

DEPARTMENT OF THE ARMY PERMIT

General Permit Number 25: Programmatic General Permit for Activities Requiring Review under Section 404 of the Clean Water Act within the Established Boundaries of DuPage County, Illinois

Permittee: The General Public in DuPage County, Illinois

Issuing office: Chicago District, U.S. Army Corps of Engineers

DEFINITIONS:

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.

The term "County" refers to the appropriate department or division office of the DuPage County government having jurisdiction over riparian and wetland permitting.

The term "Ordinance" refers to the DuPage County Countywide Stormwater and Flood Plain Ordinance.

The term "Chicago District" refers to the Regulatory Branch of the Chicago District, U.S. Army Corps of Engineers.

The term "high-quality aquatic resources (HQARs) means aquatic areas considered to be regionally critical due to their uniqueness, scarcity, and/or value, and other wetlands considered to perform functions important to the public interest, as defined in 33 CFR Part 320.4(b)(2). These resources include bogs, ephemeral pools, fens, forested wetlands, sedge meadows, wet meadows, seeps, streams rated Class A or B in the Illinois Biological Stream Characterization study, wet prairies, wetlands supporting Federal or Illinois endangered or threatened species, and wetlands with a floristic quality index of 20 or greater or mean C value of 3.5 or greater. These areas are generally considered unsuitable for dredge or fill activities.

The general public in DuPage County, Illinois is authorized to perform the work described below in accordance with the following terms and conditions.

Description of General Permit: This programmatic general permit authorizes the County to assume responsibility for the review of projects within DuPage County requiring authorization under Section 404 of the Clean Water Act, which is currently administered by the Chicago District. The general permit will be applicable where the discharge of dredged or fill material into wetlands and other waters of the United States will not result in more than minimal impacts to the aquatic environment. The types of projects that will be covered by the general permit may

include, but would not be limited to, those projects that would discharge dredged or fill material into wetlands and other special aquatic sites, or those projects that would seek to drain, flood, or excavate these areas.

This general permit applies only to Section 404 activities under the jurisdiction of the Ordinance and as reviewed by the County. Activities specifically excluded from the general permit include any activities regulated under Section 10 of the Rivers and Harbors Act of 1899, waterways not regulated under this general permit, or any project sponsored by the County, the State of Illinois, or any unit of the Federal government within the boundaries of DuPage County, Illinois.

Furthermore, any activity, work, or project the Chicago District determines would result in more than minimal impacts to the aquatic environment would not be considered eligible for review under the general permit.

The determination of minimal impacts, and the applicability of the general permit, shall remain solely within the discretion of the Chicago District. Should the District determine that a project could have more than minimal impacts on the aquatic environment, the general permit would not apply, and the project will be reviewed under standard individual permit procedures, as published in 33 CFR Part 325.2(e)(2).

The DuPage County Countywide Stormwater and Flood Plain Ordinance (Ordinance) is the authority the government of DuPage County will use to administer its review of the Section 404 program. The Ordinance, and Appendix E to the Ordinance titled Technical Guidance for the DuPage Countywide Stormwater and Flood Plain Ordinance, comprise a comprehensive document integrating stormwater management concerns with wetland issues, water quality, wildlife issues, riparian corridors, and flood control issues. The attached flow chart (Exhibit 1) details how the permit process will work, and describes the responsibilities of the Chicago District and the the County in their review of permit applications.

The transfer of Section 404 permit review authority to the County will empower the county government to make decisions involving wetland resources within its jurisdiction, and will also serve to reduce the duplication of regulatory review at different levels of government. The general permit will allow the County to integrate local wetland resource concerns into other water-related issues such as flood control, wildlife habitat concerns, preservation and restoration of riparian corridors, stormwater storage, and water quality in long-range county planning. The Ordinance regulates the same activities as the Federal Section 404 program; therefore, it is appropriate that the Chicago District has developed this general permit. The regulations published in 33 CFR Part 325.2(e)(3) encourage division and district engineers to develop joint procedures with states and other Federal agencies with ongoing permit program for activities also regulated by the Department of the Army. The Chicago District believes that this general permit is in the spirit of the above guidance, and is therefore appropriate.

Requirements and Section 404(b) (1) restrictions on discharge

Guidelines issued by the USEPA pursuant to Section 404(b) (1) of the Clean Water Act restrict discharges of dredged or fill material under certain circumstances (40 CFR 230.10). The Guidelines outline a sequence of avoidance of wetland impacts, minimization of wetland impacts, and compensation for unavoidable impacts (mitigation sequencing) that is central to the evaluation of permit applications reviewed by the U.S. Army Corps of Engineers. In addition, recent regulations (Compensatory Mitigation for Losses of Aquatic Resources (33 CFR Part 332)) further enforces this sequencing.

It is important to note that the Ordinance uses guidelines similar to the Section 404(b) (1) Guidelines, as stated in Section 15.48.A.2 and 3, and 15-86.B and C, of the Ordinance and in Appendix E under the section entitled Requirements For Development In Wetlands. These guidelines require avoidance and minimization, describe requirements for analysis of alternatives, and specify minimum mitigation ratios for wetland impacts. These guidelines also state that the purpose of the mitigation should be to duplicate or improve the hydrologic, biologic and economic features of the original wetland that would be impacted. In addition, impact within or affecting wetlands seen to be of especially high value, called critical wetlands in the Ordinance, is prohibited unless it can be conclusively proven that the presence of these wetlands precludes all economic use of the entire property, and that no practicable alternative to wetland modification exists.

These guidelines are functionally equivalent to the Section 404(b) (1) Guidelines, and are consistent with the Mitigation Rule, as authorized under the Federal Regulations, 33 CFR, Parts 325 & 332, now utilized by the Chicago District. The DuPage County guidelines provide a reasonable standard for the evaluation of unavoidable wetland impacts. The Chicago District believes that use of these guidelines by DuPage County satisfies the requirements of the Section 404(b) (1) Guidelines.

General Conditions:

1. This general permit applies only to Section 404 activities within the established boundaries of DuPage County, Illinois that would have only minimal impacts on the aquatic environment.
2. The Chicago District may, at its discretion, apply special conditions to projects authorized by this general permit as needed in order to insure that these projects would not have more than minimal impacts on the environment.
3. Processing of applications under this general permit shall proceed as detailed on the attached flow chart (Exhibit 1). The Chicago District reserves the right to modify the flow chart as required.

4. The general permit shall not be applicable to projects sponsored by any county-level unit of government of DuPage County, Illinois, or by any agency of state or Federal government.
5. Activities requiring review under Section 10 of the Rivers and Harbors Act of 1899 are not eligible for the general permit.
6. This General Permit does not authorize the use of earthfill cofferdams, or any practices that would result in a release of sediment into waters of the U.S. Cofferdams shall be constructed of non-erodible materials. Acceptable practices include, but not limited to, pre-fabricated rigid cofferdams, sheet piling, inflatable bladders, sandbags and fabric-lined basins. For projects that require installation of a cofferdam, the method or practice to be utilized shall be specified in the project narrative, and clearly labeled on the construction plans.
7. For utility line projects, directional drilling or dry crossing techniques, such as fluming, shall be used if the waterbody to be crossed contains perennial flow. The construction drawings and project narrative shall depict the location of all construction access areas, dewatering pit(s), jacking and receiving pits, and shall discuss the potential need for “utility checks” within the regulated area, a frac-out plan, and for the removal and disposal of bentonite slurry or other drilling fluid (by-product).
8. The Chicago District retains oversight authority of all projects reviewed under this general permit, and reserves the right to exert discretionary authority over any permit application at any time.

Special Conditions:

1. Bank stabilization activities are subject to the following:
 - a. Projects that involve the use of structural bank stabilization practices, such as riprap, gabions, lunger boxes, steel sheet piling, or fabric-formed concrete shall not exceed a total length of 500 feet. Riprap materials 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. Should broken concrete be used as riprap, all reinforcing rods shall be cut flush with the surface of the concrete
 - b. Projects that involve replacement of currently functional bank stabilization structures or practices shall include only minor deviations in the structure's configuration or footprint including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to implement the repair.
 - c. Structural and vegetative/biotechnical practices may be combined, but in no case shall structural practices exceed 500 feet in total length.

- d. Structural practices may not be installed in HQARs
 - e. Bank stabilization shall conform to the existing shoreline and may not be used to reclaim land lost to erosion.
2. This general permit shall not be used to relocate or channelize a linear waterbody such as a river, stream, creek, etc.
3. This general permit does not authorize construction of septic fields in Waters of the United States.
4. For wetland impacts, the County will implement the pre-discharge notification (PDN) procedure to notify other agencies of proposed activities in waters of the United States. The United States Environmental Protection Agency, the Illinois Environmental Protection Agency, the United States Fish and Wildlife Service, and the Illinois Department of Natural Resources will be notified of each pending permit action, and will be given ten (10) calendar days to respond if they intend to provide substantive, site-specific comments. If so contacted by any of these agencies, the County will delay pending permit action, not to exceed fifteen (15) calendar days for agency written comments. The Chicago District will verify applicant coordination with Illinois Historic Preservation Agency and the US Fish and Wildlife Service and other relevant agencies to ensure no resources are impacted on the project site. The PDN will identify which General Permit Class (Class I or Class II – see below) is being sought.
5. Each permit application for work reviewed under the general permit in DuPage County will be examined by the Chicago District for the environmental factors considered by the Chicago District, as prescribed by the regulations published in 40 CFR Part 230.10, and 33 CFR Part 325 and 332.
6. The determination of minimal impacts, and the applicability of this general permit, shall remain solely with the Chicago District. Should the District determine that a project would have more than minimal impacts on the aquatic environment, this general permit would not be applicable. The applicant will be informed in writing that the general permit would not apply, and that the project would be reviewed by the Chicago District under standard individual permit procedures, as published in 33 CFR Part 325.2(e)(2).
7. Wetland mitigation (compensation) will be required for all wetland impacts authorized by this general permit, as stated 33 CFR Part 332 and in Section 15-.88 of the Ordinance.
8. Projects requiring mitigation and reviewed under GP25 will follow the Federal Mitigation Rule as outlined in 33 FCR Parts 325 and 332. Projects which have permitted-responsible mitigation, on or offsite, may be eligible for GP25 review. The proposed wetland mitigation and all aspects of the proposed project site including, but not limited to BMPs, buffers, conservation easement and deed restricted area, must comply with the USACE 404 standards. The Chicago District has the authority to review a project not meeting these standards under standard Regional or Individual Permit procedures.

9. Projects proposing compensatory wetland mitigation at a federally recognized wetland mitigation bank must be reviewed under the Chicago District's standard Regional or Individual Permit procedures. Federally recognized wetland mitigation banks that lie outside of DuPage County boundaries and are not recognized by DuPage County as mitigation for wetland impacts occurring within the county. Likewise, the Chicago District does not recognize mitigation at the DuPage County in-lieu fees program as they do not comply with the existing Federal Mitigation Rule as outlined in 33 CFR Part 325.
10. The Chicago District reserves the right to enforce all applicable Laws and regulations pertaining to Section 404 activities within DuPage County, independent of any enforcement actions the County, or its agents, may pursue under the Ordinance. The Chicago District also reserves the right to enforce the conditions of any existing or future Department of the Army permits within DuPage County, Illinois.
11. The Chicago District reserves the right to conduct site inspections at any reasonable time on any project sites requiring authorization under Section 404 of the Clean Water Act in DuPage County, Illinois.
12. The Chicago District shall retain the final authority to determine the extent of jurisdictional areas in DuPage County, Illinois pursuant to Section 404 of the Clean Water Act.
13. The policies of this general permit will be subject to review at any time, but at least every five (5) years. This permit may be modified, suspended, or revoked in accordance with 33 CFR Part 325, if it is determined that the public interest is best served by doing so.

Further Information:

1. 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.
2. Limits of Federal Liability: 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 the 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 modifications, suspension, or revocation of this permit.

3. 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 the reliance on the information you provided.

4. Reevaluation of Permit Decision. The 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 3 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.

State 401 Water Quality Certification:

Water quality certification under Section 401 of the Clean Water Act is required from the Illinois Environmental Protection Agency (IEPA) for any activities authorized under this General Permit. This General Permit contains two activity based classes: Class I which includes activities with Special Conditions that will include those State Section 401 Water Quality Certification conditions as issued by the IEPA on October 1, 2008, and Class II which include all other activities under this General Permit, projects that impact over 1.0 acres of wetland, or impact high-quality aquatic resources. Class II activities require individual Section 401 Water Quality Certification from the IEPA.

Class I –

Class I activities include:

1. RESIDENTIAL, COMMERCIAL AND INSTITUTIONAL DEVELOPMENTS for the construction of residential, commercial and institutional developments and associated infrastructure, such as roads, utilities, detention areas, and recreation areas.
2. RECREATIONAL PROJECTS for the construction of recreational areas including, golf courses, sports fields, playground, parks and multi-use trails, and associated infrastructure such as roads, utilities and detention areas
3. WETLAND AND RIPARIAN RESTORATION AND ENHANCEMENT for the restoration, creation, and enhancement of wetlands and riparian areas. Wetland restoration and enhancement activities include installation, removal, and maintenance of small water control structures, dikes and berms; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation; mechanized land-clearing to remove undesirable vegetation; and other related activities.
4. UTILITY LINE PROJECTS for the construction, maintenance, and repair of utility line activities and associated facilities.
5. MAINTENANCE for repair or rehabilitation of any previously authorized, currently serviceable, structure or fill, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification.
6. BANK STABILIZATION for establishing and implementing measures against erosion and slope failure.

Class II –

Class II Activities include:

1. All other activities not listed under Class I.
2. Projects that impact over 1.0 acres of wetland, or impact high-quality aquatic resources.

Class I Special Conditions:

The following additional conditions are hereby made conditions of this General Permit for Class I activities and are required for Section 401 Water Quality Certification. The IEPA will grant Section 401 certification for General Permit Class I Activities meeting with these conditions:

1. The applicant shall not cause:

- a. violation of applicable water quality standards of the Illinois Pollution Control Board Title 35, Subtitle C: Water Pollution Rules and Regulations;
 - b. water pollution defined and prohibited by the Illinois Environmental Protection Act; or
 - c. interference with water use practices near public recreation areas or water supply intakes.
2. The applicant shall provide adequate planning and supervision during the project construction period for implementing construction methods, processes, and cleanup procedures necessary to prevent water pollution and control erosion.
3. Any spoil material excavated, dredged or otherwise produced must not be returned to the waterway but must be deposited in a self-contained area that is in compliance with all State statutes, regulations and permit requirements with no discharge to waters of the State unless a permit has been issued by the Illinois EPA. Any backfilling must be done with clean material and placed in a manner to prevent violation of applicable water quality standards.
4. All areas affected by construction shall be mulched and seeded as soon after construction as possible. The applicant shall undertake necessary measures and procedures to reduce erosion during construction. Interim measures to prevent soil erosion during construction shall be taken and may include the installation of staked straw bales, sedimentation basins and temporary mulching. All construction within the waterway shall be conducted during zero or low flow conditions. The applicant shall be responsible for obtaining a NPDES Storm Water Permit prior to initiating construction if the construction activity associated with the project will result in the disturbance of one (1) or more acres, total land area. A NPDES Storm Water Permit may be obtained by submitting a properly completed Notice of Intent (NOI) form by certified mail to the IEPA's Division of Water Pollution Control, Permit Section.
5. The applicant shall implement erosion control measures consistent with the most recent edition of the Illinois Urban Manual (IEPA/USDA, NRCS).
6. The applicant is advised that the following permit(s) must be obtained from the Illinois EPA: The applicant must obtain permits to construct sanitary sewers, water mains, and related facilities prior to construction.
7. Total Maximum Daily Load - For projects that include a discharge of pollutant(s) to waters for which there is an approved Total Maximum Daily Load (TMDL) allocation for any parameter, the applicant shall develop plans and BMPs that are consistent with the assumptions and requirements in the approved TMDL. The applicant must incorporate into their plans and BMPs any conditions applicable to their discharges necessary for consistency with the assumptions and requirements of the TMDL within any timeframes

established in the TMDL. The applicant must carefully document the justifications for all BMPs and plans, and install, implement and maintain practices and BMPs that are consistent with all relevant TMDL allocations and with all relevant conditions in an implementation plan. Information regarding the TMDL program, including approved TMDL allocations, can be found at the following website:

www.epa.state.il.us/water/tmdl/

8. The application packet shall indicate whether resources (species, their suitable habitats, or critical habitat) listed or designated under the Endangered Species Act of 1973, as amended, may be present within areas affected (directly or indirectly) by the proposed project. Applicants shall provide a Section 7 species list for the action area using the on-line process at the USFWS website. You can access “U.S. Fish and Wildlife Service Endangered Species Program of the Upper Midwest” website at www.fws.gov/midwest/Endangered. Click on the Section 7 Technical Assistance green shaded box in the lower right portion of the screen and follow the instructions to completion. Print all documentation pertaining to the species list, include the rationale for your effects determination for each species, and forward the information to this office for review. In the event there are no species, their suitable habitats, or critical habitat, then a “no effect” determination can be made and Section 7 consultation is not warranted. If species or critical habitat appear on the list, or suitable habitat is present within the action area, then a biological assessment or biological evaluation will need to be completed to determine if the proposed action will have “no effect” or “may effect” on the species or suitable habitat. The District will request initiation of Section 7 consultation with the USFWS upon agreement with the applicant on the effect determinations in the biological assessment or biological evaluation. If the issues are not resolved, the analysis of the situation is complicated, or impacts to listed species or critical habitat are found to be greater than minimal, the District will consider reviewing the project under the Individual Permit process.
9. A determination of the presence or absence of any State threatened or endangered species. Please contact the Illinois Department of Natural Resources (IDNR) to determine if any State threatened and endangered species could be in the project area. You can access the IDNR’s Ecological Compliance Assessment Tool (EcoCAT) at the following website: <http://dnrecocat.state.il.us/ecopublic/>. Once you complete the EcoCAT and consultation process, forward all resulting information to this office for consideration. The report shall also include recommended methods as required by the IDNR for minimizing potential adverse effects of the project.
10. A statement about the knowledge of the presence or absence of Historic Properties, which includes properties listed, or properties eligible to be listed in the National Register of Historic Places. A letter from the Illinois Historic Preservation Agency (IHPA) can be obtained indicating whether your project is in compliance with Section 106 of the National Historic Preservation Act of 1966, as amended. The permittee shall provide all pertinent correspondence with the IHPA documenting compliance. The IHPA has a checklist of documentation required for their review located here: <http://www.illinois.gov/iHPA/Preserve/Pages/Resource-Protection.aspx>

11. The backfill used in the stream crossing trench shall be predominantly sand or larger size material, with <20% passing a #230 U.S. sieve.
12. Any channel relocation shall be constructed under dry conditions and stabilized to prevent erosion prior to the diversion of flow. [Applicable only to projects which involve relocating stream channels.]
13. The proposed work shall be constructed with adequate erosion control measures (i.e., silt fences, straw bales, etc.) to prevent transport of sediment and materials to the adjoining wetlands and/or downstream.
14. Backfill used within trenches passing through surface waters of the State, except wetland areas, shall be clean course aggregate, gravel or other material which will not cause siltation, pipe damage during placement, or chemical corrosion in place. Excavated material may be used only if:
 - a. particle size analysis is conducted and demonstrates the material to be at least 80% sand or larger size material, using #230 U.S. sieve; or
 - b. excavation and backfilling are done under dry conditions.
15. Backfill used within trenches passing through wetland areas shall consist of clean material that will not cause siltation, pipe damage during placement, or chemical corrosion in place. Excavated material shall be used to the extent practicable, with the excavated material placed back into the trench in the same stratification as it was removed, using the original topsoil as final dressing.
16. Any applicant that is proposing activities in a mined area or previously mined area shall provide to the Illinois EPA specifications on sediment and materials used that are considered “acid-producing material” as defined in 35 Ill. Adm. Code, Subtitle D. If considered “acid-producing material,” the applicant shall obtain a permit to construct pursuant to 35 Ill. Adm. Code 404.101.
17. Asphalt, bituminous material and concrete with protruding material such as reinforcing bar or mesh shall not be 1) used for backfill, 2) placed on shorelines/stream banks, or 3) placed in waters of the State.
18. Applicants that use site dewatering techniques in order to perform work in perennial streams for construction activity shall maintain flow in the stream during such construction activity by utilizing dam and pumping, fluming, culverts or other such techniques.

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

PERMITTEE

ORIGINAL SIGNED _____
Anthony Charlton, P.E.
Director, DuPage County
Stormwater Management

February 5, 2015 _____
Date

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

ORIGINAL SIGNED _____
Christopher T. Drew, Colonel, U.S. Army
District Commander

January 8, 2015 _____
Date