

Memorandum

DATE: January 14, 2021
FROM: Christine Schwake
RE: Rationale for Section 401 Water Quality Certification of Regional Permit 33 (RP 33)

The Rock Island District Corps of Engineers (Corps) has proposed to re-issue regional permit (RP 33) to authorize work associated with the discharge of dredged and/or fill material for certain conservation practices sponsored by U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) and Department of Housing and Urban Development (HUD) under the jurisdiction of the Rock Island District in the State of Iowa. See Attachment 1. Typical work authorized using this RP includes non-exempt ponds, dams, grade stabilization structures, grassed waterways and subsurface drains associated with grassed waterways. The purpose of projects authorized using RP 33 would be to reduce erosion, reduce flood risk, trap sediment, provide water quality benefits on agricultural lands and/or provide water sources for livestock.

Receiving Streams

RP 33 authorizes discharges “to waters of the United States within the State of Iowa.” The term “waters of the United States” is defined in 40 CFR §120.2. Receiving streams include all surface water classifications defined in 567 IAC 61.3.

Exclusions: Projects Requiring an Individual Section 401 Water Quality Certification for RP 33

Providing Section 401 Water Quality Certification (certification) for RP 33 allows the Corps to expeditiously issue these permits. However, General Condition 4 states “If the project impacts an Outstanding Iowa Water, an Individual 401 WQC must be obtained, and permittee shall not begin work on the activity until a 401 is issued by the State or waived by the District Engineer.” The requirement to provide individual certification for these water bodies is also stated in the Antidegradation Implementation Procedure. 567 IAC 61.2(2). Iowa Antidegradation Implementation Procedure § 6 (2010 and 2016). This allows the Iowa Department of Natural Resources (DNR) and the public (through public notice) an opportunity to individually review projects on these unique water bodies. Outstanding Iowa Waters are listed on the [DNR Antidegradation webpage](#).

Antidegradation

Pollutants of Concern

The projects authorized by RP 33 do not use chemicals. Thus, the pollutants present in the discharge from such projects are substances present in runoff, or the result of a spill or leak. The DNR has identified the following pollutant of concern in discharges from RP 33 projects and the potential impacts on water quality:

Increased Turbidity/Total Suspended Solids

The turbidity of water is related to the amount of suspended solids contained in the water. Suspended solids decrease the clarity of water, reduce light penetration, and can impair the photosynthetic activity of aquatic plants. Suspended solids can be aesthetically displeasing and can reduce the recreational value of a water body. If suspended solids screen out light and impair growth of aquatic plants, dissolved oxygen levels can decrease. Suspended solids can be harmful to fish and other aquatic life by causing abrasive injuries and clogging gills and respiratory passages.

Increases in turbidity/total suspended solids from projects authorized by RP 33 will generally be temporary and limited. To address turbidity/total suspended solids, projects authorized under RP 33 will control runoff to water bodies using a variety of best management practices (BMPs).

Best Management Practices in Permit and Certification Conditions

Permit-Based

The Corps has BMP-based conditions for RP 33. See Attachment 1 for the draft RP 33 which includes BMP-based conditions. Pre-construction notification is required for some of the activities authorized by this regional permit. The Lead Federal Agency will advise the applicant on whether or not a proposed project requires notification to the Corps based on the combination of the Landscape Region and drainage area for that project. This allows the Corps to review certain projects to ensure that adverse impacts to the aquatic environment are no more than minimal.

Further, projects with construction activity that disturbs one or more acres requires a storm water NPDES permit from the DNR. For projects that require storm water NPDES permits, Storm Water Pollution Prevention Plans (SWPPPs) are developed, which typically include BMP-based conditions.

Certification-Based

The DNR has added BMP-based conditions to the RP 33 via certification. See draft RP 33 certification.

The combined listed BMPs, when adhered to by the permittee, protect Iowa's water quality by controlling erosion and sediment runoff to prevent pollution from reaching the nearby water bodies. Antidegradation requirements will be considered to be met if all appropriate and reasonable BMPs required by permit and certification are applied and maintained. See, 567 IAC 61.2(2); Iowa Antidegradation Implementation Procedure § 6.3.

Temporary and Limited Degradation

The State adopted Iowa Antidegradation Implementation Procedure (2010 and 2016) states that "A regulated activity shall not be considered to result in degradation, if the activity will result in only temporary and limited degradation of water quality as defined in the glossary and as further described in Sections 1.2 and 2.4." The effects can be regarded as temporary and limited following a review of all of the following factors, if applicable:

1. Length of time during which water quality will be lowered:

The length of time where there might be a lowering of water quality is relatively short for construction of conservation practices authorized under RP 33 (these projects can generally be completed in less than 6 months).

2. Percent change in ambient conditions:

The only significant change that could be reasonably expected to occur would be for the presence of sediment in the nearby waterbody, if heavy rainfall occurs or BMPs fail (e.g., if silt fences fill up).

3. Pollutants affected:

Turbidity, total suspended solids.

4. Likelihood for long term water quality benefits to the water body:

RP 33 authorizes conservation practices that can provide some water quality benefits by reducing erosion, trapping sediment, providing water quality benefits on agricultural lands, and/or providing water sources for livestock. Generally, not installing these conservation practices is more harmful to the long term water quality in the area - erosion could continue, nutrients could continue to runoff into the nearby water bodies and be transported downstream, and Iowa's good topsoil may not be available for crops. Therefore, long term water quality benefits to water bodies are likely. RPs incentivize project proponents to minimize impacts to jurisdictional waters and wetlands (to qualify for RPs) through a quicker permit process compared with the standard individual permit process.

5. Degree to which achieving the applicable Water Quality Standards during the proposed activity will be at risk:

The use of BMPs installed prior to construction, maintained during construction, and maintained until the site has returned to pre-construction conditions should greatly increase the degree to which a project achieves the applicable water quality standards.

6. Potential for any residual long term effects on existing uses:

The BMP conditions in RP 33 and certification include but are not limited to reseeding disturbed areas, installing and maintaining erosion control features, and conducting construction in waterways during no flow or low flow conditions. These projects should not contribute to any ongoing impacts to water quality.

For the above discussed reasons, the DNR makes the following finding:

This review concludes that water quality degradation due to activities authorized using RP 33 will be temporary and limited.



PUBLIC NOTICE

US Army Corps
of Engineers
Rock Island District

Applicant: U.S. Army Corps of Engineers **Issued:** October 29, 2020
Expires: November 27, 2020

Corps Project Number: CEMVR-OD-P-2020-1497

Proposed Project: Reissuance of Regional Permit 33

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

1. **Applicant:** The U.S. Army Corps of Engineers, Rock Island District, with regulatory jurisdiction in Iowa is pursuing the development of this regional permit.
2. **Project Location:** The proposed Regional General Permit (RGP) will authorize work associated with the discharge of dredged and/or fill material into all waters of the United States (WUS), including wetlands, under the jurisdiction of the Rock Island District (District) located within the State of Iowa. This permit may be used on tribal lands within the state of Iowa; however, an Individual 401 Water Quality Certification (401), must be obtained from the Meskwaki Nation - Sac and Fox Tribe of the Mississippi in Iowa, prior to authorization.

3. **Project Description:**

a. The purpose of the Regional General Permit 33 (RGP 33) is to authorize the discharge of dredged or fill material in association with specific U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) and Department of Housing and Urban Development (HUD)-sponsored activities which do not qualify for the Clean Water Act (CWA) 404(f)(1) exemptions. Discharges of dredged and/or fill material that are associated with CWA 404(f)(1) exempt activities do not qualify for the exemptions when they are part of an activity whose purpose is to convert an area of the Waters of the United States (WOUS) into a use to which it was not previously subject where the flow or circulation of Waters of the U.S. may be impaired or the reach of such waters reduced (CWA Section 404(f)(2)). Specific practices included in this permit are non-exempt ponds, dams, grade stabilization structures, grassed waterways and subsurface drains associated with grassed waterways.

b. The purpose of the individual projects is to reduce erosion, reduce flood risk, trap sediment, provide water quality benefits on agricultural lands and/or provide water sources for livestock. This permit does not authorize the straightening or realignment of a stream channel. Incidental wildlife habitat and recreation benefits may accrue to landowners from the sediment pools associated with installation of structures under this permit, but such benefits are not part of the primary purpose of the projects. Regardless of the NRCS Conservation Practice Standard, recreational and wildlife benefits may not be the primary purpose of the individual projects under this RGP.

4. Permit Conditions:

A. General Conditions

1) The permittee must notify the District Engineer, Rock Island District, for authorization of this RGP if they meet the criteria found below and in Table 1. 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 permit application (ENG Form 4345) should be used for this purpose and is available to download at the Rock Island District Corps Regulatory (District) webpage. If the Corps determines that the work meets the provisions of the RP and no extraordinary conditions exist that warrant evaluation as an individual permit, the proponent will be notified to proceed.

2) The Lead Federal Agency (NRCS/HUD) is responsible for National Environmental Protection Act (NEPA) review and must provide completed NEPA documentation on letterhead to the Corps prior to the permit being issued.

3) 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 have started the work or are under contract to begin this activity before the general permit expires, you will have twelve (12) months from that expiration date to complete the activity under the present terms and conditions of this RP.

4) If the project impacts an Outstanding Iowa Water, an Individual 401 WQC must be obtained, and the permittee shall not begin work on the activity until a 401 is issued by the State or waived by the District Engineer.

5) 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.

6) If you discover any previously unknown historic, cultural or archeological remains or artifacts while accomplishing the activity authorized by this permit, you must immediately notify this office and NRCS or HUD of what you have found. The Lead Federal Agency (NRCS or HUD) 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.

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

B. Special Conditions.

1) Projects authorized under this RGP must be in accordance with a binding agreement or a conservation plan between the Landowner and the NRCS or U.S. Department of Housing and Urban Development (HUD) or by approval in accordance with HUD financing. Applicants may include State governmental authorities (such as the Iowa Department of Agriculture and Land Stewardship) or local government authorities (such as Soil and Water Conservation Districts). The NRCS or HUD must be the Lead Federal Agency in this undertaking related to all applicable requirements under federal laws and regulations, such as the Endangered Species Act (ESA) and the National Historic Preservation Act (NHPA).

2) This regional permit can authorize impacts to streams with intermittent flow regimes but does not authorize impacts to perennially flowing streams. Generally, the projects are constructed in upper watershed reaches in areas where there is little or no base flow in the channel. The structures will be strategically located to reduce erosion, where impacts are no more than minimal. This RGP contains limitations based upon drainage area thresholds, as defined in Table 1. After using Figure 1 and Table 1, the Lead Federal Agency will advise the applicant on whether or not a proposed project requires notification to the Corps based on the combination of the Landscape Region and drainage area for that project.

3) Regardless of the Drainage Area Reporting Thresholds in Table 1, the following will require notification (submittal of a pre-construction notification) to the Corps and may not proceed until the Corps provides written verification under this RGP or other permit authorization:

- Any structure constructed on any intermittent stream with permanent pools.
- Any project that exceeds 1/10-acre loss of wetlands.
- Any structure constructed on a stream channel that creates an impoundment greater than 5 acres.

Figure 1: Landscape Regions for Regional General Permit 33- This figure will allow you to determine which landscape region your project resides within.

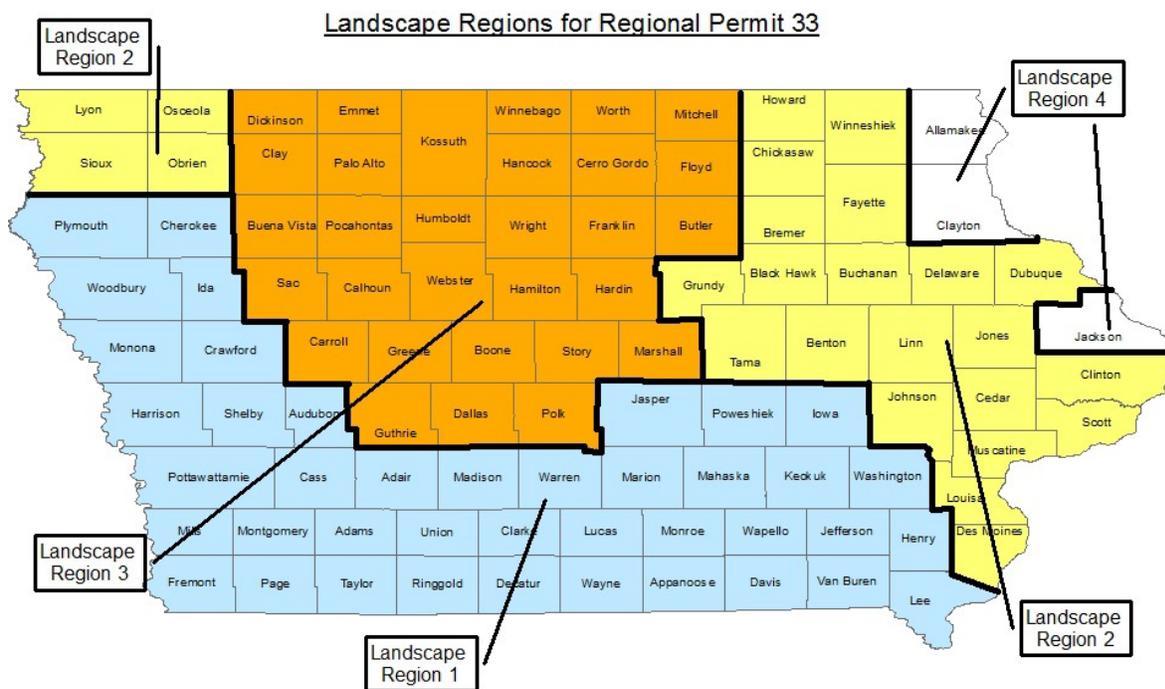


Table 1: Landscape Regions (LR) and Drainage Area Thresholds for Reporting and Permitting of Activities proposed under this RGP that do not meet the CWA 404(f) (1) exemptions.

Column 1	Column 2	Column 3	Column 4
Landscape Region (LR)	Non-Reporting Drainage Area Threshold	Reporting Drainage Area Threshold	Reporting to Corps and Require Individual Permit
LR 1	<640 acres	640-1280 acres	>1280 acres
LR 2	<440 acres	440-1000 acres	>1000 acres
LR 3	<320 acres	320-640 acres	>640 acres
LR 4	<440 acres	440-1000 acres	>1000 acres

Note: Drainage Area Threshold is the area of watershed, in acres, measured from the downstream end of the proposed project to the upper reach of the watershed.

Explanation of Table 1:

Column 1: For purposes of RGP 33, Iowa is divided into four landscape regions (Figure 1).

Column 2: Non-reporting drainage area threshold. All listed activities conducted in streams or other Waters of U.S., including wetlands, that are below the drainage thresholds listed in Column 2 for the specified Landscape Region do not require notification to the Corps, provided they are constructed in compliance with the permit general and special conditions. For example, activities that meet these drainage thresholds that are proposed in intermittent streams that contain permanent pools require reporting (that a permit application be submitted to the Corps for review).

Column 3: Reporting drainage area threshold. All listed activities conducted in streams or other Water of the U.S., including wetlands, which are within the drainage area thresholds listed in Column 3 for the specified Landscape Region require that a permit application be submitted to the Corps for review. The RID will determine whether the proposed impacts of the project are minimal and whether compensatory mitigation will be required, prior to verification under this RGP.

Column 4: All listed activities conducted in streams or other Waters of U.S., including wetlands, that meet the drainage area thresholds listed in Column 4 for the specified Landscape Region may not be authorized under this RGP. A permit application must be submitted to the Corps for review as an Individual Permit.

4) When required by the terms of the permit (reporting thresholds above) the prospective permittee must notify the Corps by submitting a pre-construction notification (PCN) as early as possible.

5) The following needs to be included with a PCN application in order to be considered complete:

- The anticipated amount of loss and/or impacts to Waters of the U.S. expected to result from the activity in acres, linear feet or other appropriate unit of measure.
 - A delineation of wetlands, other special aquatic sites and other waters such as lakes ponds and perennial, intermittent and ephemeral streams on the project site.
 - If the proposed activity will result in the loss of greater than 1/10th acre of wetland then the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explain why the adverse effects are minimal and why compensatory mitigation should not be required. Drawings will be required to support this documentation.
 - If the proposed activity will result in stream losses greater than 300 linear feet with flow regimes that are intermittent and contain permanent pools then the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explain why the adverse effects are minimal and why compensatory mitigation should not be required. The Iowa Stream Method should be used to aid in determining mitigation requirements.
 - The PCN application can be located at:
<https://www.mvr.usace.army.mil/Portals/48/docs/regulatory/Permits/NW-IA/FillableApplicationJan2015.pdf?ver=2015-01-02-124325-530>
- 6) Wetlands that are inundated with water greater than 3 feet in depth are considered conversion, therefore, those wetlands will be considered lost.
- 7) The area between the maximum flood pool elevation and the normal pool elevation will be vegetated in grass. With the exception of structures and sleep slops, all areas without an established vegetative cover will be seeded in native vegetation.
- 8) Applicants must identify and notify the Rock Island District, Corps of Engineers of all impacts to fens, bogs, seeps or sedge meadows. Fill that will adversely impact these resources are not authorized.
- 9) If a project is on a stream listed on the Outstanding Iowa Waters (OIW) list, pre-application coordination with the Iowa Department of Natural Resources IADNR must occur and appropriate measures deemed necessary to protect the integrity of the Special Water must be included in the project plans.
- 10) Subsurface drainage is authorized only to facilitate installation of grassed waterways pursuant to NRCS design practices. Placing drainage tile primarily within a stream channel for purposes of or having the effect of channelizing the stream or converting Waters of the U.S. to non-waters is not authorized.
- 11) All disturbed areas not covered with riprap shall be seeded in accordance with NRCS Practice Standard 342, Critical Area Planting at:
https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1241316.pdf

12) Erosion control features (i.e., silt fences, silt ditches, silt dikes, silt basins, re-vegetation, etc.) must be installed to provide continuous erosion control throughout the construction and post construction period. Where siltation control features have been reduced in capacity by 50% or more, the features shall be restored to their original condition with a minimum of delay.

13) All construction within waterways shall be conducted during no flow or low flow conditions.

14) Any material excavated, dredged or otherwise produced by the activity will not be returned to the stream/waterway, but will be deposited in an upland non-wetland area.

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

16) Where project plans include armoring of a stream bank, acceptable materials are limited to clean riprap, consisting of field stone, quarry rock, broken Portland Cement Concrete (PCC) erosion control fabrics and/or other similar materials. When using broken PCC, all exposed reinforcing steel rod or mesh must be completely removed or cut flush with the surface of the concrete prior to placement. It shall be the applicant's responsibility to maintain the riprap such that any reinforcement material that becomes exposed in the future is removed. The use of asphalt and/or other solid waste is not authorized.

17) If, at the discretion of the District Engineer, corrective measures are deemed necessary to protect the public interest before, during and/or after completion of project construction, the permittee shall complete such corrective actions as directed by District Engineer on a case-by case basis.

5. General Design Criteria: These criteria must be met for all projects to be authorized under this RGP.

A. Ponds. A pond, as planned and defined by the NRCS, is defined as a water impoundment made by constructing an embankment or by excavating a pit or dugout. The primary purposes of a pond are to provide water for livestock, fish and wildlife, recreation, fire control, develop renewable energy systems, and other related uses, and to maintain or improve water quality. Specific criteria for use in designing ponds may be found in NRCS Technical Guide Practice Standard 378, Pond, at:

https://www.nrcs.usda.gov/wps/PA_NRCSCConsumption/download?cid=stelprdb1255003&ext=pdf

B. Dams. A dam, as planned and defined by the NRCS, is an artificial barrier that can impound water for one or more beneficial purposes. The primary purposes are to reduce downstream flood damage, provide permanent water storage for one or more beneficial uses (such as irrigation or livestock supply and other agricultural uses) or to create or improve habitat for fish and wildlife. Specific criteria for use in designing dams may be found in NRCS Technical Guide Practice Standard 402, Dam, at:

https://www.nrcs.usda.gov/wps/PA_NRCSCConsumption/download?cid=stelprdb1046852&ext=pdf

C. Grade Stabilization Structures: A grade stabilization structure, as planned and defined by the NRCS, stabilizes the channel grade in a natural or constructed watercourse. The primary purposes are to stabilize grade, reduce erosion and/or improve water quality. A typical NRCS design is attached to this permit and specific criteria for use in designing a grade stabilization structure may be found in NRCS Technical Guide Practice Standard 410, Grade Stabilization Structure, at: https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1263175.pdf

D. Grassed Waterways: A grassed waterway, as planned and defined by the NRCS, is a shaped or graded channel that is established with suitable vegetation to carry surface water at a non-erosive velocity to a stable outlet. The primary purposes are to convey runoff from terraces, diversions, or other water concentrations without causing erosions or flooding, to reduce gully erosion and/or protect/improve water quality. Specific criteria for use in designing a grassed waterway may be found in NRCS Technical Guide Practice Standard 412, Grassed Waterway, at: https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1263177.pdf

E. Subsurface Drains: A conduit, as planned and defined by the NRCS, is installed beneath the ground surface to collect and/or convey excess water. This practice may be applied as part of a resource management system to remove or distribute excessive soil water or remove salts and other contaminants from the soil profile. In Iowa, subsurface drains are frequently used in association with grassed waterways to ensure that terrestrial vegetation can establish and are authorized under this permit when used as part of NRCS Practice 412 for installing grassed waterways. The subsurface drains may not be placed in the thalweg of the stream channel. The subsurface drains may only be placed adjacent to the stream channel, and then backfilled and the surface graded, in order to facilitate construction of the grassed waterway. A typical NRCS design is attached to this permit and specific criteria for use in designing a subsurface drain may be found in NRCS Technical Guide Practice Standard 606, Subsurface Drain at: https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1263175.pdf

6. Mitigation:

A. Generally, projects will be constructed in upper watershed reaches in areas where there is little or no base flow in the channel. The structures will be strategically located to reduce downstream peak flows and upstream erosion, where applicable, so that impacts are no more than minimal. The projects will reduce erosion, trap sediment, provide water quality benefits on agricultural lands and/or provide water sources for livestock. Incidental wildlife habitat and recreation benefits may accrue, but such benefits will not be the primary purpose of the projects. In most cases, we expect that the beneficial water quality aspects of these projects will outweigh any adverse impacts, and mitigation will not be required. In the case that the DE determines the project to have adverse impacts on an aquatic resource, the DE will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are not more than minimal:

1) The activity must be designed and constructed to avoid and minimize adverse effects to Waters of the U.S., both temporary and permanent, to the maximum extent practicable at the project site. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

2) Compensatory mitigation may be required for stream or wetland impacts associated with any project which requires notification to the Corps. In general, compensatory mitigation will be required for all wetland losses that exceed 1/10-acre and for stream losses greater than 300 linear feet with flow regimes that are intermittent that contain permanent pools. The District Engineer may also determine that the effects of the proposed activity are less than minimal and provide a project-specific waiver of this requirement. Compensatory mitigation projects provided to offset losses of aquatic resources must follow the regulations published in the Federal Register dated April 10, 2008 under 33 CFR Parts 332 and 40 CFR Part 230 – Subpart J entitled “Compensatory Mitigation for Losses of Aquatic Resources,” (Mitigation Rule) and any such Corps regulation/guidance that would supplement these mitigation requirements such as the Rock Island District Mitigation and Monitoring Guidelines.

3) It is expected that most of the pool area with water depths of three feet or less will develop emergent wetland characteristics. Additional wetland mitigation is required if the acreage of wetland impacted by the structure and deep water exceeds the proposed acreage of pool with water depths of three feet or less.

4) 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 any stream losses greater than 300 linear feet with flow regimes that are intermittent that contain permanent pools, completion of the Iowa Stream Mitigation Method is required to 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.

B. The applicant is responsible for proposing an appropriate compensatory mitigation option to ensure that the activity results in less than minimal adverse effects to the aquatic environment. Applicants may propose the use of mitigation banks, in-lieu fee (ILF) programs or separate permittee-responsible mitigation. Mitigation banks must be used unless, in rare cases, the applicant can prove that their permittee-responsible mitigation plan is environmentally preferable to the bank in order to offset the losses of aquatic resource functions that will result from the permitted activity. A conceptual permittee-responsible mitigation plan may be submitted for initial review, however, a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the District Engineer before RGP 33 may be authorized for the proposed project.

C. All mitigation must be completed prior to or concurrent with project construction. If, in the opinion of the Corps, mitigation areas do not fully replace the aquatic functions that are lost due to the installation of the structure or project features, further mitigation measures may be deemed necessary on a case-by-case basis. Proposed mitigation areas may not be located in areas that are enrolled in programs such as the Conservation Reserve Program (CRP) or the Wetland Reserve Program (WRP).

5. Agency Review:

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

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

6. Historical/Archaeological: As Lead Federal Agency, the NRCS or the sponsor under HUD regulations will fulfill the collective responsibilities set forth in the National Historic Preservation Act (NHPA) and will achieve compliance with Section 106 of the NHPA utilizing established agency procedures. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the lead Federal agency. Authorization under this RGP 33 is not considered effective until Section 106 compliance is achieved.

7. Endangered Species: As lead Federal Agency, the NRCS or the sponsor under HUD regulations will fulfill the collective responsibilities set forth in the Endangered Species Act (ESA) and will achieve compliance with that Act. This permit does not authorize the taking of a threatened or endangered species or its critical habitat. If an activity may result in take of a listed species, separate authorization under the ESA is required. If authorization under the ESA contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with an "incidental take", such terms and conditions become part of this permit. Failure to comply with the ESA terms and conditions or an unauthorized take would constitute non-compliance with this permit. Authorization under this RGP 33 is not considered effective until ESA compliance is achieved.

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

9. Who Should Reply: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an

Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. These statements should be submitted on or before the expiration date specified at the top of page 1. These statements should bear upon the adequacy of plans and suitability of locations and should, if appropriate, suggest any changes considered desirable.

10. Reply to the Corps of Engineers: Comments or questions concerning this notice may be directed to Abby Steele (309/794-5377), US Army Corps of Engineers, Rock Island District, ATTN: OD-P, Clock Tower Building - Post Office Box 2004, Rock Island, Illinois 61204-2004.

Mr. Matthew A. Zehr
Chief, Iowa Permit Branch
Regulatory Division

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