



PUBLIC NOTICE

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

Applicant: U.S. Army Corps of Engineers Date: September 29, 2021
CEMVR-RD-2021-1227 Expires: October 28, 2021
Section 404 & 10

**Joint Public Notice
US Army Corps of Engineers
Illinois Environmental Protection Agency
Proposed Issuance of General Permit 38
Linear Transportation Crossings in the State of Illinois**

In accordance with Federal regulations published in the November 13, 1986 Federal Register, under 33 CFR Parts 325.1 to 325.10, the Rock Island District (lead district in Illinois), in conjunction with the St. Louis District, Louisville District, Chicago District, and the Memphis District, propose to issue General Permit 38 which would authorize discharges of dredged or fill material in association with bridge construction activities in waters of the United States within the State of Illinois. This permit would be issued under the authority of Section 404 of the Clean Water Act (33 USC 1344) and Section 10 of the Rivers and Harbors Act of 1899.

1. Proposal. The U.S. Army Corps of Engineers proposes to issue a regional permit for linear transportation project construction activities that result in impacts to waters of the United States. The regional permit could be utilized for linear transportation projects that meet the current conditions of Nationwide Permit 14. The regional permit would also authorize certain discharges of dredged or fill material that currently exceed the limitations of Nationwide Permit 14.

2. Authorized Work.

Proposed Limits.

- A. Activities required for the construction, expansion, modification, or improvement of linear transportation projects that result in impacts of up to 2 acres of waters of the United States.
- B. Temporary fills for construction are authorized.
- C. The affected reach of stream must occur within 500 feet upstream and downstream of the centerline of the roadway (existing channel length), with a maximum distance of existing channel length permanently impacted not to exceed 2,000 feet.

3. Project Location. All waters of the United States in Illinois within the regulatory boundaries of the Rock Island District, St. Louis District, Chicago District, Louisville District, and Memphis District.

4. Permit Conditions:

A. General Conditions:

- 1) The time limit for completing the work authorized ends is the expiration date of the permit. If underway or under contract by expiration date, you have one year to complete your

project. 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 two months before that date is reached.

- 2) You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party, in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
- 3) If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
- 4) If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
- 5) If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
- 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) All work authorized under this regional permit will be in association with bridge, culvert, or roadway construction across waters of the United States.
- 2) Riprap shall be clean native fieldstone, clean quarry run 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. The width for placing a riprap toe in the streambed will vary depending on the size of the riprap used (see attached drawing). Asphalt, broken concrete containing asphalt, petroleum-based material, and items such as car bodies are specifically excluded from this authorization.
- 3) Material used as temporary fill for access, cofferdams, or other temporary structures required for the construction of highway crossings shall be included in the project plans or specifications and shall be clean, appropriately sized material (less than 15 percent fines passing a Number 200 US sieve) and shall be free of loam, sod, and other deleterious materials.
- 4) All temporary structures and fill will be removed completely no later than 30 days after they are no longer needed for construction activities. Temporary fill materials; cleared vegetative materials; construction debris, including old bridge materials; and other fill not necessary for meeting the project purpose must be disposed of at an upland area or licensed landfill as appropriate.

- 5) This permit does not authorize construction in environmentally sensitive areas, such as mussel beds, fish spawning areas, waterfowl nesting areas, fens, bogs, seeps, or sedge meadows.
- 6) Minor stream shaping and channel realignment is authorized where necessary to provide adequate flow conveyance and proper alignment of the channel through the bridge or culvert. Such activities must occur within 500 feet upstream and downstream of the centerline of the pre-existing roadway (existing channel length), with a maximum distance of existing channel length impacted (filled or abandoned) not to exceed 2,000 feet.
- 7) Compensatory mitigation may be required for any stream or wetland impacts, however, for projects impacting jurisdictional wetlands or other special aquatic sites, the permittee will provide a mitigation plan for approval which follows the regulations published in the Federal Register dated April 10, 2008 under 33 CFR Parts 325 and 332 and 40 CFR Part 230 entitled "Compensatory Mitigation for Losses of Aquatic Resources; Final Rule". Permittees must take all practicable measures to avoid and minimize impacts to waters of the United States by both temporary and permanent fills. Once such measures are taken, no more than 2 acres of wetland area and 2,000 feet of jurisdictional stream may be permanently impacted through the discharge of dredged or fill material in conjunction with each road crossing project. Compensatory wetland mitigation is required if the loss of wetland exceeds 0.10 acre. Mitigation must be adequate to offset unavoidable impacts or losses to regulated waters of the United States. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:
 - a. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., onsite).
 - b. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.
 - c. For stream and wetland losses of 0.10 acre or less the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.

The amount of mitigation required will be determined during review for authorization under this permit as per the mitigation rule requirements. Existing wetland banks should be utilized (where appropriate) to compensate for wetland impacts. Prior to commencing land disturbing activities, the applicant shall submit documentation of the purchase/allocation of mitigation credits from the appropriate wetland bank. Specific mitigation conditions to ensure mitigation success will be included on a case-by-case basis in the authorization letter accompanying this permit. Measures must be taken for heavy equipment usage in wetland areas to minimize soil disturbance and compaction. All exposed soils and other fills as well as any work below the ordinary high-water mark must be permanently stabilized at the earliest practicable date using permanent native vegetation, bioengineering methods, or armoring.

- 8) Any excavation or placement of temporary or permanent fill must be performed in a way that would not result in the physical destruction of important fish spawning areas, including smothering of downstream spawning areas via turbidity.
- 9) Petroleum products, other chemicals, and other unsuitable materials (e.g. trash, debris, asphalt, etc.) will be prevented from entering water bodies, streams, and wetlands.
- 10) Appropriate soil erosion and sediment control measures must be used and maintained during project construction. Erosion control and sediment control features (i.e. silt fences, silt ditches, silt dikes, silt basins etc.) must be installed to provide continuous control throughout the construction and post construction period as well as the re-vegetation of all disturbed areas upon project completion.
- 11) Temporary and permanent structures must be installed to maintain low flow conditions and to pass normal and expected high flows.
- 12) Historic Properties.
 - a. 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 District Engineer(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.
 - b. Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the NHPA. Permittees must provide the DE with the appropriate documentation to demonstrate compliance with those requirements.
 - c. Non-federal permittees must submit information to the district engineer 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) 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.
 - d. 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.

- e. Permittees should be aware that section 110k of the NHPA (16 U.S.C. 16470h-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. Discovery of Previously Unknown Remains and Artifacts. 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 district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the Nation Register of Historic Places.

13) Endangered Species: No activity is authorized under this Regional Permit which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species that is proposed for such designation, as identified under the Federal 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 the Regional Permit which “may affect” a listed species or critical habitat, unless Section 7 consultation with the U.S. Fish and Wildlife Service has been completed to address the effects of the proposed activity on a listed species or critical habitat. Federal 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 Regional Permit activity, or whether additional ESA consultation is necessary. Non-Federal permittees must provide the Corps with the appropriate documentation to supplement the Corps determination on whether the proposed activity “may affect” or will have “no effect” to listed species or critical habitat. The Corps will review all the available information and determine whether it is sufficient to address ESA compliance for the Regional Permit activity, or whether additional ESA consultation is necessary.

5. State of Illinois. The regional permit is being coordinated with the IEPA for water quality certification, or waiver thereof, for the proposed activity in accordance with Section 401 of the Clean Water Act. Certification or waiver indicates that IEPA believes the activity will not violate applicable water quality standards. The review by the IEPA is conducted in accordance with the Illinois water quality standards under 35 Illinois Administrative Code Subtitle C. The water quality standards provide for the IEPA to review individual projects by providing an antidegradation assessment, which includes an evaluation of alternatives to any proposed increase in pollutant loading that may result from this activity. The “Fact Sheet” containing the antidegradation assessment for this proposed project may be found on the IEPA’s web site, at <http://www.epa.illinois.gov/public-notice/index>. In the event that the IEPA is unable to publish the “Fact Sheet” corresponding to the timeframe of this

Joint Public Notice, a separate public notice and “Fact Sheet” will be published by the IEPA at the web site identified above. You may also obtain a copy of the “Fact Sheet” by contacting the IEPA at the address or telephone number shown below. Written comments specifically concerning possible impacts to water quality should be addressed to: Illinois Environmental Protection Agency, Bureau of Water, Watershed Management Section, 1021 N. Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276. A copy of the written comments should be provided to the Corps of Engineers. If you have any questions, please contact IEPA at (217) 782-3362.

6. Dredge/Fill Material Guidelines. The evaluation of the impact of the proposed activity on the public interest will also include application of the guidelines promulgated by the Administrator of the United States Environmental Protection Agency under authority of Section 404(b) of the Clean Water Act (40 CFR Part 230).

7. 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.

8. 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.

9. Public Hearing Requests. 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.

10. 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: OD-P, Clock Tower Building - Post Office Box 2004, Rock Island, Illinois 61204-2004. Mrs. Jackie M. Groves, (309/794-5351) may be contacted for additional information, and email Jackie.M.Groves@usace.army.mil.

Attach
Plan

Mr. Trevor E. Popkin
Chief, Eastern Branch
Regulatory Division

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