

DEPARTMENT OF THE ARMY PERMIT

Permittee General Public

Permit No. RGP 9601-06

Issuing Office Corps of Engineers, Omaha District

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.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: This RGP authorizes work associated with emergency flood related activities. Authorized activities include, but are not limited to, repair, construction and reconstruction of new and existing roads; temporary levee construction; levee repair; breach closures; bridge embankment repair; protection and/or repair of utility structures; placement of suitable rock and/or dirt fill for bank stabilization; and the construction of temporary drainage ditches to facilitate the removal of flood water, sheetwater, or excess water. **This RGP does not authorize significant, permanent adverse impacts.**

Project Location: Waters of the United States (including rivers, lakes, streams, and wetlands; excluding bogs and fens) located within flooded areas of North Dakota.

This Regional General Permit expires on March 31, 2014

General Conditions:

1. The time limit for completing the work authorized ends on See Special Condition 1. on page 4. 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 the above 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 archeological 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.
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.

(See pages 4 thru 6 for Special Conditions)

After a detailed and careful review of all of the conditions contained in this permit, the permittee acknowledges that, although said conditions were required by the Corps of Engineers, nonetheless the permittee agreed to those conditions voluntarily to facilitate issuance of the permit, and the permittee will comply fully with all the terms of the permit conditions.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 - (X) Section 10 of the River and Harbors Act of 1899 (33 U.S.C. 403).
 - (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
 - () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
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 or uses thereof as a result of other permitted or unpermitted activities 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, or to other permitted or unpermitted activities 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 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 4 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.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE)

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

DAVID C. PRESS
(DISTRICT ENGINEER)
Colonel, Corps of Engineers

(DATE)

BY: _____
MARTHA S. CHIEPLY
Chief, Regulatory Branch, Operations Division

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)

**REGIONAL GENERAL PERMIT 9601-06
SPECIAL CONDITIONS**

Any authorization granted under this Regional General Permit is subject to the following conditions:

1. Upon receiving approval to perform work under this RGP, the permittee will have 120 days to complete the work. If additional time will be needed to complete the authorized activity, a written request for a time extension must be submitted to the North Dakota Regulatory Office.
2. All channel restoration work will be limited to restoring the area to pre-flood conditions. Channel restoration of areas not caused by flooding is not authorized under this RGP.
3. All temporary drainage ditches constructed in Section 10 waters, or that resulted in a discharge of dredge or fill material in waters of the United States, must be restored within 30 days of the end of the flooding conditions.
4. Repair measures authorized herein are only to restore areas to pre-emergency conditions.
5. Repair and protection measures authorized herein do not allow for the construction of structures (e.g. jetties) which would result in any further stream channel constriction or in the redirection of flows in such a way as to cause upstream or downstream erosion, etc. Nor does this RGP authorize any repair work on such structures that would result in the structure being modified or extended beyond its original length.
6. Temporary levees, accesses, and other fills must involve the least damaging and minimum amount of disturbance/impacts to waters of the United States. Appropriate measures must be taken to maintain near normal downstream flows to minimize flooding.
7. All fill must be of suitable materials and placed in such a manner that the material will not be eroded by expected high flows.
8. All fill material will be obtained from a non-wetland, upland source.
9. The use of small aggregate, such as streambed material, for bank stabilization and erosion control is prohibited. All erodible fill material associated with bank stabilization must be stabilized.
10. Mitigation plans will be developed and coordinated with the applicable resource agencies on a case-by-case basis.
11. All temporary fills, including sandbags, in waters of the United States must be completely removed and the area restored to pre-emergency conditions within 30 days of the end of flooding conditions.
12. Only clean riprap materials will be utilized in order to avoid the percolation of fines that would result in excessive local turbidity.

**REGIONAL GENERAL PERMIT 9601-06
SPECIAL CONDITIONS**

13. All areas along the bank disturbed or newly created by the construction activity, which will not be ripped, will be seeded with vegetation both in kind and in quantity (this will include both the herbaceous and woody species) that are indigenous to the area for protection against subsequent erosion and to minimize adverse impacts to fish and wildlife resources.

14. The clearing of vegetation, including trees located in or immediately adjacent to waters of the United States, will be limited to that which is absolutely necessary for construction of the project.

15. All construction debris will be disposed of on an approved upland site in such a manner that it cannot enter a waterway or wetland. The permittee will establish and carry out a program for immediate removal of debris during construction in order to prevent the accumulation of unsightly, deleterious and/or potentially polluted materials.

16. Equipment for handling and conveying materials during construction will be operated to prevent dumping or spilling the materials into the water except as approved herein.

17. That all dredged or excavated materials, with the exception of that authorized herein, will be placed on an upland site above the ordinary high water line in a confined area, not classified as a wetland, to prevent the return of such materials to the waterway.

18. Concrete trucks will be washed at a site and in such a manner that washwater cannot enter the waterway.

19. During construction, no petroleum products, chemicals, or other deleterious materials shall be allowed to enter or be disposed of in such a manner so that they could enter the water and that precautions be taken to prevent entry of these materials into the water.

20. All work in the waterway will be performed in such a manner so as to minimize increases in suspended solids and turbidity that may degrade water quality and damage aquatic life outside the immediate area of operation.

21. All earthwork operations on shore will be carried out in such a manner that sediment runoff and soil erosion to the waterbody are controlled.

22. If and when the District Commander has been notified that a dredging or filling activity is adversely affecting fish or wildlife resources or the harvest thereof and the District Commander subsequently directs remedial measures, the permittee will comply with such directions as may be received to suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect as required.

23. The use of machinery in the waterway will be kept to a minimum.

**REGIONAL GENERAL PERMIT 9601-06
SPECIAL CONDITIONS**

24. A discharge of material may not occur in the proximity of a public water supply unless appropriate approval is given and mitigation measures are identified to offset any adverse effects.

25. If the Corps is notified that work being performed does not comply with, or fall within the scope of, this RGP, the responsible party will take immediate steps, as directed by the Corps, to bring the work into compliance with this permit.

26. If threatened or endangered species are sighted at or near the project site, particularly during construction, work must cease and the North Dakota Regulatory Office and U.S. Fish and Wildlife Service contacted immediately.

27. The permittee, the permittee's contractor or any of the employees, subcontractors or other person working in the performance of the contract shall immediately report the discovery of subsurface features, possible scientific, prehistorical, historical, or archeological data, giving the location and nature of the findings to the North Dakota State Historic Preservation Officer and the North Dakota Regulatory Office. If discoveries occur on an Indian Reservation, the applicable Tribal Historic Preservation Officer and North Dakota Regulatory Office shall be notified. The permittee shall cease construction or operation at the site of any cultural resource discovery. Work shall not begin until notified by the North Dakota Regulatory Office.

28. The District Commander may require additional special conditions be included in any authorization issued under this RGP to avoid or minimize adverse environmental impacts. The District Commander may also require the processing of an individual permit for an activity determined to have more than minimal adverse environmental effects, individually or cumulatively, or would be contrary to the public interest.

**REGIONAL GENERAL PERMIT 9601-06
APPLICATION PROCEDURES**

All interested parties proposing work under this RGP are required to contact the US Army Corps of Engineers, North Dakota Regulatory Office (NDRO), 1513 South 12th Street, Bismarck, North Dakota, 58504 in advance so that a determination can be made that the work is necessitated by flood conditions. The NDRO can also be contacted by telephoning (701) 255-0015 or by faxing (701) 255-4917.

The following information is required. The information submitted must clearly describe the work so the North Dakota Regulatory Office can determine whether or not the work complies with the terms and conditions of this RGP.

1. Name, address, and telephone number of the applicant responsible for the work and the owner of the affected land, if other than the applicant.
2. A written description of the proposed work including the purpose and need; type, composition and volume of fill and/or excavated material; length, width and depth of fill material and/or excavation area; disposal site for the excavated material; types and numbers of equipment to be used; impacts to wetlands, streams or other waters of the United States; and any other pertinent, supporting data. Drainage projects must identify the receiving site for the excess water. The applicant is responsible for contacting and receiving permission from the downstream landowners.
3. A written legal description of the project location including section, township, range, and county.
4. Names, addresses, and telephone numbers of adjacent property owners.
5. A set of drawings on 8 1/2 by 11 inch paper, with dimensions of the proposed work, showing:
 - a. The project location, including the borrow and disposal site locations. A photocopy excerpt from a USGS quadrangle, county road map, or FSA map is acceptable. (Photographs would be helpful.)
 - b. A plan or top view of the project area.
 - c. A typical cross-section or side view of the project area.

No project may proceed until notification approval has been received from the North Dakota Regulatory Office that the proposal meets the RGP criteria.

