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# Joint Public Notice

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Public Notice No.  
RGP 001 (ID Nos. LRL-2014-648  
LRC-2014-00586  
LRE-2014-00571-100)

Open Date:  
11 Sep 2014

Close Date:  
14 Oct 2014

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**US Army Corps  
of Engineers**  
Louisville District ®  
Detroit District  
Chicago District

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## OPPORTUNITY FOR PUBLIC COMMENT ON REVISIONS AND REISSUANCE OF REGIONAL GENERAL PERMIT NO. 001 FOR CERTAIN ACTIVITIES IN THE STATE OF INDIANA

This notice announces a proposal by the Louisville, Detroit and Chicago Districts U.S. Army Corps of Engineers (the Districts), in accordance with Title 33 CFR 325.5(b)(2) and 325.5(c)(1), as published in the Federal Register, Volume 51, No. 219, to reissue a Regional General Permit (RGP) pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

COMMENT PERIOD: 30 days from publication date.

BACKGROUND: On December 15, 2009, the Louisville and Detroit Districts issued RGP No. 001 on a regional basis for categories of activities that are similar in nature and cause minimal individual and cumulative impacts to the aquatic environment. The RGP will expire on December 15, 2014, unless reissued. An important aspect of RGP 001 is that it has eliminated the unnecessary duplication of regulatory control. In this case, the Districts have been effective in reducing duplication with the Indiana Department of Environmental Management (IDEM) Section 401 Water Quality Certification (WQC) process.

Since the issuance of RGP No. 001, the IDEM revised the Section 401 Water Quality Certification. Additionally, the Corps reissued the Nationwide Permit (NWP) program, effective on March 19, 2012. These actions, as well as interagency reviews, prompted the Districts to make revisions to this RGP. **For ease of reference, all revisions are reflected in bold print.**

The NWP program in Indiana has been complex and confusing for the public and regulatory agencies. Because of this, the RGP was designed to replace several of the NWPs. If the RGP is reissued, the Districts will suspend several existing NWPs. (See Restrictions/Suspensions Section of the Notice). The RGP has simplified and enhanced the effective regulation of waters and wetlands in Indiana and with the proposed revisions would further assure that only those activities that have minimal individual and cumulative impacts would be authorized by this RGP.

Structures and/or work in or affecting the course, location, condition, or capacity of a navigable water that does not involve the discharge of dredged or fill material requires authorization under Section 10 of the Rivers and Harbors Act and no WQC is required. In

this case the Districts would continue to evaluate the Section 10 activity proposed and authorize only those activities under the RGP that have minimal individual and cumulative impacts.

The RGP has provided a regional approach to addressing development activities in Indiana. The RGP has been effective in reducing duplication between the State and Federal permit programs. The RGP would be available to authorize activities where the WQC has been issued. Certain activities that impact 1 acre or less **of waters of the United States** and have a valid WQC would be eligible for this RGP. Under the RGP, the Districts would continue to coordinate proposed activities with the U.S. Fish and Wildlife Service (USFWS) to satisfy the requirements of the Endangered Species Act and the Indiana State Historic Preservation Officer (SHPO) to satisfy the requirements of the National Historic Preservation Act.

The public would benefit from having a simplified and abbreviated Federal permit process that allows activities with minimal impact that have clear impact thresholds, review procedures, and mitigation requirements to be authorized by the RGP.

## PROPOSED INDIANA REGIONAL GENERAL PERMIT

### Activities Covered by the Regional General Permit:

This RGP authorizes activities associated with the construction or installation of facilities or structures, **and/or work that are detailed in the “Activity Categories and Conditions” section of this document, and have been granted a WQC from IDEM, if required.**

### Agricultural and Mining Activities:

This RGP authorizes activities for agriculture and mining (excluding surface coal mining), that have been granted a WQC from the IDEM, if required. This RGP does not affect those agricultural and mining activities that are exempt in accordance with 33 CFR Part 323.4.

### **SUSPENSIONS:**

The following Nationwide Permits are proposed for suspension in Indiana. The proposed RGP would be used to authorize activities in place of suspended Nationwide Permits:

- 3 Maintenance**
- 13 Bank Stabilization
- 14 Linear Transportation Projects
- 18 Minor Discharges
- 29 Residential Developments
- 36 Boat Ramps
- 39 Commercial and Institutional Developments
- 40 Agricultural Activities

- 41 Reshaping Existing Drainage Ditches
- 42 Recreational Facilities
- 43 Stormwater Management Facilities
- 44 Mining Activities

The NWP's that would not be suspended and would be used in lieu of the RGP are:

- 1 Aids to Navigation
- 2 Structures in Artificial Canals
- 4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- 5 Scientific Measurement Devices
- 6 Survey Activities
- 7 Outfall Structures and Associated Intake Structures**
- 8 Oil and Gas Structures on the Outer Continental Shelf
- 9 Structures in Fleeting and Anchorage Areas
- 10 Mooring Buoys
- 11 Temporary Recreational Structures**
- 12 Utility Line Activities
- 15 U.S. Coast Guard Approved Bridges**
- 16 Return Water from Upland Contained Disposal Areas
- 17 Hydropower Projects
- 19 Minor Dredging**
- 20 Oil Spill Cleanup
- 21 Surface Coal Mining Operations
- 22 Removal of Vessels
- 23 Approved Categorical Exclusions
- 24 Indian Tribe or State Administered Section 404 Programs
- 25 Structural Discharges**
- 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- 28 Modifications of Existing Marinas
- 30 Moist Soil Management for Wildlife
- 31 Maintenance of Existing Flood Control Facilities
- 32 Completed Enforcement Actions
- 33 Temporary Construction, Access and Dewatering
- 34 Cranberry Production Activities
- 35 Maintenance Dredging of Existing Basins
- 37 Emergency Watershed Protection and Rehabilitation
- 38 Cleanup of Hazardous and Toxic Waste
- 45 Repair of Uplands Damaged by Discrete Events
- 46 Discharges in Ditches
- 47 Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
- 48 Existing Commercial Shellfish Aquaculture Activities
- 49 Coal Re-Mining Activities
- 50 Underground Coal Mining Activities
- 51 Land-Based Renewable Energy Generation Facilities**
- 52 Water-Based Renewable Energy Generation Pilot Projects**

**The Corps will determine the appropriate permit type for authorizing proposed activities.**

MAXIMUM LIMITATIONS:

The following impact limitations apply to all activities authorized by the RGP, **with the exception of maintenance, bank stabilization, minor discharges and excavation activities. For impact limitations pertaining to these activities, see the “Activity Categories and Conditions” sections of this document.**

1. Loss of waters of the United States (U.S.), including wetlands, is limited to 1.0 acre or less;
2. Loss of waters of the U.S. is limited to 1,500 linear feet of stream channel, not to exceed 1.0 acre.
3. Dredging in navigable waters is limited to 10,000 cubic yards;
4. Structures and fills for docking and mooring are limited to similar permitted structures and fills in the vicinity;

RESTRICTIONS: The work authorized by this RGP would also be subject to the attached General Conditions and any other Special Conditions necessary to reduce impacts to the minimum level.

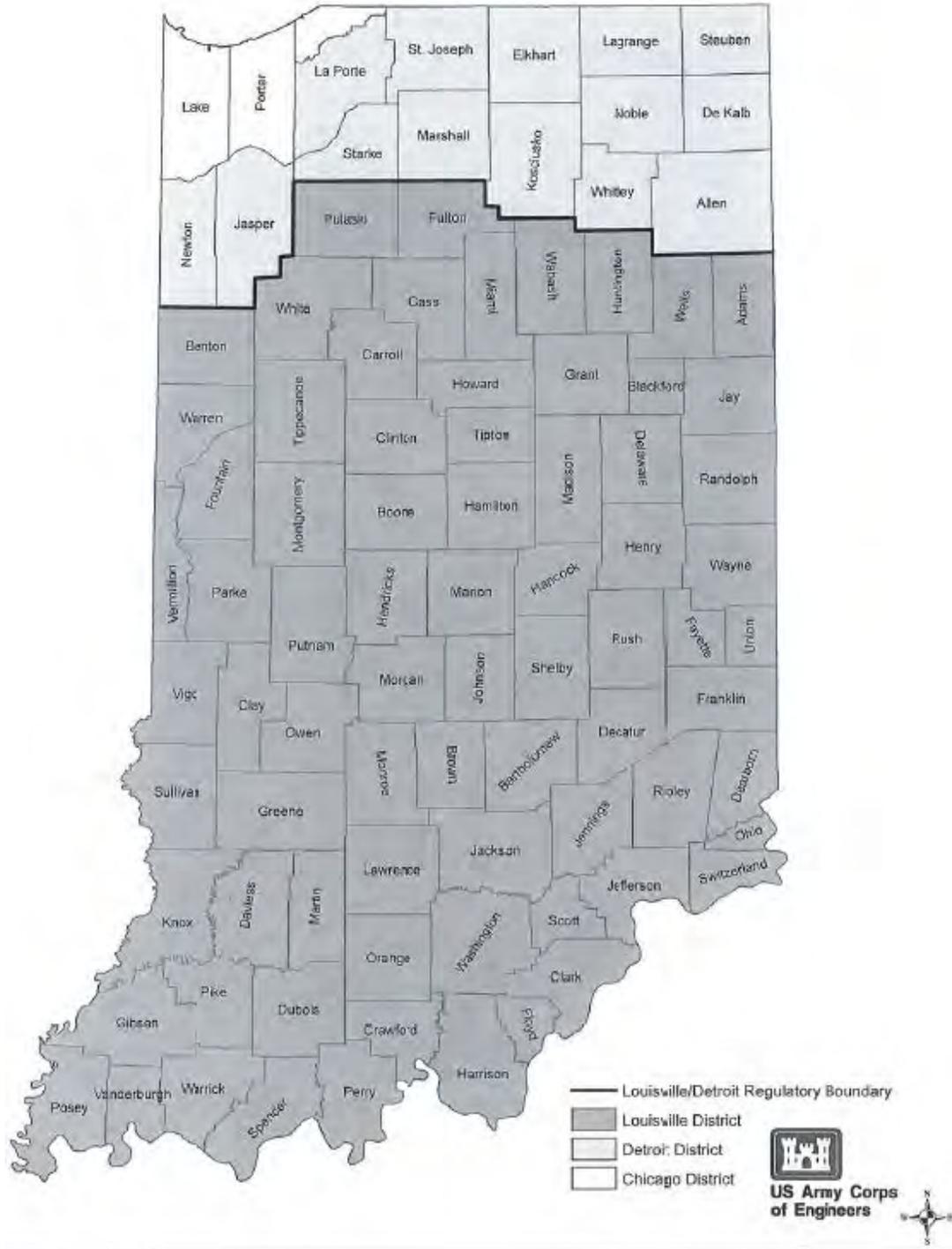
MITIGATION REQUIREMENTS

Mitigation will be required as follows, **with the exception of maintenance, bank stabilization, minor discharges and excavation activities (See “Activity Categories and Conditions” section of this document.)**

1. Impacts resulting from the loss of waters by relocation, encapsulation, or channelization of greater than 300 linear feet of **ephemeral**, intermittent or perennial stream shall require mitigation;
2. The loss of greater than 0.10 acre of special aquatic sites (including wetlands) and/or loss of waters of the U.S. causing more than minimal effects shall require mitigation;
3. Other work or structures in **waters of the United States** will be evaluated on a case-by-case basis and may include mitigation to reduce the impacts to minimal levels;
- 4. Any required compensatory mitigation must meet the standards set forth in the 2008 Mitigation Rule and any district guidance.**

### U.S. ARMY CORPS OF ENGINEERS DISTRICT BOUNDARIES IN INDIANA

This map represents the Louisville, Detroit and Chicago District boundaries. Please contact the appropriate District using the “Agency Notification Procedures” outlined below for your area.



**AGENCY NOTIFICATION:**

**Applicants are required to submit the IDEM RGP Notification form when notifying the Corps or applying for authorization under the RGP.**

**Louisville District - If proposed loss of jurisdictional waters is more than 0.1 acre or work involves more than 300 linear feet of stream channel or shoreline impact, then an application must be submitted. Notification is also required for work in navigable waters.**

**Detroit District - If there are proposed impacts to jurisdictional waters, then an application must be submitted.**

**Chicago District - If there are proposed impacts to jurisdictional waters, then an application must be submitted.**

**Indiana Department of Environmental Management - If there are proposed impacts to any waters, then an application must be submitted.**

- **For proposed waters impacts of 0.1 acre or less, or if work involves 300 linear feet or less of stream channel or shoreline impact submit the ‘Section 401 WQC Regional General Permit Notification Form - 51937’, commonly referred to as the ‘Short Form’ (Found here: [http://www.in.gov/idem/5157.htm#owq\\_stormwater](http://www.in.gov/idem/5157.htm#owq_stormwater)).**
- **For proposed waters impacts of more than 0.1 acre, or if work involves more than 300 linear feet of stream channel or shoreline impact, or involves any stream relocation, channelization, or encapsulation then submit the ‘Application for Authorization to Discharge Dredged or Fill Material to Isolated Wetlands and/or Waters of the State – 51821’, commonly referred to as the ‘Long Form’ (Found here: [http://www.in.gov/idem/5157.htm#owq\\_stormwater](http://www.in.gov/idem/5157.htm#owq_stormwater)).**

**Note: Certain construction activities in waters of the U.S. within the State of Indiana under Section 404 of the Clean Water Act that are also regulated by the IDNR as public freshwater lakes will be covered under the Programmatic General Permit (PGP) dated December 15, 2012, and will not be covered under this RGP.**

**Information on the PGP can be found here:**

**[http://www.lre.usace.army.mil/Portals/69/docs/regulatory/PDFs/Final\\_PN\\_12Dec.pdf](http://www.lre.usace.army.mil/Portals/69/docs/regulatory/PDFs/Final_PN_12Dec.pdf)**

**INFORMATION REQUIREMENTS:**

**Any request for authorization under the RGP must provide the following information:**

1. Name, address, and phone number of the **applicant**;
2. Location of the proposed work to include Section, Township, Range, latitude and longitude or UTM;
3. A detailed description of the project, its purpose, the dimensions including the size of the structure or the fill area, fill quantity and type of fill being used. Please include a discussion of any temporary construction activities such as access roads or cofferdams if included as part of the scope of work;
4. Drawings on 8 1/2 x 11-inch paper must include a location map, plan and cross-section drawings illustrating all the work to be done. The application drawings must provide a scale and/or the exact dimensions given;
5. Legible and reproducible construction drawings on 8 1/2 x 11-inch paper showing all aspects of the proposed activity, including existing and proposed contours, utilities, the location of wetlands/waters of the U.S. to be impacted and not impacted (marked appropriately for identification purposes), the Ordinary High Water Mark (OHWM) of all waters and the observed outermost boundary of all wetlands. In addition, the drawings shall include a detailed plan and profile view of all structures AND/OR FILL to be installed in jurisdictional areas. The application drawings must provide a scale and/or exact dimensions given;
6. Submittal of photographs representing the existing site conditions;
7. Submittal of a mitigation and monitoring plan, if applicable.
8. For any project that impacts jurisdictional wetlands, a wetland delineation report is required and must conform to the Corps of Engineers' 1987 Wetland Delineation Manual, Technical Report Y-87-1, the Midwest Regional Supplement to the Corps 1987 Wetland Delineation Manual, the Northcentral and Northeastern Regional Supplement to the Corps 1987 Wetland Delineation Manual, or the Eastern Mountains and Piedmont Regional Supplement to the Corps 1987 Wetland Delineation Manual, as applicable.

#### IMPLEMENTATION PROCEDURES:

1. **Applicants proposing to conduct work or discharge dredged and/or fill material into all waters of the U.S., including wetlands, must submit the application or notification form to the IDEM and the Corps as described in the "Agency Notification" section above.**
2. The Districts will review all applications for project compliance with the terms, maximum limitations, and general conditions identified in the attachment. The conditions have been adapted from the Corps' present standard permit conditions and

the nationwide permit program. Any individual project that fails to comply with all conditions cannot be authorized under the RGP procedures. The Districts will also review the proposal to determine the coordination requirements with the USFWS in accordance with the Endangered Species Act and with the SHPO in accordance with the National Historic Preservation Act (see general condition numbers 11 and 12). Applicants will be notified if additional information or project modification were necessary to comply with these requirements.

3. The applicant must immediately provide a copy of the Section 401 WQC to the appropriate Corps District. Typically, the District will respond in writing to all requests within 60 days of the District's receipt of a complete application. However, any work conducted under the RGP must comply with all the terms of the Section 401 WQC as well as the RGP general conditions and any other special conditions that may be necessary to reduce the impacts to the minimal level, and to satisfy other environmental concerns and regulatory requirements.
4. The Districts may, at their discretion, determine that the RGP is not appropriate and require an individual permit review of the proposal.
5. The Districts may, at their discretion, insert additional special conditions to the RGP **to ensure that only activities that have minimal individual and cumulative impacts on the aquatic environment are authorized.**

#### EXCLUDED ACTIVITIES:

1. Activities that are denied any required local, State or Federal authorization.
2. Activities that the Districts determine to have the potential to cause unacceptable adverse impacts on aquatic resources or other public interest factors. The Districts may on a case-by-case basis require an Individual Department of the Army (DA) permit. The Districts will notify the applicant that the project does not qualify for the RGP and instruct the applicant on the procedures to seek authorization under a standard Individual DA permit. The Districts may also require an Individual DA permit for any After-the-Fact application and/or any unauthorized activity regardless of whether or not the loss of waters meets the upper threshold limitation of 1.0 acre of impacts to wetlands or 1,500 linear feet (not to exceed 1.0 acre) of stream impacts threshold limitation.

#### **ACTIVITY CATEGORIES AND CONDITIONS:**

##### **MAINTENANCE**

**Maintenance activities include the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized**

**modification. There is no impact limit threshold for this activity, nor is mitigation required.**

- 1. Minor deviations in the structure's configuration or fill area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized.**
- 2. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill.**
- 3. Also authorized are the repair, rehabilitation, or replacement of those structures or fills destroyed by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced or under contract to commence within two years of the date of their destruction or damage. In cases of catastrophic events, this two year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.**

#### **BANK STABILIZATION ACTIVITIES**

**This activity includes bank stabilization necessary for erosion prevention. No mitigation is required.**

- 1. The proposed bank stabilization activity shall be justified based on a demonstrated need for erosion protection or replacement of an existing seawall. This category does not include maintenance activities.**
- 2. The district engineer may waive the RGP linear foot limitation by making a written determination concluding that the discharge will result in minimal adverse effects on the aquatic environment.**
- 3. Projects that involve the use of vegetative and biotechnical practices are not subject to length restrictions. Biotechnical practices are defined as bank stabilization practices that benefit the aquatic environment by incorporating organic materials to produce functional structures, provide wildlife habitat, and provide areas for revegetation. Examples of biotechnical practices include, but are not limited to: a) adequately sized riprap or A-Jack structures keyed into the toe of the slope with native plantings on the banks above; b) vegetated geogrids; c) coconut fiber (coir) logs; d) live, woody vegetative cuttings, fascines or stumps; e) brush layering; and f) soil lifts.**
- 4. Riprap shall not be placed at a steeper slope than 2:1 (2 horizontal to 1 vertical) for dumped riprap, and 1.5:1 for hand placed riprap.**
- 5. No more than two (2) cubic yards per running foot of material shall be used as backfill behind structures.**

**6. Bank stabilization shall conform to the existing shoreline and may not be used to reclaim land lost to erosion.**

**7. Bank stabilization and any necessary backfill shall be constructed of clean fill materials. The following materials may be used: rock, quarry stone, fieldstone, clay, granular fill, broken concrete, steel or vinyl sheet piling, cellular blocks, fabric formed concrete, concrete filled fabric mats, gabion baskets, rock and wire mattresses, sand/cement filled bags, geotechnical fabric materials, non-invasive vegetation, and treated timber. If broken concrete is used, it must be free from asphalt and oils, in addition all protruding material such as reinforced rods shall be cut flush with the surface of the concrete and removed from the construction area.**

**8. All material utilized shall be properly sized or anchored to resist anticipated forces of wave action.**

### **TRANSPORTATION PROJECTS**

**This activity includes the construction, expansion, modification or improvement of linear transportation projects. Temporary structures, fills, and work necessary to construct linear transportation projects are also included.**

**1. 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. 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 revegetated, as appropriate.**

### **RESIDENTIAL, COMMERCIAL, INSTITUTIONAL AND RECREATIONAL DEVELOPMENTS**

**Activities include the construction or expansion of a single residence, a multiple unit residential development, a residential subdivision, commercial and institutional buildings, and recreational facilities. Attendant features may include but are not limited to roads, parking lots, garages, yards, infrastructure and utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, golf courses, hiking trails, bike paths, horse paths, nature centers and campgrounds.**

**1. Stormwater management facilities shall not be constructed in a linear body of water such as a river, or perennial, intermittent or ephemeral stream, unless there is substantial evidence that the project will provide a benefit to the aquatic system, and that water detention will not last longer than 24 hours.**

**THE FOLLOWING CONDITIONS FOR THIS CATEGORY APPLY TO THE CHICAGO DISTRICT ONLY:**

- 2. No lot lines shall occur in preserved or mitigation waters of the U.S. on the project site. The District may consider a request by the applicant to allow for lot lines to be in these areas provided there is a demonstrated conflict between the lot line restriction and local ordinances or other applicable laws. The District may accept physical measures such as the installation of split-rail fencing or other means of ensuring additional, unanticipated wetland impacts will not occur.**
- 3. Remaining waters of the U.S. on development sites shall be protected through a deed restriction or through a conservation easement. This requirement may be waived by the District Engineer.**

**BOAT RAMPS**

**Activities required for the construction of boat ramps.**

- 1. The boat ramp does not exceed 60 feet in width, unless the district engineer waives this criterion by making a written determination concluding the discharge will result in minimal adverse effects.**

**MINOR DISCHARGES AND EXCAVATION ACTIVITIES**

**Activities include minor discharges of dredged or fill material into all waters of the U.S. and reshaping of existing drainage ditches.**

- 1. Projects involving the grading or reshaping of existing drainage ditches may not increase the slope of the ditch banks, the drainage capacity, nor can they expand the area drained by the ditch (as originally constructed). Mitigation is not required for projects involving grading or reshaping of existing drainage ditches because the work is designed to improve water quality.**
- 2. All dredged/excavated materials will be disposed of in upland location(s) landward of the OHWM with no placement in, or return to, any waterway or wetland. Any excess material that cannot be accommodated on the permittee's upland property shall be placed in an upland location without any return to a waterway or wetland.**

**AGRICULTURAL ACTIVITIES**

**Agricultural activities including the installation, placement or construction of drainage tiles, ditches or levees; and the relocation of existing serviceable drainage ditches constructed in waters of the U.S.; and similar activities.**

## **MINING ACTIVITIES**

Mining activities are authorized under this category, except for coal mining activities.

1. If reclamation is required by other statutes, a copy of the reclamation plan must be submitted with the permit application.

## **DEFINITIONS**

**Compensatory mitigation:** The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

**Currently serviceable:** Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

**Discharge:** The term “discharge” means any discharge of dredged or fill material.

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**Ephemeral stream:** An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

**Establishment (creation):** The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

**Historic Property:** Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR Part 60).

**Intermittent stream:** An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods,

intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for the RGP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

**Ordinary High Water Mark:** An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

**Perennial stream:** A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

**Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Preservation:** The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Reestablishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

**Rehabilitation (pertaining to compensatory mitigation):** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing

natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: reestablishment and rehabilitation.

**Stormwater management:** Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

**Stream bed:** The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

**Structure:** An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

**Waterbody:** For purposes of the RGP, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent - meaning bordering, contiguous, or neighboring - to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)–(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

#### **GENERAL CONDITIONS:**

1. *Minimization/Avoidance:* Discharges of dredged or fill material into waters of the U.S. must be minimized or avoided to the maximum extent practicable at the project site (i.e. on-site). In determining the minimal impact threshold, the Districts will consider the direct and secondary impacts of the fill or work and any mitigation measures.
2. *Mitigation:* The permittee shall provide a mitigation/monitoring plan for any activity where the adverse impact (i.e., loss of waters) on special aquatic sites (including wetlands) exceeds 0.10 acre (4,356 sq. ft.) or is determined to be more than minimal impact. The permittee shall also provide a mitigation/monitoring plan for any

channelization, encapsulation, or relocation of greater than 300 linear feet of stream. All mitigation plans will include a minimum 50-foot wide buffer between the edge of the mitigation project site and the waters and/or wetlands to be affected unless a shorter distance has been specifically approved under the RGP. If a shorter distance is approved, it is incumbent on the applicant to demonstrate that no practicable alternatives are available in meeting the required buffer widths. If mitigation is required, the permittee shall develop the mitigation site concurrently with permitted impacts. **The mitigation proposal must be in compliance with the 2008 Mitigation Rule.**

3. *Soil Erosion and Sedimentation Controls:* The permittee shall install sedimentation and soil erosion control measures prior to any construction activity, and maintain them in effective operating condition during construction. This shall include the installation of silt fencing and/or other approved methods to control sedimentation and erosion. The permittee shall immediately stabilize areas disturbed by any construction activity, including channel banks, and revegetate with a combination of grasses, legumes and shrubs compatible to the affected area.

4. *Management of Water Flows:* In-stream work during periods of high flows should be avoided. The activity must be designed to maintain preconstruction flow conditions to the maximum extent practicable. The activity must not permanently restrict or impede the passage of high flows (unless the primary purpose of the fill is to impound waters). The activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site.

5. *Waterfowl Breeding Areas:* The discharge of dredged and/or fill material in known waterfowl breeding areas must be avoided to the maximum extent practicable.

6. *Aquatic Life:* The permittee shall not perform in-stream construction activity during the fish-spawning season between April 1 through June 30 without prior approval from the Districts. The Districts will coordinate with the IDNR for their expertise on impacts to the fishery resource. The permittee will ensure that the activity authorized will not disrupt movement of those aquatic species indigenous to the waterbody, including those species which normally migrate through the area unless the activity's specific purpose is to impound water.

7. *Equipment:* All construction equipment shall be refueled and maintained on an upland site away from existing streams, drainage ways and wetland areas. Heavy equipment working in wetlands must be placed on mats, or other measures taken to minimize soil disturbance.

8. *Water Quality:* **If an individual 401 WQC is required**, the permittee must provide a copy of it to the Corps before the Corps will authorize a project under the RGP. The permittee must comply with any case specific special conditions added by the Corps or by the Section 401 WQC. The conditions imposed in the Section 401 WQC are also conditions of this RGP.

9. *Navigation*: The permittee shall assure that no activity authorized by the RGP may cause more than a minimal adverse effect on navigation.

10. *Maintenance*: Any structure or fill authorized by this RGP shall be properly maintained, including maintenance to ensure public safety.

11. *Endangered Species*: The permittee shall not perform any work under the RGP which is 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, or which is likely to destroy or adversely modify the critical habitat of such species. The permittee shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work under the RGP until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Authorization of an activity under the RGP does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act.

12. *Historic Properties*: The permittee shall not perform any activity under the RGP which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places until the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C. The permittee must notify the District Engineer if the activity authorized by the RGP may affect any historic properties listed, determined to be eligible or which the permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin construction until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the IDNR, Division of Historic Preservation and Archaeology.

If the permittee discovers any previously unknown historic or archaeological remains while accomplishing the activity authorized by the RGP, work must be immediately stopped and the Corps immediately notified. The District will initiate the Federal, tribal 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.

13. *Water Supply Intakes*: The permittee shall not perform any work under the RGP where the discharge of dredged and/or fill material will occur in the proximity of a public water supply intake except where the activity is for the repair of the public water supply structure or adjacent bank stabilization.

14. *Suitable Materials*: No activity, including structures and work in waters of the U.S. or discharges of dredged or fill material may consist of unsuitable materials, including auto

bodies, tires, garbage or debris, scrap lumber, metal refuse, roofing materials, asphalt or other bituminous material, broken concrete containing asphalt, or any material which would cause water pollution as defined by the Indiana Department of Environmental Management.

15. *Impoundments:* The permittee shall ensure that if the activity approved by the RGP includes impoundment of water, measures will be taken to minimize adverse effects on the aquatic ecosystem caused by the accelerated passage of water and/or the restriction of flow.

16. *Removal of Temporary Fills:* The permittee shall ensure that all temporary fills authorized under the RGP be removed in their entirety and the affected areas returned to pre-construction conditions (i.e., elevation, contours, re-establishment of vegetation, etc.).

17. *Access:* Representatives from the Corps of Engineers and/or IDEM may inspect any authorized activity or mitigation site at any time deemed necessary to ensure compliance with the terms and conditions of the RGP, Section 401 WQC, and applicable laws.

18. *Construction Period:* **If construction of the project has commenced, or is under contract to commence prior to the expiration date, the applicant must complete the project within one (1) year of the RGP expiration date.** If you find you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 3 months prior to the expiration date.

19. *Reporting:* The permittee, after completion of work under the RGP, shall submit a signed certification letter regarding the completed work and required mitigation, if applicable. The certification letter will include a statement that the work was done in accordance with the RGP authorization including compliance with all general and special conditions and completion of mitigation work.

#### EFFECTIVE PERIOD:

The reissued RGP would be effective for a new five (5) year period. At the end of the period, it would be again re-evaluated and a decision made whether or not the permit should be renewed. The District Engineer, may at any time during the 5-year period, alter, modify, or revoke this permit if he deems such action to be in the public interest.

Preliminary review of this RGP (including the reviews of the initial RGP) indicates that an Environmental Assessment (EA) is adequate and that an Environmental Impact Statement (EIS) would not be required. However, prior to the reissuance of this RGP, a new EA would be prepared and would be available in the District Office of each Corps District.

**The proposed RGP would be re-evaluated to determine whether any work to be authorized by it would cause any major controversy or result in any detrimental impacts to the public interest. The District Engineer's decision to renew it would be based on this evaluation.**

DECISION GUIDELINES:

The decision whether to reissue this RGP would be based on an evaluation of the probable impacts of the proposed activity on the public interest. That decision would reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue must be balanced against the reasonably foreseeable detriments. All factors that may be relevant to this action would be considered; among those are conservation, economics, aesthetic values, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs, safety, food production, and in general, the needs and welfare of the people. In addition, the evaluation of the impact of the RGP on the public interest would include application of the guidelines (40 CFR 230) promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b) of the CWA for discharges of dredged or fill material. This RGP would be adopted unless its issuance is found to be contrary to the public interest. Written statements received in this office before the closing date would be made part of the record and would be considered in the determination.

PUBLIC HEARING:

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this action. A request for a public hearing must state, with particularity, the reason for holding a public hearing.

REVIEW PROCEDURES:

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 potential impact of this RGP. Any comments received would be considered by the Corps of Engineers to determine whether to issue, modify, add conditions or not reissue this RGP. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above.

Comments are used in the preparation of the EA previously mentioned and/or an EIS in conformance with the National Environmental Policy Act. Comments are also used to determine the need for a public hearing as stated above and to determine the overall public interest as well to reissue this RGP.

Written statements received in this office on or before the closing date would become part of the official record and would be considered in the determination on re-issuance of the RGP. Any objections that are received during this period would be evaluated before the determination is made whether to reissue this RGP. A new RGP would be issued unless the issuance is found to be contrary to the public interest. Information pertaining to this

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application is available for public examination during normal business hours upon prior request. All comments regarding the re-issuance of the RGP should be addressed to Ms. Norma C. Condra, CELRL-OP-FN at the address noted above and should refer to Public Notice No. LRL-2014-648-ncc.

If you desire to submit your comments by email, you must comply with the following: In the subject line of your email, type in **ONLY** the Public Notice ID No. LRL-2014-648-ncc. Provide your physical mailing address and telephone number. Send your email to: [lrl.regulatorypubliccomment@usace.army.mil](mailto:lrl.regulatorypubliccomment@usace.army.mil).

If you are sending attachments greater than 1 Mb in size with your email, you must send a hard copy (CD or paper) to the Corps' physical address as well.

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**CONTACT INFORMATION:**

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P.O. Box 59  
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Website: [www.lrl.usace.army.mil/Missions/Regulatory.aspx](http://www.lrl.usace.army.mil/Missions/Regulatory.aspx)

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