

PUBLIC NOTICE



US Army Corps
of Engineers
Memphis District

Permit No. GP-41 (2007-588)
Issue Date: December 5, 2007
Expiration Date: December 26, 2007

21-Day Notice

JOINT PUBLIC NOTICE: This public notice is issued jointly with the Missouri Department of Natural Resources, Water Pollution Control Program (MDNR). MDNR will use the comments to this notice in deciding whether to grant Section 401 water quality certification. Respondents are requested to furnish a copy of their comments to MDNR, P.O. Box 176, Jefferson City, Missouri 65102.

PROPOSED REGIONAL GENERAL PERMIT NO. 41
FOR THE PERMANENT PROTECTION AND/OR REPAIR OF
FLOOD DAMAGED STRUCTURES, DAMAGED LAND AREAS, AND/OR
DAMAGED FILLS IN THE STATE OF MISSOURI

In accordance with Title 33 CFR 325.2 and 325.7(e), as published in the November 13, 1986, Federal Register, the U.S. Army Corps of Engineers, Kansas City, St. Louis, Rock Island, Little Rock and Memphis Districts propose to issue the enclosed regional general permit (GP). A similar GP has been issued in the past to authorize dredge and fill activities associated with necessary repairs to structures, fills, stream channels, and ditches that were damaged from flooding events. This GP, if issued, would authorize certain discharges of dredged or fill material in conjunction with the permanent protection and/or repair of flood damaged structures, damaged areas, and/or damaged fills in waters of the United States within the states of Kansas and Missouri. This GP is proposed to be issued under the authority of Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344).

Note: A Similar GP (GP33M) for flood repairs was issued in 1995 for the State of Missouri and shared waters with the State of Kansas. The 1995 GP was extended and expired on 31 December 2000. A new GP for flood repair activities was not reissued at that time. During the period from 1995 to 2000, the Kansas City District verified 70 activities as authorized by GP33M. These activities were primarily completed in 1996 and 1997. Presently, there is no regional GP to authorize the needed repair activities.

Criteria for Authorization: Applications for verification of this GP would be reviewed on a case-by-case basis to ensure that each activity authorized by the GP satisfies criteria in Appendix I of the GP (enclosed). Applications must be received within 15 months of the end of the flood emergency at the project location, and authorization must be received from the Corps prior to starting work in the Corps jurisdiction.

Duration of the General Permit: The GP would expire five years from the date of issuance unless it is specifically modified, suspended, or revoked prior to that date. Upon its expiration, the GP would be considered for renewal. The GP may be modified, suspended or revoked, in whole or in part, at any time if it is determined that the cumulative effects of the activities would have a significant environmental impact or are otherwise not

in the public interest.

If issued this GP would not obviate the need to obtain other Federal, state, or local authorizations required by law.

Procedure for Applying: Individuals desiring to perform activities in accordance with the criteria of this GP must notify the appropriate Corps of Engineers District. The notification must include detailed drawings and sufficient information to determine if the proposed work conforms to the criteria and conditions of the GP. An ENG Form 4345 and instructions are available at www.nwk.usace.army.mil/regulatory/regulatory.htm and may be used for the purpose of notification. Copies of ENG Form 4345, instructions or assistance may also be obtained by writing or calling the appropriate Corps district.

If the Corps district determines that the work meets the provisions of the GP, and no extraordinary conditions exist that would warrant submitting an application for an individual permit, the proponent would be notified to proceed. If the Corps determines that the subject work does not meet the provisions of the GP, or that extraordinary conditions exist, the applicant will be notified that an individual permit will be necessary.

Flood repair activities, supervised by the Corps of Engineers, pursuant to Public Law 84-99 and/or supervised by the United States Department of Agriculture, pursuant to the emergency Watershed Protection Program or the Emergency Conservation Program do not require notification to the Corps of Engineers, Regulatory Branch. It is the responsibility of these federal agencies to comply with all environmental laws and Presidential Executive Orders.

Compliance with Other Laws: No potential adverse environmental effects related to the operation of the GP have been identified or are anticipated from the issuance of this GP. All applicable statutes, regulations, and administrative policies and agreements, including the National Environmental Policy Act of 1969, which are currently applicable to the GP will be considered and satisfied. **All comments in response to this public notice should be forwarded to the Kansas City District at the appropriate address given in the Additional Information section, on page three, of this notice.**

Public Interest Review: The decision to issue this GP will be based on an evaluation of the probable impact of the proposed permit on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposed GP must be balanced against the reasonably foreseeable detriments. All factors which may be relevant to the proposed GP will be considered including the cumulative effects thereof; among those are conservation, economics, esthetics, general wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production, mineral needs, and, in general, the needs and welfare of the people. Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposed GP. Requests for holding hearings shall state, with particularity, the reasons for holding a public hearing.

Comments: Any interested party (particularly officials of any town, city, county, state or Federal agency, local association, or individual) is invited to submit to the Kansas City District written facts or objections to the proposed GP on or before the public notice expiration date. Comments, both favorable and unfavorable, will be accepted and made a part of this record and will receive full consideration in determining whether it would be in the public interest to issue the GP.

Additional Information: Additional information about GP-41 may be obtained by writing to the following address: Chief, Regulatory Branch, U.S. Army Corps of Engineers, 700 Federal Building, 601 East 12th Street, Kansas City, Missouri 64106-2896 or by calling **Mr. Douglas R. Berka at 816-389-3657** (FAX 816-389-2032) douglas.r.berka@usace.army.mil. All comments to this public notice should be directed to the above address.

NOTICE TO EDITORS: This notice is provided as background information for your use in formatting news stories. This notice is not a contract for classified display advertising.

Enclosures

DEPARTMENT OF THE ARMY PERMIT

Permittee General Public, Railroads, Transportation Departments, Pipeline and Utility Companies and Government Agencies

Permit No. NWK GP-41

Issuing Office U.S. Army Engineer District, Kansas City

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 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.

Project Description: To excavate or place fill material for the following proposed permanent protection and/or repair of flood damaged structures, damaged land areas and/or damaged fills that satisfy the criteria in APPENDIX I:

- a. Repair of levees to existing elevations and cross-section, including breach closures and borrow operations
- b. Bridge embankment protection (armoring) or repair
- c. Repair of pre-existing highway or railroad embankments and the addition or repair of stone (armoring) protection
- d. Repair of pre-existing utility protection structures
- e. Placement of rock and/or earth materials for stream/ditch bank protection and/or stream/ditch bank restoration
- f. Drainage ditch restoration to pre-flood capacity and flow line unless the flow line must be altered due to other damage associated with the flood event
- g. Restoration of creek channels to pre-flooding alignment and capacity
- h. Construction of temporary haul roads to facilitate the completion of any of the listed activities

Note: Maintenance of existing flood damaged structures and/or flood damaged fills, which have been previously authorized, may be authorized by Nationwide Permit No. 3 or exempted by Part 323.4 of Federal regulations 33 CFR 320-331. The repair of uplands damaged by storms, floods or other discrete events may be authorized by Nationwide Permit No. 45 upon notification and review by the appropriate Corps of Engineers District, Regulatory Branch.

Project Location: In Waters of the United States, (rivers, lakes, streams, and wetlands) within the State of Kansas and within the State of Missouri that are declared flood disaster areas by the Governor of either state and/or the President of the United States.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on Five years from the date of issuance. 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 the above date is reached.

2. You must maintain the activity authorized by this permit 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 archeological 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.

Special Conditions:

See continuation sheets, pages 5, 6, and 7 of this document.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

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 authorization 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 this 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 1 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.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

GENERAL PUBLIC - SIGNATURE NOT REQUIRED

(PERMITTEE)

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(DISTRICT COMMANDER)

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

(TRANSFEREE)

(DATE)

Special Conditions:

a. You must sign and return the attached "Compliance Certification" after the authorized work and any required mitigation is completed. Your signature will certify that you completed the work in accordance with this permit, including general and specific conditions, and that any required mitigation was completed in accordance with the permit conditions.

b. **(Activities occurring in navigable waters under Section 10 of the Rivers and Harbors Act of 1899 Only)** The permittee understands and agrees that, if future operations by the United States require 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 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.

c. If any part of the authorized work is performed by a contractor, before starting work you must discuss the terms and conditions of this permit with the contractor; and, you must give a copy of this entire permit to the contractor.

d. You must employ measures to prevent spilled fuels, lubricants, excessive suspended solids including dredged material, and/or wet concrete from entering the waters of the United States and formulate a contingency plan to be effective in the event of a spill.

e. You must use clean, uncontaminated materials for fill in order to minimize excessive turbidity by leaching of fines, as well as to preclude the entrance of deleterious and/or toxic materials into the waters of the United States by natural runoff or by leaching. Use of small aggregate material, such as creek gravel, for stabilization and erosion control is prohibited.

f. You must excavate or fill in the watercourse so as to minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation. Activities should be conducted during low water periods and outside major spawning season for fish, unless a waiver is obtained from the Corps of Engineers. Crossings of waterways and use of construction machinery in waterways should be limited to the minimum extent necessary.

g. You must immediately remove and properly dispose of all debris during every phase of the project in order to prevent the accumulation of unsightly, deleterious and/or toxic materials in or near the water body. All construction debris must be disposed of in an upland site, outside the floodplain, and in such a manner that it cannot enter into the waterway/wetland.

h. You must store all construction materials, equipment, and/or petroleum products, when not in use, above anticipated high water levels.

Special Conditions cont.

- i. You must restrict the clearing of timber and other vegetation to the absolute minimum required to accomplish the work. You must avoid the removal of mature trees to prevent potential impacts to bald eagle roost sites. Work should be limited to one side of the channel only. Vegetated riparian buffer areas should be included along both sides of any channel restoration projects. All wooded areas cleared for site access must be set aside and allowed to return to wooded habitat. Mitigation may be required for other timber clearing.
- j. Upon completion of earthwork operations, you must seed, replant or otherwise protect from erosion all fills in the water or on shore, and other areas on shore disturbed during construction. If seeding does not successfully vegetate the disturbed areas by the end of the first growing season, you must implement alternate measures, such as placing riprap, slope terracing with untreated railroad ties, gabions or concrete blocks, or additional vegetative plantings, to protect the disturbed areas from further erosion. You must contact the Corps of Engineers prior to beginning work on any additional erosion control measures so that we can determine if we will require further authorization.
- k. You must dispose of excess concrete and wash water from concrete trucks and other concrete mixing equipment in a nonwetland area above the ordinary high water mark and at a location where the concrete and wash water cannot enter the water body or an adjacent wetland area.
- l. You must not dispose of any construction debris or waste materials below the ordinary high water mark of any water body, in a wetland area, or at any location where the materials could be introduced into the water body or an adjacent wetland as a result of runoff, flooding, wind, or other natural forces.
- m. You must use only graded rock, quarry-run rock and/or clean concrete rubble for riprap. The material must be reasonably well graded, consisting of pieces varying in size from 20 pounds up to and including at least 150 pound pieces. Generally, the maximum weight of any piece should not be more than 500 pounds. Gravel and dirt should not exceed 15% of the total fill volume. If you use concrete rubble, you must break all large slabs to conform to the well graded requirement, and remove all exposed reinforcement rods, trash, asphalt, and other extraneous materials before you place the rubble in the waters of the United States. Size and gradation requirements can be changed provided approval is received from the Corps' Regulatory Branch prior to placement.
- n. You must completely remove all temporary fills, including sand bags (to the extent practicable), in the Waters of the United States within 30 days of the end of the flood emergency and disposed of in accordance with special condition "e" above, unless the temporary fill is to be incorporated in the final repair of the structure. If sand bags are needed for a longer duration until permanent repairs are made, you must request a waiver of this condition in writing. Temporary construction of levees to protect agricultural land in areas where no levees previously existed, are not authorized.

Special Conditions cont.

- o. You must avoid impacts to wetlands to the fullest extent practicable. When wetlands impacts are unavoidable, borrow site selection will be based on the following order of preference: upland (non-wetland) sources, areas riverward of the levee previously used for borrow, open prior converted wetlands, farmed wetlands, or other authorized excavation sites. You must mitigate for all unavoidable proposed wetland excavation or fill activities authorized by this permit. You must develop mitigation plans on a case-by-case basis which must be approved by the Corps. This permit does not authorize actions designed to drain or otherwise convert wetlands to other uses, nor actions where a practicable alternative to impacting wetlands is available unless the Corps of Engineers, in consultation with other resource agencies, determine that sediment removal from existing wetlands will restore wetland functions and create valued habitat diversity.
- p. You must place all fills and structures such that they do not result in stream channel constriction or in redirection of flows in such a way as to cause upstream or downstream erosion. Channelization projects or shortening of waterways, other than restoration of creek channels to pre-flood alignment, are not authorized.
- q. You must not undertake actions which are likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, nor actions which are likely to destroy or adversely modify the critical habitat of such species.
- r. You must avoid activity in the proximity of a property listed in or eligible for listing in the National Register of Historic Places unless, after coordination with the State Historic Preservation Office of the affected state and/or the Advisory Council on Historic Preservation, a determination of "no effect" or "no adverse effect" is made in accordance with criteria established by 36 CFR 800. If an inadvertent discovery of any cultural or archaeological resource occurs you should voluntarily suspend work in the area until a determination of eligibility for listing on the National Register of Historic Places is completed and any necessary consultation under Section 106 of the National Historic Preservation Act is completed.
- s. You must not undertake any activity that results in a new structure or replacement of a previously authorized structure with an increase in scope or design of the original structure. Small changes that do not affect elevations, such as the reconstruction of a levee around a scour hole at pre-existing elevations, and that do not convert wetland to upland (non-wetland) or a different wetland use beyond what is unavoidable such as to go around a scour hole, may be authorized upon notification to the Corps.
- t. You must contact the Missouri Department of Natural Resources, Water Pollution Control Program, P.O. Box 176, Jefferson City, Missouri 65102-0176, or the Kansas Department of Health and Environment, Bureau of Water, Curtis State Office Building, 1000 Southwest Jackson, Topeka, Kansas 66612, in order to determine the need for a state permit for land disturbance, return water, or other activities that normally require such permits.

APPENDIX I

Criteria for Authorization by General Permit NWKGP-41

1. Applications must be received within 15 months of the end of the flood emergency (when the nearest river gauge drops below flood stage for two months). The flood repair activities must be in counties declared disaster areas by the Governor of the State of Kansas, the Governor of the State of Missouri and/or the President of the United States.
2. This general permit applies to the general public, railroads, transportation departments, pipeline and utility companies, and government agencies.
3. We may reevaluate the cumulative impacts of this general permit at our discretion at any time. We will reevaluate cumulative impacts at least every five (5) years.
4. The following is a list of flood damaged structures, damaged land areas and/or damaged fills authorized to be repaired under this general permit:
 - a. Repair of levees to existing elevations, including breach closures and borrow operations
 - b. Bridge embankment protection (armoring) or repair
 - c. Repair of pre-existing highway and/or railroad embankments and armor protection
 - d. Repair of pre-existing utility protection structures
 - e. Placement of rock and/or earth materials for emergency bank protection or restoration
 - f. Drainage ditch restoration to pre-flood capacity and flow line unless the flow line must be altered due to other damage associated with the flood event
 - g. Restoration of creek channels to pre-flooding alignment, capacity and flow line
 - h. Construction of temporary haul roads to facilitate any of the above listed activities
5. The District Engineer may require an individual permit on a case-by-case basis for any activity authorized herein.
6. If you propose to work under the authority of this General Permit, you must notify the appropriate Corps of Engineers district within 15 months of the end of the flood emergency, and receive authorization prior to starting work in the Corps jurisdiction. You must submit the following information:
 - a. A completed application form ENG 4345 or a letter which includes all information required by form ENG 4345.

- b. An 8 1/2" x 11" drawing(s) showing the details of the proposed work.
- c. A clearly marked 8 1/2" x 11" site location map, including the Section, Township, and Range or the Latitude and Longitude location (decidegrees).
- d. Discussion of possible alternatives and why they were not selected.
- e. Verification of the Governor's or the President's disaster declaration.

You must clearly describe the proposed work so we can clearly and readily determine whether or not the proposed work complies with the General Permit.

Also, as project proponent, you must send copies concurrently to the following addresses, but we will not necessarily solicit comments from these agencies:

U.S. Fish and Wildlife Service
Columbia Field Office
101 Park DeVille Dr., Suite A
Columbia, Missouri 65203
(573) 234-2132

Missouri Department of Natural Resources
Water Pollution Control Branch
P.O. Box 176
Jefferson City, Missouri 65102
1-800-361-4827 or (573) 751-1300

U.S. Environmental Protection Agency
Watershed Planning and Implementation Branch
901 North Fifth Street
Kansas City, Kansas 66101
(913) 551-7003

Missouri Department of Natural Resources
Historic Preservation Program
P.O. Box 176
Jefferson City, Missouri 65102
(573) 751-7958

Missouri Department of Conservation
Policy Coordination
P.O. Box 180
2323 Grand Boulevard, Suite 900
Jefferson City, Missouri 65102
(816) 283-7061

U.S. Fish and Wildlife Service
Manhattan Field Office
2609 Anderson Avenue
Manhattan, Kansas 66502
(785) 539-3474

Kansas Department of Health and Environment
Bureau of Water
Curtis State Office Building
1000 Southwest Jackson Street
Topeka, Kansas 66612
(785) 296-1500

Kansas Department of Wildlife and Parks
512 Southeast 25th Avenue
Pratt, Kansas 67124
(620) 672-5911

* Federal Emergency Management Agency (FEMA), Region VII
9221 Ward Parkway, Suite 300
Kansas City, MO. 64114-3372
(816) 283-7063

We will give these agencies an opportunity to request that we take discretionary authority to require you to apply for an individual permit, if a potential significant problem is identified.

* You must contact FEMA for all proposed development located in the 100-year floodplain of a National Flood Insurance Program (NFIP) participating community in order to comply with local floodplain management regulations and secure a floodplain development permit from that community.

You must complete the authorized work within the five year issuance period of the GP. If you need additional time to complete repairs or if flood damage occurs within the last year of the GP applicants must contact the appropriate Corps District for an extension of the authorization to complete the needed work. Contact should be made at least one month in advance of the GP expiration date.

Flood repair activities, supervised by the U. S. Army Corps of Engineers, pursuant to Public Law 84-99, and/or supervised by the United States Department of Agriculture, pursuant to the Emergency Watershed Protection Program or the Emergency Conservation Program, do not require notification to the Corps of Engineers, Regulatory Branch. It is the responsibility of these federal agencies to comply with all environmental laws and Presidential Executive Orders.

**COMPLIANCE CERTIFICATION
GENERAL PERMIT NWKGP-41**

Special condition "a" of this permit document requires that you submit a signed certification regarding the completed work and any required mitigation. This certification page satisfies this condition if it is provided to the Kansas City District at the address shown at the bottom of this page upon completion of the project.

APPLICATION NUMBER: _____

APPLICANT: _____

ADDRESS: _____

PROJECT LOCATION: _____

- a. I certify that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions.
- b. I certify that any required mitigation was completed in accordance with the permit conditions.
- c. Your signature below, as permittee, indicates that you have completed the authorized project as certified in paragraphs a and b above.

(PERMITTEE)

(DATE)

Return this certification to:

Applicable Corps of Engineers District