



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

PUBLIC NOTICE

Applicant: U.S. Army Corps of Engineers

Date: July 16, 2024

CEMVR-OD-P-2023-1617

Expires: August 14, 2024

Section 10/404

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

**New Regional General Permit 50
Fill Material Placed for Ponds up to 10-Acres in Size
In the State of Illinois**

1. **Applicant:** The U.S. Army Corps of Engineers, Rock Island District, with regulatory jurisdiction in Illinois are pursuing the development of this regional permit.

2. **Project Location:** The regional permit will authorize work associated with the discharge of dredged and/or fill material into all waters of the United States, including wetlands (WOTUS), for ponds up to 10-acres in size under jurisdiction of the Rock Island District and St. Louis District in the State of Illinois.

3. **Project Description:**

A. Activities required for the construction of ponds up to 10-acres in size. To qualify for this Regional General Permit (RGP), the activity must not cause the loss of more than 2-acres of WOTUS through filling and inundation. The loss of stream plus any losses of jurisdictional wetlands caused by this activity cannot exceed 2-acres combined, which includes no more than 1,000 linear feet of stream loss. The loss of WOTUS includes loss through filling and grading of streams and/or wetlands, the footprint of the embankment or dam, plus the secondary impact of inundation of streams and/or wetlands in the footprint of the pond. The 1,000-foot stream impact limit also includes combined impacts to other jurisdictional tributaries that are inundated because of the structure.

B. This RGP is generally for recreational uses such as ponds for hunting and fishing activities, however it may be utilized for other purposes. This RGP may not be used to for the construction of storm water or detention basins. This RGP is for individuals or landowners to construct ponds. The pond may be constructed using assistance from another state or Federal Agency. In instances where another federal agency is the lead, they must adhere to Section 7 and Section 106 processes and provide their determination with the application packet.

4. Permit Conditions:

A. General Conditions: The permittee must notify the District Engineer (DE), Rock Island District, for authorization of this Regional General Permit (RGP). The notification must include detailed drawings and sufficient information to determine if the proposed work conforms to the criteria and conditions of the RGP, 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 (DA) permit application can be submitted via the Regulatory Request System at <https://rrs.usace.army.mil/rrs>.

1). The time limit for submittals ends 60 days prior to the expiration of the RGP, unless the RGP 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 RGP is modified or revoked, you will have twelve months from this date to complete your activity under the present terms and conditions of this RGP.

2). Pursuant to 35 Ill. Adm. Code Section 302.105(d)(6), an individual 401 Water Quality Certification (WQC) will be required for discharges to waters designated by the State of Illinois as waters of particular biological significance or Outstanding Resource Waters under 35 Ill. Adm. Code 302.105(b). Biologically Significant Streams (BSS) are cataloged in Illinois DNR's publication "Integrating Multiple Taxa in a Biological Stream Rating System" and may be identified at: <https://www2.illinois.gov/dnr/conservation/BiologicalStreamratings/Pages/default.aspx>.

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. 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.

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 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.

5). You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

6). This activity shall be designed to pass appropriate normal high flows.

7). This activity shall not result in the inundation of any upstream property without providing legal documentation of permission, such as an easement.

8). Spillways should be designed to operate safely for the life of the structure and at the discharges and pressures which would be experienced under all normal or flood flow conditions.

9). The permittee is responsible for obtaining all other required federal, state, and local permits.

10). Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

11). Activities shall not occur in areas of concentrated shellfish populations.

12). During construction, best management practices must be utilized to protect water quality and minimize the impacts of stormwater runoff.

13). 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 or 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 USACE 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.

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 will 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 USACE 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 if not armored.

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 the activity shall be conducted during low or no flow conditions.

6). The permittee 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.

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 most recent Rock Island District (MVR) Regulatory Division Mitigation and Monitoring Guidelines available (located at: <https://www.mvr.usace.army.mil/Missions/Regulatory/Wetland-Mitigation/>).

2). 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 acres or for stream losses greater than 300 linear feet and/or 0.03 acres of streambed, compensatory mitigation is required and 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,” and any such USACE regulation/guidance that would supplement these mitigation requirements such as the Rock Island District Mitigation and Monitoring Guidelines and the MVR Stream Mitigation Policy.

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 WOTUS. For all permanent stream losses greater than 300 feet and/or 0.03 acres of streambed impacts, completion of the Illinois Stream Mitigation Method (ISMM) or most updated Mitigation Stream method (located at: <https://www.mvr.usace.army.mil/Missions/Regulatory/Stream-Mitigation/>) is required to determine adequate compensatory stream mitigation. The USACE has the final approval in determining the appropriate and practicable mitigation necessary. The discharge of fill material into WOTUS prior to USACE approval of the mitigation plan is prohibited.

4. 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 Illinois.

1). The Illinois Department of Natural Resources, Office of Water Resources (IDNR/OWR) is a participant in the joint application process and requires that IDNR/OWR permits be obtained for construction within floodways; construction and other activities within public bodies of water; and construction, operation, and maintenance of dams pursuant to the State of Illinois Rivers, Lakes, and Streams Act (615 ILCS 5).

2). Inquiries concerning IDNR/OWR jurisdiction and/or review of the activity should be directed to the Office of Water Resources at dnr.dwrn@illinois.gov or 217/782-3863. Information on the IDNR/OWR regulatory and other programs can be found at <http://dnr.state.il.us/owr>.

5. Historical/Archaeological:

A. Section 106 consultation is not required when the USACE 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.

B. Federal permittees should follow their own procedures for complying with the requirements of Section 106 of NHPA, permittee's must provide the DE with the appropriate documentation to demonstrate compliance with those requirements.

C. 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) 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 USACE, 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 USACE 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. Permittee's should be aware that section 110k of the NHPA (16 U.S.C. 16 470h-2(k)) prevents the USACE 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 USACE, 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 USACE 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.

6. Endangered Species:

A. 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 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 regional permit 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.

B. 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 USACE with the appropriate documentation to demonstrate compliance with those requirements. The USACE will review the documentation and determine whether it is sufficient to address ESA compliance for the activity, or whether additional ESA consultation is necessary.

C. Non-federal permittees must provide the USACE 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.

D. Authorization of an activity by this regional general permit does not authorize the "take" 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 "takes" 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.

7. Water Quality Certification: We are currently working with the Illinois Environmental Protection Agency (ILEPA) to potentially obtain a Section 401 of the Clean Water Act Water Quality Certification.

8. **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).

9. **Public Interest Review:** The decision whether to issue the USACE 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.

10. **Who Should Reply:** The USACE 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 USACE 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.

11. **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.

12. **Reply to the USACE.** Comments concerning the DA 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. **Brynn Noble (309-386-3173)**, email: Brynn.E.Noble@usace.army.mil, may be contacted for additional information.



Aurora Scott
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