g. stream restoration or relocation activities).

C. Temporary Impacts/Restoration Requirements:

- 1) The permittee is required to replant all temporary construction right-of-way (ROW) located within wetlands to the standards stated in the Rock Island District (MVR) Regulatory Division Mitigation and Monitoring Guidelines.

- 2) Side slopes of a newly constructed channel will be no steeper than 2H:1V and planted with permanent, perennial, native vegetation if not armored.
- 3) If jurisdictional wetlands and/or streams will be excavated within the permit area, the permittee will side-cast and stockpile the topsoil (top 10-12 inches), if practicable and/or if site conditions allow, that is being removed during the initial construction, in order to re-establish the topsoil once construction is complete. The soil must be returned to its original contours and a re-established topsoil shall be present prior to the re-planting of vegetation. This ensures that the organic/hydric soils that were present prior to construction are returned to their natural condition and can provide for a fertile habitat to re-plant vegetation and increase the survival rate of any new habitat.

D. Mitigation:

- 1) If the permanent loss of wetland exceeds 0.10 acre or for streambed losses greater than 300 linear feet compensatory mitigation is required. Adherence to 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.
- 2) 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 WUS. For all permanent streambed losses greater than 300 feet, completion of the Iowa Stream Mitigation Method is required to determine adequate compensatory stream mitigation. The Corps has the final approval in determining the appropriate and practicable mitigation necessary. The discharge of fill material into WUS prior to Corps approval of the mitigation plan is prohibited.

E. Historic Properties/Archaeological:

- 1) Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). In cases where the DE determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places (National Register), the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) are met.
- 2) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of NHPA, permittees must provide the DE with the appropriate documentation to demonstrate compliance with those requirements.
- 3) Non-federal permittees must submit information to the DE if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register, including previously unidentified properties. For such activities, the information must state which historic properties may be affected by the proposed work and include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO), as appropriate, and the National Register (see 33 CFR 330.4(g)). The DE shall make a reasonable and good faith effort to ensure that appropriate identification efforts are carried out, which may include background research, consultation, history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the DE shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the

non-Federal applicant has identified historic properties which the activity may have the potential to cause effects, and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the DE either that the activity has no potential to cause effects, or that consultation under Section 106 of the NHPA has been completed.

- 4) The DE will notify the prospective permittee within 45 days of receipt of a complete application whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA Section 106 consultation is required, the non-Federal applicant cannot begin work until Section 106 consultation is completed.
- 5) Permittees should be aware that section 110k of the NHPA (16 U.S.C. 16 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

F. Endangered Species:

- 1) No activity is authorized under this RP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under Section 7 of the Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under this RP which may affect a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed to address the effects of the proposed activity on a listed species or critical habitat.
- 2) Federal permittees and their designated state agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the Corps with the appropriate documentation to demonstrate compliance with those requirements. The Corps will review the documentation and determine whether it is sufficient to address ESA compliance for the activity, or whether additional ESA consultation is necessary.
- 3) Non-federal permittees must provide the Corps with the appropriate documentation to demonstrate compliance with the ESA. If the authorized activity may have the potential to effect any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in designated critical habitat, permittee shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The DE will determine whether the proposed activity may affect or will have no effect on listed species and designated critical habitat.

- 4) Authorization of an activity by this regional general permit does not authorize the taking of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service (USFWS), both lethal and non-lethal takings of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the USFWS webpage.

G. Water Quality Certification: By letter dated January 6, 2021 the Iowa Department of Natural Resources issued Section 401 water quality certification for this regional permit.

The permittee understands and agrees that, if future operations by the United States requires the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army of his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

<<<< 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 the issuing 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 2 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: 2021.04.30 13:44:30 -05'00'

Ward Lenz
Chief, Rock Island District
Regulatory Branch

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 associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

Transferee

Date



January 6, 2021

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 41 (Fill Material Placed in Waters of the United States for Commercial and Institutional Developments in the State of Iowa) CEMVR-OD-P-2020-0643

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 May 28, 2020 Joint Public Notice and the draft Regional Permit 41.

This conditional Section 401 Water Quality Certification is hereby granted for Regional Permit 41 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 41 (CEMVR-OD-P-2020-0643) 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 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 riprap 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 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).

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
Environmental Specialist