



PUBLIC NOTICE

US Army
Corps of Engineers
Memphis District

Applicant: U.S. Army Corps of Engineers

Date: June 26, 2020

Expires: July 26, 2020

CEMVM-R-2020-190

Section 10/404

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

1. **Applicant.** The U.S. Army Corps of Engineers, Memphis District, with regulatory jurisdiction in Illinois is 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 the Waters of the United States (WOUS), including wetlands, for the construction, maintenance, repair, and removal of utility lines and associated facilities.

3. **Project Description.**

a. **Authorized Work.** This Regional General Permit (RGP) authorizes activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in WOUS, provided the activity does not result in the loss of greater than 1/2-acre of WOUS for each single and complete project.

b. **Utility lines:** This RGP authorizes discharges of dredged or fill material into WOUS and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of utility lines, including outfall and intake structures. There must be no change in pre-construction contours of WOUS. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication. The term “utility line” does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area. Material resulting from trench excavation may be temporarily side cast into WOUS for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer (DE), may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain WOUS (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

c. Utility line substations: This RGP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in WOUS, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of WOUS.

d. Foundations for overhead utility line towers, poles, and anchors: This RGP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all WOUS, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

e. Access roads: This RGP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal WOUS, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal WOUS. Access roads must be the minimum width necessary. Access roads must be constructed so that the length of the road minimizes any adverse effects on WOUS and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in WOUS must be properly bridged or culverted to maintain surface flows.

f. This RGP may authorize utility lines in or affecting navigable WOUS even if there is no associated discharge of dredged or fill material (See 33 CFR part 322). Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a section 10 permit.

g. This RGP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to WOUS through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. DEs may add special conditions to this RGP to require a remediation plan for addressing inadvertent returns of drilling fluids to WOUS during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines.

h. This RGP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be re-vegetated, as appropriate.

Note 1: For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of RGP authorization.

Note 2: Utility lines consisting of aerial electric power transmission lines crossing navigable WOUS (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

Note 3: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this RGP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable WOUS are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into WOUS associated with such pipelines will require a section 404 permit (see RGP 15).

Note 5: This RGP authorizes utility line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For overhead utility lines authorized by this RGP, a copy of the preconstruction notification and RGP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

4. Permit Conditions.

a. General Conditions

(1) The permittee must notify the District Engineer (DE) in their respective Corps Regulatory 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 RP, 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 (ENG Form 4345) should be used for this purpose.

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

(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.

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. Asphalt, broken concrete containing asphalt, petroleum based material, liquid concrete, and items such as car bodies are specifically excluded from this authorization.

(2) Measures must be taken for heavy equipment usage in wetland areas to minimize soil disturbance and compaction.

(3) 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.

c. Temporary Impacts/Restoration Requirements.

(1) All Areas affected temporarily must be returned to pre-construction contours, and must be re-vegetated with native vegetation if not armored.

(2) Side slopes of a newly constructed channel will be no steeper than 2:1 and planted with permanent, perennial, native vegetation if not armored.

(3) 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 is 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 cumulative permanent loss of wetland exceeds 0.10 acres or for stream losses greater than 300 linear feet, 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 Corps regulation/guidance that would supplement these mitigation requirements.

(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 WOUS. For all permanent stream losses greater than 300 feet, completion of the appropriate applicable stream mitigation method will determine adequate compensatory stream mitigation. The Corps has the final approval in determining the appropriate and practicable mitigation necessary. The discharge of fill material into WOUS prior to Corps approval of the mitigation plan is prohibited.

5. Historical/Archaeological.

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 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 permittee's 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 permittee's 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 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. Permittee's should be aware that section 110k of the NHPA (16 U.S.C. 16 470h-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.

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 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 activity, or whether additional ESA consultation is necessary.

c. Non-federal permittees must provide the Corps 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. 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.** 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 of Engineers.** Comments concerning the Corps permit should be addressed to the District Engineer, U. S. Army Corps of Engineers, Rock Island District, ATTN: OD-PE (Samantha Chavez), Clock Tower Building - Post Office Box 2004, Rock Island, Illinois 61204-2004. For additional information contact Ms. Samantha Chavez at 309-794-5104 or email: samantha.j.chavez@usace.army.mil.

for Gregg W. Williams
Chief
Regulatory Division
Memphis District

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