



**US Army Corps  
of Engineers**®  
Rock Island District

# PUBLIC NOTICE

Applicant: U.S. Army Corps of Engineers

Date: June 22, 2021

CEMVR-2021-0498

Expires: July 21, 2021  
Section 404

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**Joint Public Notice  
US Army Corps of Engineers  
Iowa Department of Natural Resources**

**Re-Issuance of Regional Permit 39  
Targeted Water Quality Improvement Constructed/Restored Wetlands  
In the State of Iowa**

- 1. Applicant:** The U.S. Army Corps of Engineers, Rock Island District, with regulatory jurisdiction in Iowa is pursuing the development of this regional permit.
- 2. Project Location:** The proposed regional general permit (RGP) will authorize work associated with the discharge of dredged and/or fill material into all waters of the United States (WUS), including wetlands, under the jurisdiction of the Rock Island District (District) located within the State of Iowa, excluding tribal lands.
- 3. Project Description:**

A. The purpose of these projects is for activities in Waters of the U.S., including jurisdictional wetlands, that are part of a watershed strategy to improve water quality. This will be implemented by limiting the amount of agricultural pollutants (mainly nitrates) entering the nation's rivers and ultimately, the Gulf of Mexico, and restore functions that support and/or enhance aquatic biological resources at the project site. The constructed or restored wetlands will slow storm water and agricultural drain tile water runoff and provide habitat for microorganisms which will allow a large percentage of nitrates to denitrify before they enter larger waterways, control erosion, and improve wildlife habitat. Wetlands, through the accumulation of organic matter, also act as sinks for nutrients and other chemical compounds, reducing the amounts of these substances in the water column. The activity must be designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the U.S. to the maximum extent practicable at the project site.

B. This Regional Permit will authorize the placement of fill material in waters of the U.S. in the state of Iowa to create wetlands and ponded water through the construction of earthen embankments and/or dams when funding or technical assistance is being provided through the Iowa Department of Agriculture and Land Stewardship (IDALS) with Corps approval in conjunction with a provided watershed plan where the Corps assumes the lead federal agency role in regards to NEPA.

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

#### **4. Permit Conditions:**

##### **A. General Conditions**

1) The time limit for completing the work authorized ends when Regional General Permit 39 expires, unless otherwise specified. If you have started the work or are under contract to begin this activity before the general permit expires, you will have twelve (12) months from that expiration date to complete the activity under the terms and conditions of this general permit.

2) The permittee must notify the District Engineer, Rock Island District, for authorization of this general permit. The notification must include detailed drawings and sufficient information to determine if the proposed work conforms to the criteria and conditions of the general permit, as well as a mitigation plan (see special condition 18), if unavoidable stream or wetland impacts will occur as a part of the project. Department of the Army (DA) permit application (ENG Form 4345) may be used for this purpose. If the Corps determines that the work meets the provisions of the general permit and no extraordinary conditions exist that warrant evaluation as an individual permit, the proponent will be notified to proceed.

3) You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party, in compliance with General Condition 5 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

4) If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

5) If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

6) If a conditioned Individual Section 401 Water Quality Certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

7) You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being, or has been, accomplished in accordance with the terms and conditions of your permit. Corps personnel will notify the landowner and/or IDALS a minimum of 48 hours prior to a planned on-site inspection.

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

- 1) The Corps must be the Lead Agency for all projects authorized under this Regional Permit.
- 2) The structures will be strategically located and designed to pool tile drainage water which will remove nitrates and herbicides from that water.
- 3) Wetlands that are inundated with water greater than 3 feet in depth are considered conversion, therefore, those wetlands will be considered lost.
- 4) The area between the maximum flood pool elevation and the normal pool elevation will be vegetated with a native wetland seed mix.
- 5) 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 percent of the total vegetative cover shall be vegetated with non-native and/or invasive species.
- 7) Adverse effects on the aquatic system due to temporarily accelerating the passage of water and/or restricting its flow during the construction of an impoundment must be minimized to the maximum extent practicable. Construction activities are encouraged to be completed during dry periods when low flows are expected.
- 8) This permit authorizes any future discharge of dredged or fill material associated with periodic maintenance and the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities) even if the original construction of the structure did not require a Department of the Army permit. The reversion must occur per the Easement or the Easement executed between the Drainage District and the landowner, even if the discharge occurs after this permit expires. Reversion of the area, includes wetlands that were restored, enhanced, or created on prior converted cropland that has not been abandoned in accordance with binding agreements involving the landowner, IDALS, and the Drainage District in the county in which the wetland is located. The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Corps as they are executing the permit. Before any reversion activity, the permittee or IDALS must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps' regulatory requirements are at that future date.
- 9) This Regional Permit authorizes all activities related to the repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill provided that the structure or fill is not to be put to uses differing from those originally specified in the application. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary effects resulting from such repair, rehabilitation, or replacement and are minimal are authorized by this permit. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit.

10) This permit does not authorize new stream channelization or stream relocation. This permit does not authorize more than minimal temporary degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increased flooding.

11) Any spoil material excavated, dredged, or otherwise produced by the activity will not be returned to the waterway, but will be deposited in an upland non-wetland site.

12) Clearing of vegetation, including trees located in or immediately adjacent to waters of the U.S., shall be limited to that which is in the pool or that which is absolutely necessary for construction of the project. All vegetative clearing material shall be removed to an upland, non-wetland disposal site.

13) Where project plans include armoring, acceptable material will include clean: riprap, field stone, quarry rock, and broken Portland Cement Concrete (PCC). When using broken PCC, all exposed reinforcing steel rod or mesh must be completely removed. If removal is not possible, the reinforcement material shall be cut flush with the surface of the concrete prior to placement. It shall be the permittee's responsibility to maintain the riprap such that any reinforcement material that becomes exposed in the future is removed. The use of asphalt or other solid waste is not authorized.

14) If at the discretion of the District Engineer, corrective measures are deemed necessary to protect the public interest before, during, and after completion of project construction, permittees shall complete such corrective actions as directed by the District Engineer.

15) 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.

16) Mitigation:

a) 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 site. 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.

b) Compensatory mitigation may be required for stream or wetland impacts associated with any project which requires notification to the Corps. In general, compensatory mitigation will be required for all wetland losses that exceed 1/10-acre and for stream losses greater than 300 linear feet with flow regimes that are perennial or contain permanent pools. 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.

c) 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.

d) 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.

e) 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).

17) 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.

18) 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.

19) 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.

20) Water Quality Certification. The following conditions are considered to be part of this Regional Permit for Section 401 Water Quality Certification.

a) For any project that occurs on a water body listed in the Iowa Department of Natural Resources (IDNR) “Special Waters of Concern” list, the Corps of Engineers will contact the IDNR for project-specific comments/conditions to protect the water quality/aquatic resources of the site prior to finalizing the permit decision. The list and maps of Special Concern can be found on the IDNR website.

b) An individual Section 401 Water Quality Certification will be required for any project occurring within an Outstanding Iowa Water or its designated watershed/drainage area. The list and maps of the Outstanding Iowa Waters and their designated watersheds/drainage areas can be found on the IDNR website.

c) An individual Section 401 water quality certification will be required for projects that impact fens, bogs, seeps, or sedge meadows.

## **5. Agency Review:**

A. Department of the Army, Corps of Engineers. The Department of the Army application is being processed under the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344).

B. State of Iowa. The project plans have been submitted to the Iowa Department of Natural Resources for state certification of the proposed work in accordance with Section 401 of the Clean Water Act. The certification, if issued, will express the Department's opinion that the proposed activity will comply with Iowa's water quality standards (Chapter 61 IAC). The applicant has also applied for authorization of work in the floodplain pursuant to Chapter 455B of the Iowa Code and other applicable state permits. Written comments concerning possible impacts to waters of Iowa should be addressed to: Iowa Department of Natural Resources, 502 E. 9th Street, Des Moines, Iowa 50319. A copy of the comments should be provided to the Corps of Engineers office (see paragraph 11. of this public notice for address).

**6. Historical/Archaeological:** As Lead Federal Agency, the Corps will fulfill the collective responsibilities set forth in the National Historic Preservation Act (NHPA) and will achieve compliance with Section 106 of the NHPA utilizing established agency procedures. 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.

**7. Endangered Species:** As lead Federal Agency, the Corps will fulfill the collective responsibilities set forth in the Endangered Species Act (ESA) and will achieve compliance with that Act. This permit does not authorize the 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 noncompliance with this permit. Authorization under this RGP 39 is not considered effective until ESA compliance is achieved.

**8. Public Interest Review:** The decision whether to issue the Corps permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

**9. Who Should Reply:** The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. These statements should be submitted on or before the expiration date specified at the top of page 1. These statements should bear upon the adequacy of plans and suitability of locations and should, if appropriate, suggest any changes considered desirable.

**10. Public Hearing Requests:** Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided.

**11. Reply to the Corps.** Comments concerning the Corps permit should be addressed to the District Engineer, US Army Corps of Engineers, Rock Island District, ATTN: RD-W (Alex Meincke), Clock Tower Building - Post Office Box 2004, Rock Island, Illinois 61204-2004. For additional information Contact **Mr. Alex Meincke (309-794-5368)** or email: [alexander.c.meincke@usace.army.mil](mailto:alexander.c.meincke@usace.army.mil).

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Mr. Matthew A. Zehr  
Chief, Western Branch  
Regulatory Division

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