



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

# Joint Public Notice

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23 Sep 2019

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Please address all comments and inquiries to:  
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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(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, 2014, the Louisville, Detroit, and Chicago 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, 2019, unless reissued.

Since the issuance of RGP No. 001, the Indiana Department of Environmental Management (IDEM) revised the Section 401 Water Quality Certification. The Corps also reissued the Nationwide Permit (NWP) program, effective on March 19, 2017, while the current RGP expires on December 15. These actions, as well as interagency reviews, prompted the Districts to make revisions to this RGP to better serve the public.

The RGP was designed to replace several of the NWPs to simplify and enhance the effective regulation of waters and wetlands in Indiana. The RGP replaces Nationwide Permits that have restrictive impact limitations for certain activities, and in some cases, conditions not specific to our region. If the RGP is reissued, the Districts will suspend several existing NWPs. (See Restrictions/Suspensions Section of the Notice). The proposed revisions would further assure that only those activities that have minimal individual and cumulative impacts would be authorized by this RGP.

The RGP has provided a regional approach to addressing development activities in Indiana. 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 No. 001**

### **A. Introduction**

In accordance with Title 33 CFR 325.5(c)(1), as published in the Federal Register, Volume 51, No. 219, the U.S. Army Corps of Engineers Districts of Louisville, Detroit and Chicago (the Districts), have reissued a Regional General Permit (RGP) for certain activities in waters of the United States within the State of Indiana under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

The RGP affords the Districts a means to authorize, on a regional basis, categories of activities that are similar in nature and cause minimal individual and cumulative impacts to the aquatic environment while eliminating unnecessary duplication of regulatory control.

This RGP suspends several Nationwide Permits (NWP) (see Suspensions section of this document). The RGP has simplified and enhanced the effective regulation of waters and wetlands in Indiana and 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.

Certain activities that impact 1 acre or less of waters of the United States, or 2 acres or less for open waters, and have a valid WQC would be eligible for this RGP. Under the RGP, the Districts will 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.

### **B. 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.

### **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:

- 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
- 3 Maintenance
- 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
- 53 Removal of Low-Head Dams
- 54 Living Shorelines

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

### **C. 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, 1,500 linear feet (not to exceed 1.0 acre) of stream impacts, or 2 acres of open water impacts.

### **D. Maximum Limitations**

The following impact limitations apply to all activities authorized by the RGP, with the exception of bank stabilization, boat ramps, agricultural activities, and mining activities. For impact limitations pertaining to these activities, see the "Activity Categories and Conditions" section of this document for further discussion regarding maximum limitations;

1. Loss of waters of the United States (U.S.), including wetlands, is limited to 1.0 acre or less. However, loss of open waters (excluding natural waterbodies) is limited to 2.0 acres or less. Open waters includes ponds, impoundments, and borrow/mined pits;
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; and
5. "Piecemealing" of projects in order to meet these thresholds will not be allowed.

**RESTRICTIONS:** The work authorized by this RGP would also be subject to the attached General Conditions (see Appendix 1) and any other Special Conditions necessary to reduce impacts to the minimum level.

### **E. Mitigation Requirements**

The District Engineer may determine that the adverse effects of the proposed activity are minimal, and require no mitigation. Otherwise, mitigation will be required as follows, with the exception of bank stabilization, minor discharges, excavation, and agricultural activities (see “Activity Categories and Conditions” section of this document for further discussion regarding mitigation requirements).

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 require mitigation to reduce the impacts to minimal levels;
4. Any required compensatory mitigation must meet the standards set forth in Title 33 CFR Parts 325 and 332, Compensatory Mitigation for Losses of Aquatic Resources, as published April 10, 2008 in the Federal Register, Vol. 73, No. 70, and any district guidance.
5. If the proposed project will result in more than minimal adverse environmental effects, the District Engineer will require the applicant to submit a mitigation proposal, which must comply with Corps of Engineers compensatory mitigation regulations and guidance.

### **F. Agency Notification**

#### **1. Corps of Engineers**

**Louisville District** - If the 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. No application/notification is required if the work is under these thresholds, and no jurisdictional determination of any kind is required. Notification is required for work in navigable waters. Contact the Louisville District Regulatory Division here:

U.S. Army Corps of Engineers

Louisville District

ATTN: CELRL-RDN

P.O. Box 59

Louisville, Kentucky 40201-0059

Phone: (502) 315-6733

Website: <http://www.lrl.usace.army.mil/Missions/Regulatory.aspx>.

**Detroit District** - If there are proposed impacts to jurisdictional waters, then an application must be submitted. Contact the Detroit District Regulatory Branch here:

U.S. Army Corps of Engineers  
Regulatory Michiana Branch  
2422 Viridian Drive, Suite #200  
South Bend, IN 46628-3561  
Phone: (574) 232-1952  
Website: <http://www.lre.usace.army.mil/Missions/RegulatoryProgramandPermits.aspx>.

**Chicago District** - If there are proposed impacts to jurisdictional waters, then an application must be submitted. Submit applications to: [chicagorequests@usace.army.mil](mailto:chicagorequests@usace.army.mil)  
Contact the Chicago District Regulatory Branch here:

U.S. Army Corps of Engineers  
Chicago District Regulatory Branch  
231 South LaSalle Street, Suite 1500  
Chicago, Illinois 60604  
Phone: (312) 846-5529  
Website: <http://www.lrc.usace.army.mil/Missions/Regulatory.aspx>.

## **2. Indiana Department of Environmental Management**

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

The applicant must submit a Section 401 WQC Regional General Permit Notification Form (State Form 51937) for proposed waters impacts 0.10 acre or less, bank stabilization activities 300 linear feet or less on stream banks or lake shorelines, encapsulation activities 150 linear feet or less, or any activity that does not comply with the Section 401 Water Quality Certification that authorizes the use of the RGP in the state of Indiana.

The applicant must submit an Application for Authorization to Discharge Dredged or Fill material to Isolated Wetlands and/or Waters of the State (Form 51821) for proposed isolated waters impacts greater than 0.10 acre, for bank stabilization impacts greater than 300 linear feet on stream banks and lake shorelines, and for encapsulation activities greater than 150 feet.

Contact the Indiana Department of Environmental Management here:

Indiana Department of Environmental Management  
Section 401 WQC Program  
100 North Senate Avenue  
MC 65-42 WQS IGCN 1255  
Indianapolis, Indiana 46204.

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 March 2, 2018, and will not be covered under this RGP.

### **G. 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 an address, the latitude and longitude, or the 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 view and a profile view of existing and proposed conditions, including of structures AND/OR FILL to be discharged and/or installed in jurisdictional areas.
6. Submittal of photographs representing the existing site conditions;
7. Submittal of proposed mitigation, if applicable. Proposed mitigation must meet the standards set forth in Title 33 CFR Parts 325 and 332, Compensatory Mitigation for Losses of Aquatic Resources, as published April 10, 2008 in the Federal Register, Vol. 73, No. 70, and any District guidance.
8. For any project that impacts jurisdictional wetlands and other waterbodies, a wetland delineation report is required and must conform to the Corps of Engineers' 1987 Wetland Delineation Manual, Technical Report Y-87-1, and the appropriate regional supplement for the proposed review area. The regional supplements in Indiana are 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. For other waters

such as lakes, streams, or rivers the Ordinary High Water Mark (OHWM) should be identified according to the 33 CFR 328.3(e) and related guidance.

## **H. 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 Section F. “Agency Notification”, 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 the SHPO in accordance with the National Historic Preservation Act (see general condition numbers 17 and 20). Any proposal that may affect a Corps’ Civil Works Project will require coordination pursuant to 33 USC 408. 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 a 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 proposed project.

5. The Districts may, at their discretion, insert project-specific special conditions to RGP verifications to ensure that proposed projects have minimal individual and cumulative impacts on the aquatic environment.

## **I. Activity Categories and Conditions**

### **BANK STABILIZATION ACTIVITIES**

This activity includes bank stabilization necessary for erosion prevention. The District Engineer may require mitigation for this activity on a case-by-case basis.

1. The proposed bank stabilization activity shall be justified based on a demonstrated need for erosion prevention. This category does not include maintenance activities.

2. Proposed fill is limited to two (2) cubic yards per running foot, unless the District Engineer waives this criterion or the RGP linear foot limitation by making a written determination



concluding that the discharge will result in minimal adverse effects on the aquatic environment. IDEM will be notified by the Corps that the RGP linear foot limitation has been waived.

3. The District Engineer will decide, on a case-by-case basis, if projects involving the use of vegetative and biotechnical practices will be 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. Bank stabilization shall be constructed using 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.

6. 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 including roads, bridges, runways and taxiways, bike/pedestrian pathways, and railroads. 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.

2. Crossings of waterways and/or wetlands must be culverted, bridged, or otherwise designed to prevent the restriction of expected high water flows. The crossing must be designed as to not impede low water flows or the safe passage of fish and aquatic organisms.

## RESIDENTIAL, COMMERCIAL, INSTITUTIONAL, INDUSTRIAL 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. The maximum impact limitations will be applied on a cumulative basis for activities that are part of a larger common plan of development or sale.

### BOAT RAMPS

Activities required for the construction of boat ramps.

1. The proposed boat ramp shall not exceed 60 feet in width, unless the District Engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects on the aquatic environment. Boat ramps should be constructed of crushed stone, concrete, gravel, or other suitable material. Boat ramps constructed of asphalt are not authorized under this permit.

### MINOR DISCHARGES AND EXCAVATION ACTIVITIES

Activities include minor discharges of dredged or fill material into waters of the U.S. and reshaping of existing drainage ditches. The District Engineer may require mitigation for this activity on a case-by-case basis.

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).

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 construction of building pads for farm buildings; installation, placement or construction of drainage tiles, ditches or levees; the relocation of existing serviceable drainage ditches constructed in waters of the U.S.; and similar activities. The District Engineer may require mitigation on a case-by-case basis, and 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. IDEM will be notified by the Corps that the RGP linear foot limitation

has been waived. This RGP does not affect those agricultural activities that are exempt in accordance with 33 CFR Part 323.4, or are exempt under CWA Section 404(f)(1)(A).

### MINING ACTIVITIES

Mining activities are authorized under this category, except for coal mining activities. This RGP does not affect those mining activities that are exempt in accordance with 33 CFR Part 323.4.

1. The District Engineer may waive the RGP linear foot and cubic yards per foot of fill limitation by making a written determination concluding that the discharge will result in minimal adverse effects on the aquatic environment. The IDEM will be notified by the Corps that the RGP linear foot limitation has been waived.

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

APPENDIX 1: GENERAL CONDITIONS

1. *Navigation*: (a) No activity authorized by the RGP may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army, or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. *Aquatic Life*: No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. *Spawning Areas*: Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. *Migratory Bird Breeding Areas*: Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. *Shellfish Beds*: No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to an authorized shellfish harvesting activity, or is a shellfish seeding or habitat restoration activity.

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

7. *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 or improvement of the public water supply intake structures or adjacent bank stabilization.

8. *Safety of Impoundment Structures*: To ensure that all impoundment structures are safely

designed, the District Engineer may require non-federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons, i.e., a licensed engineer. The District Engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

*9. Adverse Effects from Impoundments:* If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

*10. Management of Water Flows:* To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

*11. Fills Within 100-Year Floodplains:* The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

*12. 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.

*13. Soil Erosion and Sedimentation Controls:* Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

*14. Removal of Temporary Fills:* Temporary fills must be removed in their entirety and the affected areas returned to pre-construction conditions (i.e., elevation, contours, re-establishment of vegetation, etc.).

*15. Proper Maintenance:* Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable general conditions, as well as any activity-specific conditions added by the District Engineer to an RGP authorization.

*16. Single and Complete Project:* The activity must be a single and complete project. The RGP cannot be used more than once for the same single and complete project.

*17. Endangered Species:* (a) No activity is authorized under the RGP 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 the Federal Endangered Species Act, or which

will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under the RGP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the District Engineer with the appropriate documentation to demonstrate compliance with those requirements. The District Engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the RGP activity, or whether additional ESA consultation is necessary. (c) Non-federal permittees must submit a pre-construction notification to the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work. The District Engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-federal applicant of the Corps determination within 45-days of receipt of a complete pre-construction notification. In cases where the non-federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (d) As a result of formal or informal consultation with the USFWS the District Engineer may add species-specific regional endangered species conditions to the RGP. (e) Authorization of an activity under the RGP 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 USFWS Service, the ESA prohibits any person subject to the jurisdiction of the United States to take listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. (f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS or their webpages on the Internet.

18. *Migratory Birds and Bald and Golden Eagles*: The permittee is responsible for obtaining any “take” permits required under the USFWS’ regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the USFWS to determine if such “take” permits are required for a particular activity.

19. *Migratory Bird Breeding Areas*: Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

20. *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.

21. *Discovery of Previously Unknown Remains and Artifacts:* 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 District Engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The District Engineer will initiate the federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. *Mitigation:* The permittee shall provide a mitigation proposal that meets the standards set forth in Title 33 CFR Parts 325 and 332, Compensatory Mitigation for Losses of Aquatic Resources, as published April 10, 2008 in the Federal Register, Vol. 73, No. 70, and any District guidance 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 proposal that meets the standards set forth in Title 33 CFR Parts 325 and 332, Compensatory Mitigation for Losses of Aquatic Resources, as published April 10, 2008 in the Federal Register, Vol. 73, No. 70, and any District guidance for any channelization, encapsulation, or relocation of greater than 300 linear feet of stream, unless there is no net loss of function, in which case the District Engineer will determine, on a case-by-case basis, if mitigation is required.

23. *Water Quality:* If an individual 401 WQC is required, the permittee must provide a copy of it to the Corps. 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.

24. *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.

25. *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.

26. *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.

27. *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.

28. *Activities Affecting Structures or Work Built by the United States:* An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate approval from the District under 33 USC 408.



## APPENDIX 2: 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 into waters of the United States.

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.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, orders, including tribal trust resources.

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.

Single and complete non-linear projects: The total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility and may not be ‘piecemealed’ to avoid the

limitation in a RGP authorization.

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.

Stream channelization: The manipulation of a stream's course, condition, capacity or location that causes more than minimal interruption of natural stream processes. A channelized stream remains a water of the United States.

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.

Tribal lands: Any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or individuals; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

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.

**APPENDIX 3: 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 above for your area.

