DEPARTMENT OF THE ARMY PERMIT

Regional Permit 33

Small NRCS Structures

In the State of Iowa

Permit Number: CEMVR-OD-P- Section: 404

Permittee: POC:

Tel:

Effective Date:

Expiration Date:

Issuing Office: U.S. Army Corps of Engineers, Rock Island District
Clock Tower Building - P.O. Box 2004
Rock Island, Illinois 61204-2004

Either you, the State or Local Sponsoring Authority and its agent, the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), or you the Landowner, if you are receiving technical assistance through the NRCS, are authorized to perform work in accordance with the terms and conditions specified below.

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

General: Placement of fill materials in waters of the U.S. in Iowa for the construction of small ponds, dams and grade stabilization structures either planned by and/or funded by the NRCS, or in cooperation with other local, state, or federal agencies **where NRCS is the lead Federal agency**.

Project Description:

Project Location:

In accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit.

Drawings No.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on the date specified on page 1. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before that date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party, in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions. (Condition is not applicable for Section 10 Permits.)

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

Special Conditions:

1. The NRCS must be the Lead Federal Agency in this undertaking.

2. Authorization of individual projects under this Regional Permit is contingent upon projects meeting the considerations outlined in the attached Addendum.

3. The attached Section 401 water quality certification from the Iowa Department of Natural Resources, dated _____, and any conditions included in the certification are considered to be part of this permit.

4. Mitigation: The wetland mitigation actions contained in the project plans must be implemented/completed concurrently with the project construction.

5. National Historic Preservation Act (NHPA) Compliance:

a. As Lead Federal Agency, the NRCS will fulfill the collective responsibilities set forth in the NHPA, and will achieve compliance with Section 106 of the NHPA utilizing established agency procedures, including the procedures and processes in Part 601 of the NRCS National Cultural Resources Procedures Handbook. Authorization under this Regional Permit is not considered effective until Section 106 compliance is achieved. As Section 106 compliance should not be duplicated by agencies, the Corps of Engineers will accept the lead Federal agency's (NRCS) compliance with the requirements of the NHPA. Compliance with NHPA will be considered complete when the NRCS completes the 106 process per the *State Level Agreement Between the United States Department of Agriculture, Natural Resources Conservation Service and the Iowa State Historic Preservation Officer* dated December 8, 2005. If the December 8, 2005 agreement is terminated or is otherwise not in effect,

compliance with NHPA will be considered complete when the NRCS provides documentation of its compliance to the U.S. Army Corps of Engineers' Rock Island District office.

b. That if construction work uncovers an item or items that may be of historic or archaeological interest or if important new historical data comes to light in the project area, the work must be delayed sufficient time to notify the U.S. Army Corps of Engineers, Rock Island District, Clock Tower Building, Post Office Box 2004, Rock Island, Illinois 61204-2004 (telephone 309/794-5384) and the State Historical Society of Iowa, Bureau of Historic Preservation, Historical Building/Capitol Complex, Des Moines, Iowa 50319 (telephone 515/281-8744) and to allow the significance of the discovery to be determined. The permittee may be held responsible for cost associated with identification and recovery.

6. Endangered Species Act (ESA) Compliance: As lead Federal agency, the NRCS will fulfill the collective responsibilities set forth in the ESA and will achieve compliance with that Act. This permit does not authorize the take of an endangered species or its habitat. In order to legally take a listed species, separate authorization under the ESA is required. If authorization under the ESA contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with an "incidental take", such terms and conditions become part of this permit. Failure to comply with the ESA terms and conditions would constitute an unauthorized take, and would also constitute non-compliance with this permit. This permit is not considered effective until ESA compliance is achieved. As ESA compliance should not be duplicated by agencies, the Corps of Engineers will accept the lead Federal agency's compliance with the requirements of that Act. Compliance with the ESA will be considered complete when the NRCS completes the necessary Section 7 compliance process and provides documentation of said compliance to the U.S. Army Corps of Engineers' Rock Island District office. If the NRCS and the U.S. Department of Interior, Fish and Wildlife Service are successful in finalizing an agreement on how compliance will be achieved for projects described in this Regional Permit, that agreement will be considered documentation of Section 7 compliance.

7. For purposes of this Regional Permit, the term "streams" will not include channels that generally only flow following precipitation events, are upland gullies, are constructed drainage ditches, or are channels with continuous flow for less than three months in a typical year. For other streams, a habitat analysis must be completed at and above the project site. The stream habitat analysis will record the presence or absence of naturally-occurring sorting of bed material, and the presence or absence of naturally-occurring pools with a depth of 12 inches or greater. The stream habitat analysis will encompass the reach of channel from the proposed dam centerline to a point 200 feet upstream. Projects affecting streams that exhibit bed sorting and pool characteristics will require mitigation. The final determination as to how much and what kind of mitigation will be required will be made by the Rock Island District based on the habitat analysis and other information gathered during the permit process.

8. Except for the structure and upland borrow areas, all disturbed areas not covered with riprap shall be seeded with native grasses, excluding Reed Canarygrass (Phalaris arundinacea), during an optimal seeding period. If excavation and construction are completed outside an optimal seeding period, temporary erosion control protection shall be implemented immediately upon completion of excavation and construction and shall be maintained until such time as seeding can be completed during an optimal period. The applicant shall monitor revegetated areas continuously to assure success of revegetation. If rye is initially planted to stabilize the soil then native warm season grasses shall be planted during the following growing season. Erosion control features (i.e., silt fences, silt ditches, silt dikes, silt basins, revegetation, etc.) must be installed to provide continuous erosion control throughout the construction and post construction period. Where siltation control features have been reduced in capacity by 50% or more, the features shall be restored to their original condition with a minimum of delay.

9. All construction within the waterway shall be conducted during zero to low flow conditions.

10. Any spoil material excavated, dredged or otherwise produced by the activity will not be returned to the waterway but will be deposited in a self-contained upland area or in the proposed pool area.

11. Clearing of vegetation, including trees located in or immediately adjacent to waters of the U.S., shall be limited to that which is absolutely necessary for construction of the project. All vegetative clearing material shall be removed to an upland, non-wetland disposal site or shall be buried within the proposed pool area.

12. Where project plans include armoring, acceptable material will include clean: riprap, field stone, quarry rock, and broken Portland Cement Concrete (PCC). Neither shot rock nor ungraded stone will be used. When using broken PCC, all exposed reinforcing steel rod or mesh must be completely removed. If removal is not possible, the reinforcement material shall be cut flush with the surface of the concrete prior to placement. It shall be the applicant's responsibility to maintain the riprap such that any reinforcement material that becomes exposed in the future is removed. The use of asphalt or other solid waste is not authorized.

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

Further information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization:

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project and/or uses thereof as a result of other permitted or non-permitted activities and/or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, and/or to other permitted or non-permitted activities and/or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See item 4 of this section above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Duane P. Gapinski
Colonel, U.S. Army
District Engineer

3/21/06
Date

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

Transferee: _____ Date: _____
(Name)

Addendum

Considerations Required for Authorization Under

Regional Permit 33

Small NRCS Structures

In the State of Iowa

I. General:

The NRCS must be the Lead Federal Agency for all projects authorized under this Regional Permit.

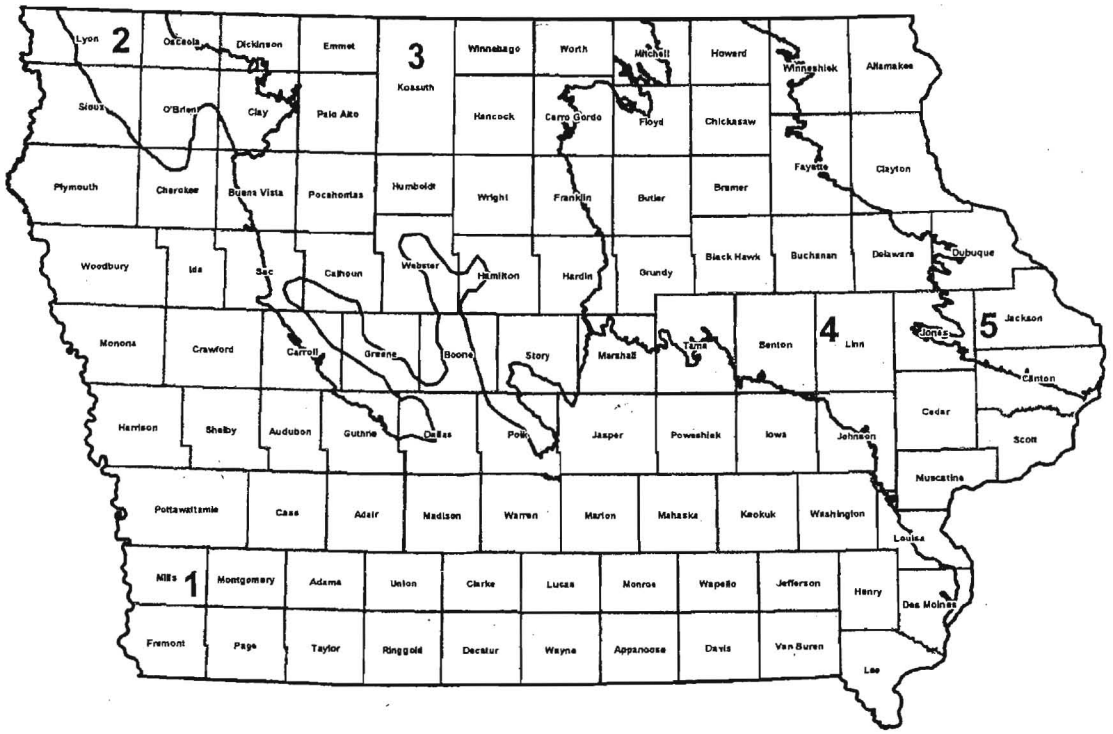
Projects authorized under this Regional Permit are:

- the construction of small ponds, dams and grade stabilization structures where the NRCS plans, installs, funds, and/or provides technical assistance for such projects;
- in accordance with a binding agreement or a conservation plan between the Landowner, and/or the Sponsor which is a State governmental authority (such as the Iowa Department of Agriculture and Land Stewardship), local authorities (such as Soil and Water Conservations Districts), and/or the NRCS.

The purpose of the projects is to reduce downstream damages to agricultural lands from erosion, sediment deposition, and/or flooding, on-site or up stream damages from gully erosion, and to provide a water source for livestock. Incidental wildlife habitat and recreation benefits may accrue to landowners from the sediment pools associated with installation of structures under this permit, but such benefits are not part of the primary purpose of the projects.

II. Technical Criteria and Specifications:

Generally, the projects will be constructed in upper watershed reaches in areas where there is little base flow in the stream. The structures will be strategically located to reduce downstream peak flows and upstream erosion so that damages are reduced to acceptable levels. The structures described under the Project Description may be authorized within the landscape areas and drainage area limits shown below.



Landscape Area	Upper Limit of Drainage Area in Acres
1	1280
2	1000
3	640
4	1000
5	1280

Fills in or across drainage ways with **perennial flow in a normal year** will not be covered under this Regional Permit except in cases where there is a documented nick point in an excessively incised stream or gully. Such nick point must be documented with a survey and a plotted drainage profile in the permit application.

If a project is on a stream listed on the Special Waters of Iowa list, coordination with the Iowa Department of Natural Resources must occur and appropriate measures deemed necessary to protect the integrity of Special Waters must be included in the project plans before authorization under the regional permit is issued.

Fills that will adversely impact fens or sedge meadows will not be covered under this Regional Permit.

General Design Criteria:

Ponds: A water impoundment made by construction of a dam, an embankment, or by excavation of a pit or dugout. The primary purpose of a pond is to provide water for livestock. Secondary benefits may include fish and wildlife habitat, recreation, fire control, and other related uses, and serve to maintain or improve water quality. Specific criteria for use in designing ponds may be found in the *Iowa Field Office Technical Guide Standard 378, Pond*, at http://www.ia.nrcs.usda.gov/technical/permitmaterials.html.

Dams: Dams are structures which generally form water impoundments. In addition to providing for the purposes shown under ponds, dams may be used to provide flood control, water supply, grade stabilization, erosion control, and sediment control. Specific criteria for use in designing dams may be found in the *Iowa Field Office Technical Guide Standard 378, Pond, and Standard 410, Grade Stabilization Structure* at the web address shown above. Additional criteria for the design of dams is found in *Technical Release 60, Earth Dams and Reservoirs*. This Technical Release may also be found on the web at http://www.ia.nrcs.usda.gov/technical/permitmaterials.html.

Grade Stabilization Structures: A structure used to control the channel grade in natural or constructed watercourses. Grade stabilization structures are used to stabilize channel grades, reduce gully erosion, and improve water quality. Specific criteria for use in designing grade stabilization structures may be found in the *Iowa Field Office Technical Guide Standard 410, Grade Stabilization Structure*, at the web address shown above.

Typical drawings of a pond, a dam, and a grade stabilization structure are attached hereto (see Drawings 1, 2, 3, and 4).

Mitigation: Practicable measures must be taken to avoid and minimize adverse impacts to waters of the United States by both temporary and permanent fills. Any unavoidable impacts to wetlands must be mitigated at a minimum ratio of 1:1 provided the mitigation is in-kind (out-of-kind mitigation shall be mitigated at a minimum ratio of 2:1). Mitigation for unavoidable adverse impacts to other waters of the U.S. must be adequate to offset lost functions. The Corps will determine if the proposed mitigation is adequate. At least 5 years of post-project monitoring of mitigation areas is required to insure success.

All mitigation must be completed prior to or concurrent with project construction and may include the following:

1) Replacing wetlands impacted by the project by creating fringe/pool area conditions conducive to wetland development and establishment of desirable wetland vegetation (Successful wetland mitigation requires inundation of 2 feet or less and/or soil saturation within 12 inches of the surface for at least five percent of the growing season);

2) Lining shallow water areas in the pool with hydric soils;

3) Providing native wetland seedings/plantings in shallow parts of the pool and in areas that will be saturated within 12 inches of the surface;

4) Creating native upland buffers around the pool and mitigation wetlands;

5) Fencing the pools to protect the mitigation wetlands, the shoreline, and the upland buffers from livestock disturbance;

6) Leaving woody vegetation standing in pools to provide temporary fish and wildlife habitat;

7). Enhancing/protecting the stream below the structure and/or nearby streams with bank stabilization, plantings, stream bed stabilization, riffles, or other habitat structures/improvements, etc;

8) Or other measures appropriate to the site conditions. More mitigation guidance can be found in the *Rock Island District Mitigation and Monitoring Guidelines.* The guidelines can be found at: http://www2.mvr.usace.army.mil/Regulatory/default.cfm?cat=sip .

If, in the opinion of the Corps of Engineers, mitigation areas do not fully replace the aquatic functions that will be lost due to the installation of the structure or project features, further mitigation measures may be deemed necessary on a case-by-case basis. To insure that there is no net loss of aquatic functions and values, additional project specific mitigation at either the project location or an alternative location within the same watershed may be required prior to issuance of authorization under this Regional Permit.

III. Permit Application Process:

No work on the project may commence on any portion of the project under this regional permit until project specific authorization has been issued by the U.S. Army Corps of Engineers.

a. To initiate review by the Corps of Engineers, the NRCS, the Landowner or the Project Sponsor will provide the Corps of Engineers a complete permit application utilizing current Joint Application processing procedures in Iowa. The NRCS should be clearly identified as the Lead Federal Agency in the application.

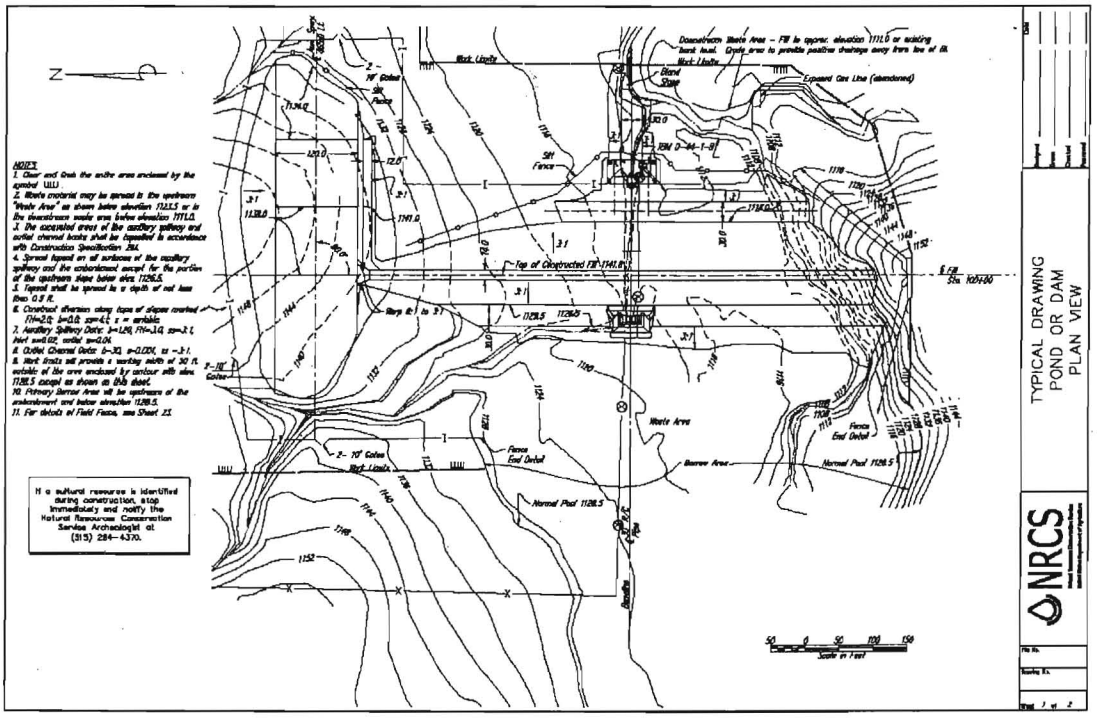
b. Drawings/project plans specific to an individual project covered by this Regional Permit are required to be submitted with the permit application.

c. The application will also contain identification/delineation of all waters of the U.S. affected by the project, the impacts to the waters of the U.S. due to the project, and a mitigation plan for impacts to waters of the U.S. The permit applicant will provide a copy of a wetland determination to the Corps of Engineers, who will determine if it is adequate for Clean Water Act purposes or if more information is required.

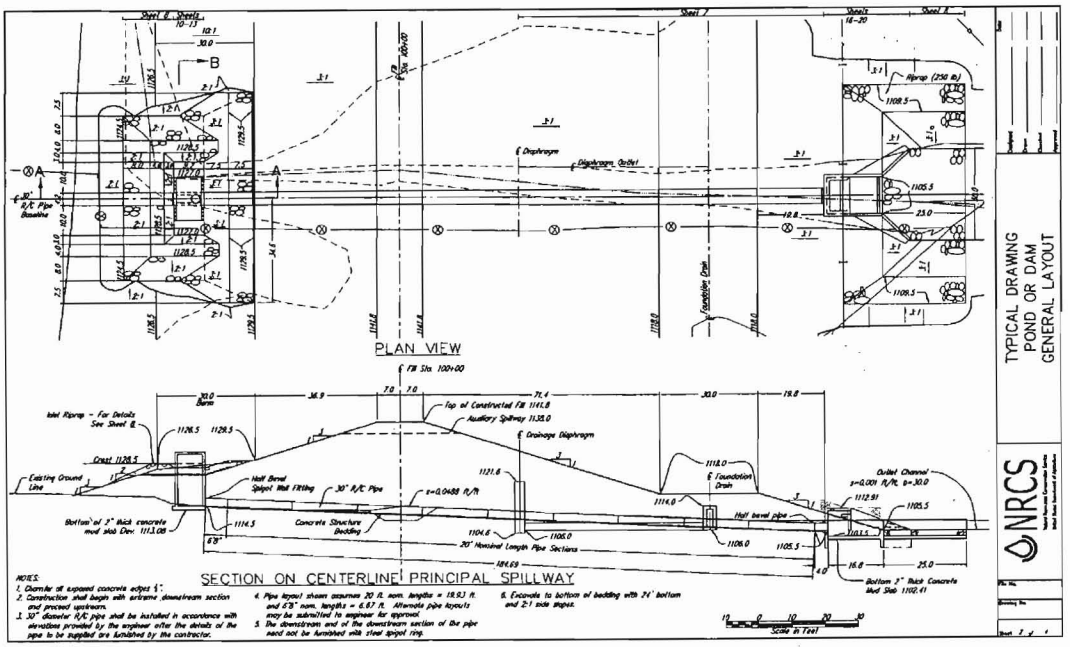
d. The application will be submitted and reviewed in compliance with 33 CFR 325.

e. Department of Army authorization for the projects under this Regional Permit will be effective upon receipt of written, project specific verification of the authorization from the Corps of Engineers, and will be generally be valid for three (3) years.

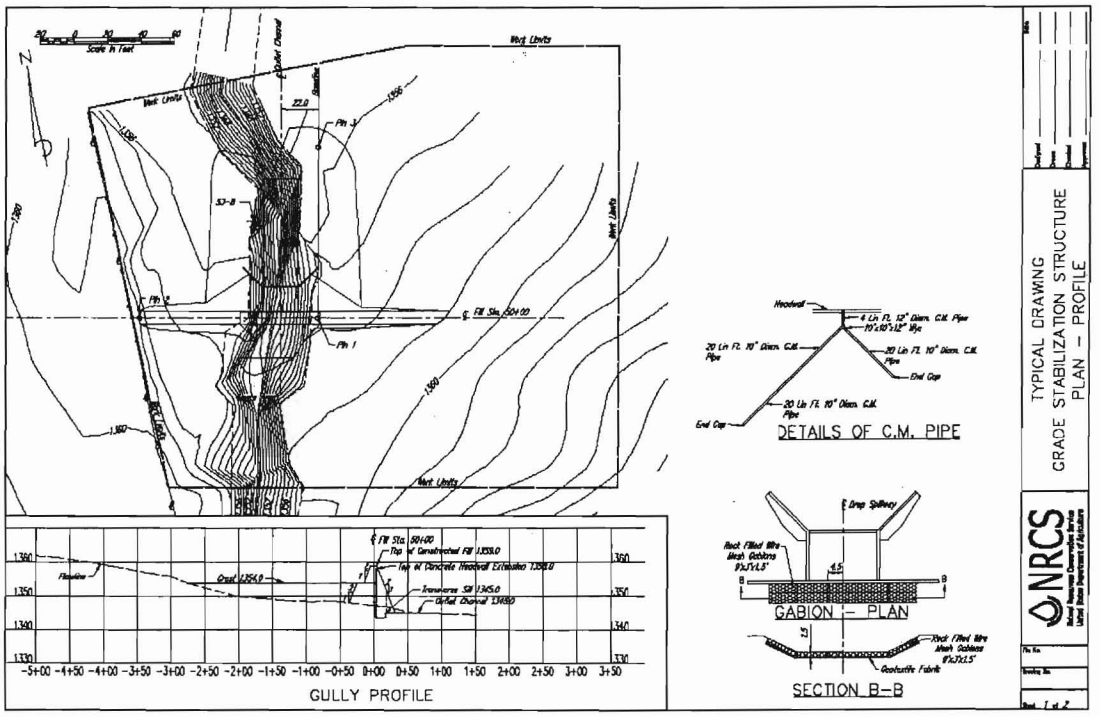
Drawing 1 - Pond / Dam - Typical Plan View



Drawing 2 - Typical Pond / Dam - Principal Spillway



Drawing 3 - Grade Stabilization Structure - Typical Plan View



Drawing 4 - Grade Stabilization Structure - Typical Cross Section