

**DEPARTMENT OF THE ARMY PERMIT  
Regional Permit 34  
Conservation Reserve Enhancement Program  
Structures in the State of Iowa**

Permit Number: CEMVR-OD-P-

Section: 404

Permittee:

POC:

Tel:

Effective Date:

Expiration Date:

[NOTE: The expiration date for individual authorization under this regional permit will not extend beyond December 31, 2010

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

If funding or technical assistance is being provided through the Conservation Reserve Enhancement Program (CREP), either the landowner, the Iowa Department of Agriculture and Land Stewardship (IDALS), or the Farm Service Agency (FSA) of the U.S. Department of Agriculture, 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. to create wetlands and ponded water through the construction of earthen embankments and/or dams when funding or technical assistance is being provided through CREP and **when FSA 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:**

## **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 FSA 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, FSA will fulfill the collective responsibilities set forth in the NHPA, and will achieve compliance with Section 106 of the NHPA utilizing established agency procedures and processes. 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 (FSA) compliance with the requirements of the NHPA. Compliance with NHPA will be considered complete when FSA completes the 106 process and provides documentation of its compliance to the U.S. Army Corps of Engineers' Rock Island District office.

b. To further clarify General Condition 3, 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 stop and the following parties must be notified immediately: The FSA, Department of Agriculture, 10500 Buena Vista Court, Des Moines, Iowa 50322-3732 (telephone 515/331-8451. See Special Conditions 1 and 5a above), 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). Sufficient time will be allowed to determine the significance of the discovery. The permittee may be held responsible for cost associated with identification and recovery.

6. This permit authorizes any future discharge of dredged or fill material associated with periodic maintenance and the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities) even if the original construction of the structure did not require a Department of the Army permit. The reversion must occur per the Iowa Conservation Reserve Enhancement Program Easement executed between the Soil and Water Conservation District and the landowner, even if the discharge occurs after this permit expires. This permit authorizes the reversion of the area, including wetlands that were restored, enhanced, or created on prior-converted cropland that has not been abandoned in accordance with binding agreements involving the landowner, NRCS, and the Soil and Water Conservation District in the county in which the CREP wetland is located. The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity the permittee or the appropriate Federal or State agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps regulatory requirements will be at that future date.

7. Endangered Species Act (ESA) Compliance: As lead Federal agency, the FSA 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. 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 (FSA) compliance with the requirements of that Act. Compliance with the ESA will be considered complete when FSA 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 FSA and the U.S. Department of Interior, Fish and Wildlife Service are successful in finalizing a memorandum of agreement on how compliance will be achieved for projects described in this Regional Permit, that agreement will be considered documentation of Section 7 compliance.

8. This Regional Permit authorizes all activities related to 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 originally specified. Minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal. The District Engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this permit. This permit does not authorize new stream channelization or stream relocation. This permit does not authorize more than minimal degradation of water quality, more than minimal changes to the flow characteristics of the stream, or increased flooding.

9. Any spoil material excavated, dredged or otherwise produced by the activity will not be returned to the waterway but will be deposited in an upland area or in the proposed pool area.

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

11. Where project plans include armoring, acceptable material will include clean: riprap, field stone, quarry rock, and broken Portland Cement Concrete (PCC). 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 permittee'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.

12. 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. Requests should be made to:

Robert A. Sinkler  
Colonel, U.S. Army  
District Engineer, Rock Island District  
Clock Tower Building  
P.O. Box 2004  
Rock Island, Illinois 61204-2004



Robert A. Sinkler  
Colonel, U.S. Army  
District Engineer

19 SEP 2006  
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: \_\_\_\_\_  
(Name)

Date: \_\_\_\_\_

**Addendum  
Considerations Required for Authorization Under  
Regional Permit 34  
Conservation Reserve Enhancement Program  
Structures in the State of Iowa**

**I. General:**

The Department of Agriculture's Farm Service Agency (FSA) must be the Lead Federal Agency for all projects authorized under this Regional Permit. FSA is responsible for determining when they are the Lead Federal Agency.

Projects authorized under this Regional Permit are for the construction of earthen berms and/or dams where FSA plans, installs, funds, and/or provides technical assistance under the Conservation Reserve Enhancement Program (CREP).

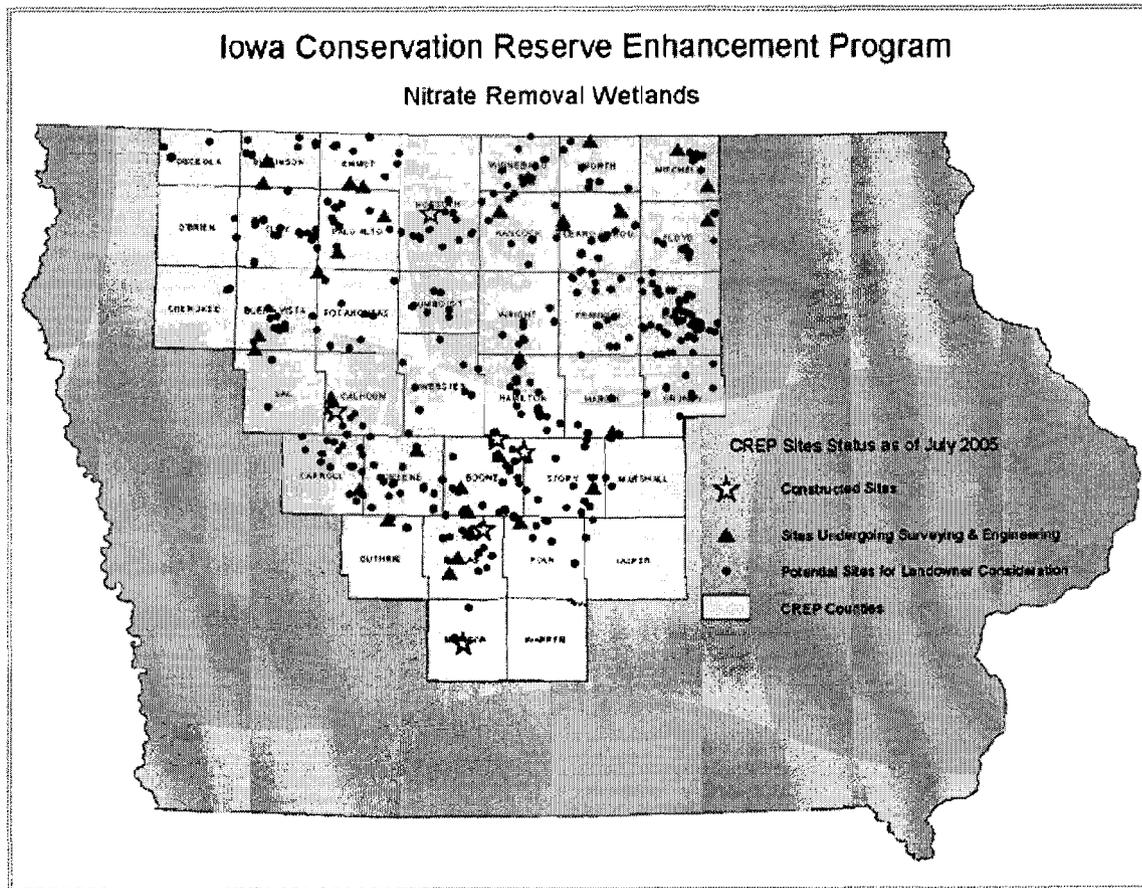
The primary purpose of the projects is to improve water quality by limiting the amount of agricultural pollutants (mainly nitrates) entering the nation's rivers and ultimately, the Gulf of Mexico. The earthen embankment will slow storm water and agricultural drain tile water runoff which will allow a large percentage of nitrates to fall out and break down before they enter larger waterways. Other benefits include erosion control and wildlife habitat.

**II. Technical Criteria and Specifications:**

The projects will be constructed on small streams and waterways with drainage areas of 4,000 acres or less. They must be located in one of thirty-seven counties in North-Central Iowa (see the map on the following page).

The structures will be strategically located and designed to pool tile drainage water which will remove nitrates and herbicides from that water.

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.



General Design Criteria:

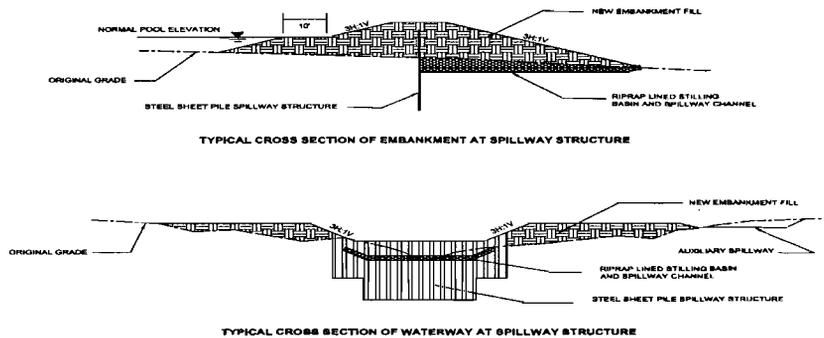
The typical size of the pool that will form above the structure will be between ½ and 2 percent of the size of the watershed.

CREP criteria requires water depths of 3 feet or less in at least 75 percent of the pool.

The area between the maximum flood pool elevation and the normal pool elevation will be vegetated in grass. With the exception of structures and steep slopes, all areas without an established vegetative cover will be seeded to native grasses.

Specific criteria for use in designing the CREP structures are found in the *Iowa Field Office Technical Guide* on the web at <http://www.ia.nrcs.usda.gov/technical/permitmaterials.html>. Standards 378 and 410 are pertinent. Additional criteria for the design of dams are 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>.

Typical drawings of a CREP structure are shown below.



### Mitigation:

Practicable measures must be taken to avoid and minimize adverse impacts to waters of the United States by both temporary and permanent fills. Mitigation for unavoidable adverse impacts to other waters of the U.S. must be adequate to offset lost functions. Unavoidable wetland losses will typically be fully replaced in the 75 percent of the pool with water depths of 3 feet or less. It is expected that most of the pool area with water depths of 3 feet or less will develop emergent wetland characteristics. Additional wetland mitigation is required if the acreage of wetland impacted by the structure and deep water exceeds the proposed acreage of pool with water depths of 3 feet or less. Additional wetland mitigation may also be required for out-of-kind mitigation. The Corps will determine if the proposed mitigation is adequate.

All mitigation must be completed prior to or concurrent with project construction. If mitigation is required beyond what is provided in the shallow areas of the pool, it may include:

- 1) Increasing the size of shallow water areas with excavation or raising the height of the structure to create 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) Creating or restoring wetland at another location.
- 3) Lining shallow water areas in the pool with hydric soils;
- 4) Providing native wetland seedings/plantings in shallow parts of the pool and in areas that will be saturated within 12 inches of the surface;
- 5) Increasing the width of the native upland buffers around the pool and mitigation wetlands;
- 6) Fencing the pools to protect the mitigation wetlands, the shoreline, and the upland buffers from livestock disturbance;
- 7) Leaving woody vegetation standing in pools to provide temporary fish and wildlife habitat;

8). 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;

9) 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. To be considered for authorization under this Regional Permit, a project must meet the General Design Criteria on page 7 (above).

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

b. Location maps (showing the proposed structure and pool) 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 Corps will determine if the information 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 generally be valid for three (3) years. Although the Regional Permit will authorize the construction of the structure for only three years, it also authorizes periodic maintenance and the reversion of the permit area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or creation activities) for a period specified in the Iowa Conservation Reserve Enhancement Program Easement executed between the Soil and Water Conservation District and the landowner even if the original construction of the structure did not require a Department of the Army permit. The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before any reversion activity the permittee or the appropriate Federal or State agency must notify the District Engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps regulatory requirements will be at that future date.