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## **Appendix G: Clean Water Act Compliance**

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Mississippi River, Dubuque County Iowa  
CAP Section 14 Emergency Streambank Protection

### **Dubuque Forced Sewer Main**

Feasibility Phase

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## **1. CLEAN WATER ACT COMPLIANCE INTRODUCTION**

The U.S. Army Corps of Engineers (Corps), Rock Island District (District), is required to comply with Clean Water Act (CWA) Sections 401 and 404 for the *Continuing Authorities Program Section 14 Emergency Streambank Protection: Dubuque Forced Sewer Main Project* (Project). This appendix details the District and the City of Dubuque (City) justifications for why this Project meets the conditions and requirements of CWA Nationwide Permit (NWP), *Maintenance Activities*.

## **2. PROJECT PURPOSE**

The Project seeks to protect and prevent damages caused by erosion to the right descending bank of the Mississippi River where the Dubuque forced sewer main is located. The goal is to restore the shore bank to its original state to prevent the forced sewer main from sustaining damages resulting in the main going offline or large amounts of wastewater discharged into the river.

The Project Delivery Team (PDT) performed a thorough plan formulation process to identify potential alternatives to address the Project objectives. Many alternatives were considered, evaluated, and screened in producing a final array of alternatives. The PDT subsequently riprap revetment as the Tentatively Selected Plan (TSP). The PDT developed this alternative from an array of Project features. The Main Report details each feature of this alternative as well as those features the District also considered. The TSP includes the following features:

- Placing IA DOT Class C Riprap along the eroded bank line
- Stone bedding thickness a minimum of 12" about the 42" forced sewer main
- A 6-inch-thick section of bedding stone would be used everywhere else in the project

A maintenance access drive will not be feasible due to the limited space available to avoid impacts to the sewer main and keep a buffer with the railroad tracks. The staging area is proposed to be at Ice Harbor on city-owned property.

The proposed Project is located on the southern edge of Dubuque, Dubuque County, Iowa on the right descending bank of the Upper Mississippi River between river miles (RM) 577.7 and 578.4. The Project area includes the entire shoreline south of the Dubuque levee and terminates just north of the parking lot at the end of Julien Dubuque Drive. (Figure G-1).

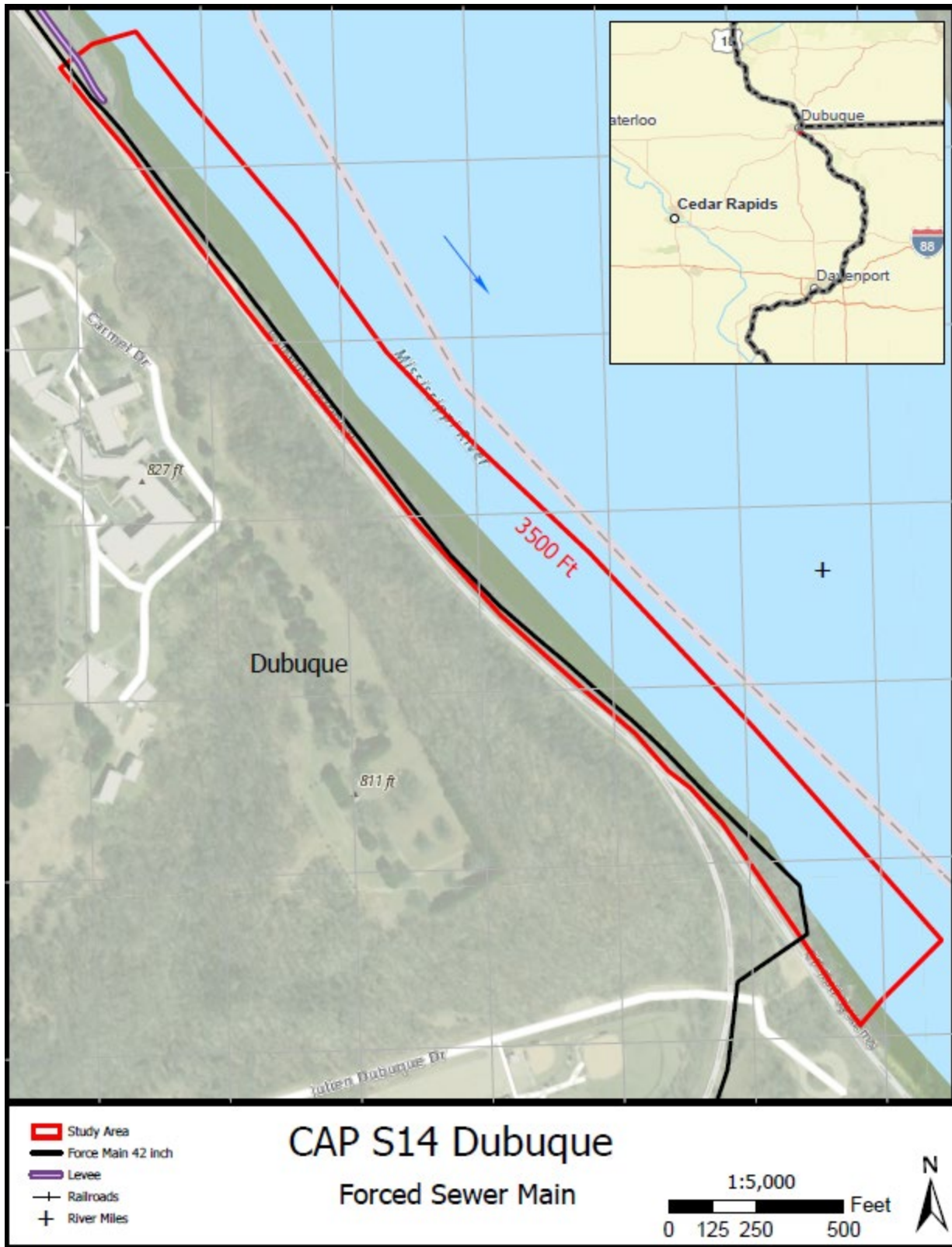


Figure G-1. Project Location

### **3. AUTHORITY**

In the 1880s, Congress directed the Corps to prevent dumping and filling in the nation's harbors, a program that was vigorously enforced by the engineers.

In the Rivers and Harbors Act of 1899, Congress gave the Corps the authority to regulate most kinds of obstructions to navigation, including hazards resulting from effluents (under the so-called Refuse Act, but actually Section 13 of the 1899 legislation).

Within its current regulatory program, the Corps has authority over work on structures in navigable waterways under Section 10 of the Rivers and Harbors Act of 1899 and over the discharge of dredged or fill material under Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500). This latter requirement applies to wetlands and other valuable aquatic areas throughout the United States. The Corps' current regulatory mission is a natural product of historical evolution, for the Corps has been exercising regulatory responsibilities for over a hundred years.

The Iowa Department of Natural Resources (IA DNR) promulgated authority to issue CWA Section 401 Water Quality Certification certifying the Project's discharge will comply with Iowa's water quality standards on a case by case basis. However, for certain nationwide permits, the IA DNR issued 401 Water Quality Certification for all projects meeting the conditions and limits of the NWP. Each project must also comply with the IA DNR's conditions specific to each NWP.

On January 6, 2017, the Corps published in the Federal Register (82 FR 1860), the Final Rule for the Nationwide Permits Program under the Rivers and Harbors Act of 1899; the Clean Water Act; and the Marine Protection, Research and Sanctuaries Act. These Nationwide Permits became effective on March 19, 2017. On January 13, 2021, the Corps published a final rule in the Federal Register (86 FR 2744). This final rule announced the reissuance of 12 existing NWPs and four new NWPs, as well as the reissuance of NWP general conditions and definitions with some modifications. Both rules affected the permit conditions for NWP 3.

The District used both approved versions of the NWP language, terms, and conditions.

### **4. THE PERMITTING PROCESS**

The Corps requires permits for building or developing in, on, or over wetlands and waters. The Corps regulatory program permit evaluation process results in permit decisions balancing the need for proposed development with protection of the nation's aquatic environment. The level of the Corps evaluation is commensurate with the level of the environmental impacts and the aquatic functions and values involved in the particular area being impacted. Authorization can range from minor permits such as Nationwide and Programmatic and Regional General Permits to Individual Permits. Impacts to higher ecological value areas will be subject to a much more detailed evaluation and a strong focus on avoidance of impacts to the aquatic environment. In the case of this Project, the PDT's CWA compliance procedures include:

- Consulting with the Rock Island District Regulatory Division, which is located at the District headquarters office in Rock Island, Illinois. This consultation concluded the Project preliminarily complies with NWP 3 and not an individual 404 permit.
- Demonstrating why NWP 3 would be the appropriate level of compliance. This appendix outlines this information the District’s Regulatory office reviewed to make their final concurrence/nonoccurrence determination.
- Having the District’s Regulatory Division provide a written statement of concurrence, the information herein satisfies the conditions of NWP 3 (figure G-2).

**From:** Zehr, Matthew A CIV USARMY CEMVR (USA)  
**Sent:** Thursday, June 24, 2021 8:26 AM  
**To:** Hoffmann, Kelsey A CIV (USA)  
**Subject:** RE: Dubuque CAP Section 14

Thanks Kelsey,

This looks like a Nationwide Permit #3 for Maintenance. Regulatory has no issues with moving forward on this one and applying the permit for your actions.

Thank you,

Matt Zehr  
 Chief, Western Branch  
 Regulatory Division  
 Rock Island District

**Figure G-2:** Rock Island Regulatory Division Written Statement of Concurrence

## 5. NATIONWIDE PERMIT COMPLIANCE DOCUMENTATION

To use an NWP, the Project must comply with four sets of conditions:

- 2017 General NWP conditions for NWPs (Table G-1),
- 2020 Iowa Regional conditions (Table G-2)
- In a letter dated March 3<sup>rd</sup>, 2017, the Iowa DNR conditioned Section 401 Water Quality Certification conditions applicable to NWP 3. Department of the Army authorization pursuant to Section 404 of the CWA (33U.S.C.1344) under NWP 3 will be subject to the Iowa DNR conditions (Table G-3).
- Table G-4 shows the December 14, 2020, additional Iowa DNR Section 401 Water Quality Certification conditions for NWP 3 and the District’s compliance response.

For the full language of NWP permit conditions and NWP 3 conditions, refer to the District’s Regulatory Branch website for *Nationwide Permits – Iowa* link on the (<https://www.mvr.usace.army.mil/Missions/Regulatory/Permits/>).

Tables G-1 through G--4 show the District’s compliance responses to each permit condition.

**Table G-1. 2017 General NWP Conditions and Compliance Responses**

| #  | General NWP Condition  | Compliance Response   |
|----|--|---|
| 1  | Navigation   | No navigation impacts expected. The Project would not impact barge operation, safety, or tow handling.  |
| 2  | Aquatic Life Movements   | No measurable impacts to aquatic life movements expected.   |
| 3  | Spawning Areas   | No measurable impacts to spawning areas   |
| 4  | Migratory Bird Breeding Areas                                      | No measurable impacts to migratory bird breeding areas.   |
| 5  | Shellfish Beds   | No shellfish beds present in planning area  |
| 6  | Suitable Material  | Water control features would require standard construction materials.   |
| 7  | Water Supply Intakes   | No public water supply intakes present in planning/impact area  |
| 8  | Adverse Effects from Impoundments                                  | No applicable   |
| 9  | Management of Water Flows  | Project features would not measurably impact fluctuating river levels.  |
| 10 | Fills Within 100-Year Floodplains                                  | This Project would comply with applicable FEMA approved floodplain management requirements.   |
| 11 | Equipment  | Use of heavy equipment would be done in dry conditions and would not impact the water column clarity or water quality standards   |
| 12 | Soil Erosion and Sediment Controls                                 | The Project would require standard construction guidelines to avoid erosion and sediment resuspension.  |
| 13 | Removal of Temporary Fills   | Not Applicable  |
| 14 | Proper Maintenance   | The City of Dubuque would maintain Project features over the 50-year Project life.  |
| 15 | Single and Complete Project  | This is a single and complete project   |
| 16 | Wild and Scenic Rivers   | Not Applicable  |
| 17 | Tribal Rights  | Not Applicable  |
| 18 | Endangered Species   | In Progress   |
| 19 | Migratory Birds and Bald and Golden Eagles                         | No eagle nesting or roosting areas would be impacted or disturbed from this action  |
| 20 | Historic Properties  | Full Compliance   |
| 21 | Discovery of Previously Unknown Remains and Artifacts              | During construction, if the City discovers any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, it will immediately notify the district engineer of what it found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. |
| 22 | Designated Critical Resource Waters                                | This Project would comply with the conditions of Designated Critical Resource Waters  |
| 23 | Mitigation   | This Project would not require wetland mitigation.  |
| 24 | Safety and Impoundments Structures                                 | If impoundment structures are needed either on a temporary or permanent basis, the City will ensure all impoundment structures are safely designed.   |
| 25 | Water Quality  | This Project would comply with the Iowa DNR water quality standards (See Table I-3, page I-10.)   |
| 26 | Coastal Zone Management  | Not Applicable  |
| 27 | Regional and Case-By-Case Conditions                               | Not Applicable  |
| 28 | Use of Multiple Nationwide Permits                                 | The Project PDT requests only NWP 3.  |
| 29 | Transfer of NWP Verifications                                      | The PDT anticipates the City of Dubuque ownership of the Project site for the 50-year Project life.   |
| 30 | Compliance Certification   | The City of Dubuque would comply with submitting the compliance certification upon receipt of the NWP.  |
| 31 | Activities Affecting Structure or Works Built by the United States | Not Applicable  |
| 32 | Pre-Construction Notification                                      | Full compliance expected. This project does not affect navigable waters of the United States.   |

**Table G-2. Iowa Regional Conditions 2021 Nationwide Permit Conditions and Compliance Responses**

| # |  | Compliance Response  |
|---|--|--|
| 1 | Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.  | Not applicable. No new channels would be constructed.  |
| 2 | For projects that impact an Outstanding National Resource Water, Outstanding Iowa Water, fens, bogs, seeps, or sedge meadows, a Pre-Construction Notice in accordance with General Condition No. 32 and an Individual Section 401 Water Quality Certification will be required.  | Not applicable. The Project does not affect Outstanding National Resource Water, Outstanding Iowa Water, fens, bogs, seeps, or sedge meadows.      |
| 3 | Any bank stabilization activity involving a method that protrudes from the bank contour, such as jetties, stream barbs and/or weirs, will require a Pre-Construction Notice in accordance with General Condition No. 32.   | Not applicable. This project does not include permanent structure that protrude from the bank contour, such as jetties, stream barbs and/or weirs. |
| 4 | Beyond what is described in General Condition #6, suitable fill material shall consist of clean materials, free from debris, trash, and other deleterious materials. If broken concrete is used as riprap, all reinforcing rods must be cut flush with the surface of the concrete, and individual pieces of concrete shall be appropriately graded and not exceed 3 feet in any dimension. Asphalt, car bodies, and broken concrete containing asphalt, and liquid concrete are specifically excluded.  | All materials used will be free from debris, trash, and other deleterious materials  |
| 5 | No non-native, invasive or other plant species included on the Corps "Excluded Plant List" shall be planted for re-vegetation or stabilization purposes, with the exception of any species that hold particular cultural or traditional significance to the Meskwaki Nation (the Sac and Fox Tribe of the Mississippi in Iowa). The plant list can be found on the Corps website at: <a href="http://www.mvr.usace.army.mil/Missions/Regulatory.aspx">http://www.mvr.usace.army.mil/Missions/Regulatory.aspx</a> . To prevent the spread of non-native and/or invasive plant species, the permittee shall ensure that equipment to be utilized in Waters of the United States is cleaned before arriving on site. Wash water shall not be discharged into any wetland, waterway, or any other surface water conveyances. | No plantings are planned for stabilization.  |
| 6 | All authorizations requested by applicants other than the Tribal Authority for use within lands under the jurisdiction of the Sac and Fox Tribe of the Mississippi in Iowa require preconstruction notification to the District Engineer and coordination with the Tribal Authority.   | Not applicable. The Project does not affect or is on any lands under the jurisdiction of the Sac and Fox Tribe of the Mississippi in Iowa.         |
| 7 | For Nationwide Permit 14, all proposed projects that result in the loss of greater than 300 linear feet of streambed located within Waters of the U.S., as defined in the definitions contained in the Nationwide Permits, require a Pre-Construction Notice in accordance with General Condition No. 32 to the District Engineer.   | Nationwide Permit #14 is not applicable for this project.  |



**Table G-3. March 3, 2017 Iowa DNR Section 401 Water Quality Certification for NWP Conditions and Compliance Responses**  
(per 33 U.S.C. par. 1251 et. seq)

| # | Iowa DNR Section 401 Water Quality Certification Conditions (March 3, 2017)  | Compliance Response  |
|---|--|--|
| 1 | Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.  | Not applicable. No new channels would be constructed.  |
| 2 | Nationwide permits with mitigation may require recording of the nationwide permit and pertinent drawings with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and require the permittee to provide proof of that recording to the Corps.   | All equipment used in the water will be clean and clear of the listed hazardous materials and/or aquatic vegetation.   |
| 3 | Mitigation shall be scheduled prior to, or concurrent with, the discharge of dredged or fill material into waters of the United States, unless an alternate timeline is specifically approved in the authorization.  | All vegetation/tree removal debris will be disposed of offsite.  |
| 4 | For newly constructed channels through areas that are unvegetated, native grass filter strips, or a riparian buffer with native trees or shrubs a minimum of 35 feet wide from the top of the bank must be planted along both sides of the new channel. A survival rate of 80 percent of native species shall be achieved within three years of establishment of the buffer strip.                           | All construction debris will be disposed of offsite.   |
| 5 | For single-family residences authorized under nationwide permit 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed 1/4 acre.  | Not applicable. The NWP #29 is not applicable for this project.  |
| 6 | For nationwide permit 46, the discharge of dredged or fill material into ditches that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.  | Not applicable. The NWP #46 is not applicable for this project.  |
| 7 | For projects that impact an Outstanding National Resource Water, Outstanding Iowa Water, fens, bogs, seeps, or sedge meadows, a Pre-Construction Notice in accordance with General Condition No. 32 and an Individual Section 401 Water Quality Certification will be required.  | Not applicable. This project does not include any dredging.  |
| 8 | For nationwide permits when the Corps' District Engineer has issued a waiver to allow the permittee to exceed the limits of the nationwide permit, an Individual Section 401 Water Quality Certification will be required.   | Not applicable. This project does not include any dredging.  |
| 9 | Operation of heavy equipment within the stream channel should be avoided. If instream work is unavoidable, it shall be performed in such a manner as to minimize the duration of the disturbance, turbidity increases, substrate disturbance, bank disturbance, and disturbance to riparian vegetation. This condition does not further restrict otherwise authorized drainage ditch maintenance activities. | All in water construction activities will be completed in an efficient manner to avoid disturbance, turbidity increases, substrate disturbance, bank disturbance, and disturbance to riparian vegetation |

|           |  |   |
|-----------|--|---|
| <b>10</b> | Any bank stabilization activity involving a method that protrudes from the bank contour, such as jetties, stream barbs and/or weirs, will require a Pre-Construction Notice in accordance with General Condition No. 32.   | Not applicable  |
| <b>11</b> | Beyond what is described in General Condition # 6, suitable fill material shall consist of clean materials, free from debris, trash, and other deleterious materials. If broken concrete is used as riprap, all reinforcing rods must be cut flush with the surface of the concrete, and individual pieces of concrete shall be appropriately graded and not exceed 3 feet in any dimension. Asphalt, car bodies, and broken concrete containing asphalt, and liquid concrete are specifically excluded.   | All materials used will be free from debris, trash, and other deleterious materials |
| <b>12</b> | No non-native, invasive or other plant species included on the Corps "Excluded Plant List" shall be planted for re-vegetation or stabilization purposes, with the exception of any species that hold particular cultural or traditional significance to the Meskwaki Nation (the Sac and Fox Tribe of the Mississippi in Iowa). The plant list can be found on the Corps website at: <a href="http://www.mvr.usace.army.mil/Missions/Regulatory.aspx">http://www.mvr.usace.army.mil/Missions/Regulatory.aspx</a> . To prevent the spread of non-native and/or invasive plant species, the permittee shall ensure that equipment to be utilized in Waters of the United States is cleaned before arriving on site. Wash water shall not be discharged into any wetland, waterway, or any other surface water conveyances. Because of the temporary nature of this causeway, no plantings are necessary for stabilization. | No plantings are planned for stabilization.   |

**Table G-4.** December 14, 2020 IA DNR Section 401 Water Quality Certification Conditions and Compliance Responses

| # | Iowa DNR Section 401 Water Quality Certification Conditions (December 14, 2020)  | Compliance Response  |
|---|--|--|
| 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. | All appropriate actions will be taken to prevent any pollution affecting public health, wildlife health, and/or water quality. |
| 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.                     | All equipment used in the water will be clean and clear of the listed hazardous materials and/or aquatic vegetation.           |
| 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.   | All vegetation/tree removal debris will be disposed of offsite.  |
| 4 | All construction debris shall be properly managed in such a manner that it cannot enter a water of the state   | All construction debris will be disposed of offsite.   |
| 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.  | Project will improve shoreline stability to prevent further erosion.   |
| 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.   | Riprap used would be IA DOT Class C Riprap. Material will be free of potentially hazardous coatings/substances.                |
| 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   | Not applicable. This project does not include any dredging.  |
| 8 | Hydraulically dredged material shall be managed to ensure the return water meets water quality standards found at 567 IAC 61.3(2)  | Not applicable. This project does not include any dredging.  |

## **5. CONCLUSION**

The District concludes this Project meets the conditions of Section 404 of the Clean Water Act by an existing Department of Army NWP for maintenance (NWP 3), as described in the January 6, 2017, Federal Register, Reissuance of Nationwide Permits; Notice (86 FR 2744). Section 401 water quality certification has been issued for Nationwide Permit (NWP) 3 – Maintenance by the Iowa Department of Natural Resources and therefore would apply to the proposed action.

The District and the City of Dubuque realize NWP 3 may be modified, reissued, or revoked prior to project construction. The District will remain informed of changes to the NWPs. If construction activities are not completed prior to 12 months from the date of the modifications or revocation of the NWP, the team will reevaluate the Project's 404 compliance status and will coordinate the Project with the District's Regulatory Branch. The Project will be in full compliance with the current CWA regulations prior to any construction and activities.