



DEPARTMENT OF THE ARMY PERMIT

Permittee **General Public**

Permit No. **General Permit 96-08 (No 199621008, Amendment No. 5)**

Issuing Office **Omaha District, Corps of Engineers**

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 General Permit authorizes work in waters of the United States (including rivers, lakes, streams and wetland areas) associated with flood protection, reconstruction and repair activities within flooded areas in South Dakota. This General Permit authorizes, but is not limited to, the following types of activities: repair and reconstruction of existing roads, temporary levee construction, levee repair, breach closures, bridge embankment repair, protection and/or repair of utility structures, placement of acceptable fill and bank erosion protection, and restoration of river channels to the alignment which existed immediately prior to flooding. Any authorization granted under this General Permit will be subject to the attached Special Conditions. Before any project will be considered under this General Permit, it must conform to the attached pre-construction notification criteria listed in Appendix A (see page 8 of 8).

Project Location:

South Dakota waterways excluding the Missouri National Recreation River from river mile 753.60 (across from Ponca State Park, Nebraska) to mile 811.05 (Gavins Point Dam) and from mile 841.00 (near Running Water, South Dakota) to mile 880.00 (Fort Randall Dam).

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on (see Special Condition No. 1 on page 4 of 8). 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. **This General Permit expires on April 30, 2023.**
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.

Special Conditions:

See pages 4 through 7 of 8 for a list of Special 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.

JOHN L. HUDSON
(DISTRICT COMMANDER)
Colonel, Corps of Engineers

4 April 2018
(DATE)

By: _____
JOSEPH A. MCMAHAN
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)

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Special Conditions:

1. The time limit for completing the work authorized is 120 days from each permit determination. If additional time will be needed to complete the authorized activity, a written request for a time extension must be submitted to the Corps of Engineers.
2. This Regional General Permit authorizes the discharge of dredged or fill material and other work associated with flood protection measures and restoration, repair or reconstruction measures performed in waters of the United States within the State of South Dakota as a result of damages caused by flooding. The work will be limited to that authorized by the Corps of Engineers through the issuance of this General Permit. Work associated with restoration, repair or reconstruction will be limited to that necessary to restore damaged areas to pre-flood conditions.
3. 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 General Permit.
4. 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 Regional General Permit authorize any repair work on such structures that would result in the structure being modified or extended beyond its original dimensions. Protection measures (e.g. raise and widen flooded roadways, riprap protection of road inslopes, etc.) are authorized herein.
5. Repair measures authorized herein do not allow for improved drainage of legally drained wetlands or new, permanent drainages that would result in the lowering of basin water retention capacity and/or impacts to the wildlife value of that wetland.
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 temporary and permanently placed fill material must be clean material free of contaminants that may be toxic to aquatic life. The material shall be placed and protected in such a manner that it will not be eroded by stream currents and expected high flows.

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Special Conditions (cont'd):

8. All fill material must be obtained from a non-wetland, upland source.
9. All temporary fills, including sandbags, in waters of the United States must be completely removed and the area restored to pre-project conditions within 30 days of the end of flooding conditions.
10. The use of small aggregate, such as streambed material, for bank stabilization and erosion control is prohibited.
11. All earth fill material associated with bank erosion protection and repair must be stabilized with vegetation and appropriate erosion protection material(s) and measures must be taken to confine the material placement to the fill site by utilizing comprehensive and effective erosion control methods, which will be monitored and maintained until the site is permanently stabilized.
12. Only clean riprap materials will be utilized in order to avoid the percolation of fines that would result in excessive local turbidity.

Note: There is a vast range in types of materials that could potentially be used for erosion protection. The Natural Resources Conservation Service (NRCS) can be contacted for native plant information. Many biodegradable products are available to reinforce the soils and bankline during the initial plant growth. Information on the erosion control methods and materials and links to manufactures can be found at www.IECA.ORG (International Erosion Control Association).

13. All areas along the bank disturbed or newly created by the construction activity, which will not be riprapped or otherwise stabilized with approved protection measures, 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. The removal of mature trees will be avoided to prevent potential impacts to bald eagle roost sites.

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Special Conditions (cont'd):

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. 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 or other waters of the U.S.

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 do not occur.

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.

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.

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Special Conditions (cont'd):

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

26. If any historical, archeological, architectural, or other cultural artifacts, vestiges, or remains are found prior to, during or after any earth disturbance activities in the proposed project area, the permittee shall immediately cease construction and notify the District Engineer of the find.

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

Note: If an activity proposed for authorization will occur in the known proximity of a species designated as threatened or endangered or will adversely affect the critical habitat of such species, the Corps of Engineers will consult with the U.S. Fish and Wildlife Service before completing the permit determination. No activity will be authorized which would knowingly jeopardize a threatened or endangered species or destroy or adversely modify the critical habitat of such species.

28. The District Commander may require additional special conditions (including mitigation requirements) be included in any authorization issued under this Regional General Permit to avoid or minimize adverse environmental impacts. The processing of an individual permit may also be required for any activity determined to have more than minimal adverse environmental effects (individually or cumulatively) or the probability to be contrary to the public interest.

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Appendix A

Pre-Construction Notification

All interested parties proposing work under this General Permit are required to contact the Corps of Engineers at the South Dakota Regulatory Office, 28563 Powerhouse Road, Room 118, Pierre, South Dakota 57501 in advance so that a determination can be made that the work is necessitated by flood conditions. The Corps of Engineers will verify (on-site verification, if necessary) that flood damages are probable or that damage has occurred from recent flooding (i.e., determine the applicability of this RGP to the permit application under review). The following information is required:

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 work including the purpose and need: type, composition, and quantity of material to be discharged or excavated; length, width and depth of fill material and/or excavation area; disposal site for excavated material; equipment to be used; and any other pertinent, supporting data. Drainage projects must identify the receiving site for the excess water.
3. Names, addresses, and telephone numbers of adjacent property owners.
4. A location map with the exact location of the proposed work and a legal description.
5. A drawing on 8 1/2 by 11-inch paper with details of the proposed work showing:
 - a. The project location, including the disposal site locations. A photocopy excerpt from a USGS quadrangle, road map, or equivalent is acceptable.
 - b. Plan and cross-sectional views showing elevation (relative) and dimensions.
6. If applicable, a mitigation plan for all proposed wetland fill activities.

The information submitted must clearly describe the work and the purpose and need for the work so the Corps of Engineers can determine whether or not the work complies with the terms, conditions, and limitations of this General Permit.

No project may proceed until notification approval has been received from the Corps of Engineers that the proposal meets the General Permit criteria.



**DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES**

JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182

denr.sd.gov

March 8, 2018

Steven E. Naylor
US Army Corps of Engineers, Omaha District
South Dakota Regulatory Office
28563 Powerhouse Road, Room 118
Pierre, South Dakota 57501-6174



RE: 199621008, General Permit 96-08, Amendment No. 5
Flood Protection/Reconstruction/Repair

Dear Mr. Naylor:

The Department of Environment and Natural Resources has reviewed the request for water quality certification under Section 401 of the Clean Water Act. This request pertains to the issuance of General Permit 96-08, Amendment No. 5, covering work associated with flood protection, reconstruction and repair activities for waters of the United States in South Dakota, excluding segments of the Missouri River National Recreation Area.

The department is granting water quality certification with the following conditions:

1. All work activities must be performed in such a manner to avoid violating South Dakota Water Quality Standards.
2. For projects over an acre in size, a Storm Water Construction Permit must be obtained from the South Dakota Department of Environment and Natural Resources. Please contact Katie Luce at 1-800-737-8676 for the Storm Water Construction Permit.

If you have questions pertaining to this certification, please contact Patrick Snyder at (605) 773-3351. Thank you for ensuring the continued protection of our natural resources.

Sincerely,

Steven M. Pirner
Secretary

cc: Toney Ott, US EPA, Denver



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

MAR 30 2018

Ref: 8OWP-AAP

Jeffrey L. Breckenridge
U.S. Army Corps of Engineers
Project Manager
South Dakota Regulatory Office
28563 Powerhouse Road, Room 118
Pierre, South Dakota 57501

Re: General Permit 96-08 (No 199621008, Amendment No. 5) Flood Regional General Permit

Dear Mr. Breckenridge:

The Environmental Protection Agency Region 8 has received a request from the U.S. Army Corps of Engineers Corps (USACE) for a Clean Water Act (CWA) Section 401 water quality certification (certification) for waters of the United States found on Indian Reservations whose boundaries are within the State of South Dakota. This certification is for tribal waters associated with use of USACE CWA Section 404 Regional General Permit (RGP) 96-08. The RGP will authorize work in waters of the United States (including rivers, lakes, streams and wetland areas) associated with flood protection, reconstruction and repair activities in South Dakota, excluding segments of the Missouri River National Recreation River from river mile 753.60 (Ponca State Park, Nebraska) to mile 811.05 (Gavins Point Dam) and from mile 841.00 (near Running Water, South Dakota) to mile 880.00 (Fort Randall Dam).

Projects include activities such as repair and reconstruction of 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 earth fill for bank protection, and restoration of river channels to the alignment which existed immediately prior to flooding. EPA has considered CWA Section 304(a) criteria and significant tribal concerns in reviewing the potential impacts of the proposed permit. The EPA is certifying the proposed RGP with conditions which are enclosed.

Applicants should be informed that we are certifying this RGP with specific conditions which are enclosed. We emphasize that applicants must document that they have contacted and discussed the proposed project with Tribal environmental and water quality staff and submit project information to EPA and the affected Tribe. Current environmental and water quality contacts for South Dakota Tribes are enclosed.

This certification does not relieve applicants or contractors of any liability for damages to aquatic life, habitat, or other beneficial uses that may result from permitted projects. It does not exempt applicants or contractors from any other federal, state, tribal, or local laws or regulations, nor does this certification provide exemption from legal action by private citizens or governments for damage to property that the activities permitted under this general permit may cause. This certification applies to all proposed projects within Indian Country in South Dakota, which can usually be described as within the exterior boundaries of Cheyenne River Sioux Reservation, Crow Creek Sioux Reservation, Flandreau Santee Sioux, Lake Traverse Reservation, Lower Brule Sioux Reservation, Pine Ridge Reservation, Rosebud Indian Reservation, Standing Rock Sioux Reservation, and Yankton Sioux Reservation. If you have any questions, please contact Toney Ott at 303-312-6909, or ott.toney@epa.gov.

Sincerely,



Darcy O'Connor
Assistant Regional Administrator
Office of Water Protection

Enclosures

1. CWA Section 401 Certification for General Permit 96-08 (No 199621008, Amendment No. 5)
Flood Regional General Permit
2. South Dakota Tribal Environmental Program Contact Information

cc: David D. Nelson, Environmental Director, Cheyenne Sioux Tribe
Wanda Gourneau, Environmental Director, Crow Creek Sioux Tribe
Mark Allen, Environmental Director, Flandreau Santee Sioux
George Honeywell, Environmental Director, Lower Brule Sioux Tribe
Suzy (Lloydell) Mesteth, Environmental Director, Oglala Sioux Tribe
Ivan Crow Eagle, Environmental Director, Rosebud Sioux Tribe
Allyson Two Bears, Environmental Director, Standing Rock Sioux Tribe
Doug Crow Ghost, Water Administrator, Standing Rock Sioux Tribe
Dustin Opsal, Environmental Director, Sisseton-Wahpeton Oyate
Richard Leasure, Environmental Director, Yankton Sioux Tribe

ENCLOSURE 1

CWA Section 401 Water Quality Certification for General Permit 96-08 (No 199621008, Amendment No. 5) Flood Regional General Permit for emergency flood related activities projects in Indian Country in South Dakota, which usually can be described as within the exterior boundaries of Cheyenne River Sioux Reservation, Crow Creek Sioux Reservation, Flandreau Santee Sioux, Lake Traverse Reservation, Lower Brule Sioux Reservation, Pine Ridge Reservation, Rosebud Indian Reservation, Standing Rock Sioux Reservation, and Yankton Sioux is granted with the following conditions:

- 1) The project applicant or agent shall provide a complete copy of the application for USACE Section 404 authorization, location and any additional information submitted to the Corps of Engineers to the appropriate Tribal Environmental Director and EPA.
- 2) Locational information must be submitted. Suggested formats for locational information are decimal latitude and longitude; KMZ or KML files, or shapefiles.
- 3) Project applicant/contractor must notify and discuss the project with the Tribal environmental staff prior to the onset of the project, if possible, or as soon as possible after the emergency situation has ended.
- 4) This certification does not authorize the introduction or replanting of non-native and/or invasive species.
- 5) All existing water uses shall be fully maintained and protected to the maximum extent possible. This certification does not authorize significant, permanent adverse impacts to waters of the United States and mitigation for impacts may be required for permanent losses to aquatic resources.
- 6) All dredge and excavation material, debris, and temporary fill must be removed from waters of the United States and properly disposed of so it cannot enter a waterway or cause water quality degradation.
- 7) Georeferenced photographs of the project site, repairs, stabilization, restoration and revegetation, shall be submitted to the EPA Region 8 Aquifer and Aquatic Resources Protection Unit and Tribal Environmental Directors immediately after the project is completed. Submittals to EPA of project photographs of the site may be submitted electronically or mailed to:

US EPA Region 8
Aquifer and Aquatic Resources Protection Unit
1595 Wynkoop Street, 8OWP-AAP
Denver, CO 80202
Attention: CWA 401 Certification Monitoring, RGP 96-08

ENCLOSURE 2

Tribal Staff Contacts of Tribes within South Dakota

Cheyenne River Sioux

David D. Nelson, Environmental Director, 605-964-6558 x22, dnelson@crstepd.org

Carlyle Ducheneaux, Water Quality Coordinator, Wetlands contact, 605-964-6560, cducheneaux@crstepd.org

Crow Creek Sioux Tribe

Wanda Gourneau Environmental Director 605-245-2608 swan57339@yahoo.com

Matt St. John Water Quality Coordinator 605-245-2736 msj605@outlook.com

Flandreau Santee Sioux

Mark Allen, Environmental Director 605-997-5123 mallen@fsst.org

Tim Spade, Water Quality Coordinator 605-997-5123 x3 tim.spade@fsst.org

Lower Brule Sioux Tribe

George Honeywell Environmental Director 605-473-0163 ghoneywell@LBST-EPO.org

Clair Green, Cultural Resources 605-730-1935 clairgreenoffice@gmail.com

Oglala Sioux Tribe

Suzy (Lloydell) Mesteth Environmental Director 605-867-5236/5736/5476 suzym@oglala.org

Delinda Simmons Water Quality Coordinator 605-685-6820 ostwpdls@gwtc.net

Rosebud Sioux Tribe

Ivan Crow Eagle, Environmental Director, 605-747-2933, ivan.croweagle@rst-nsn.gov

TJ Whipple, Water Quality Coordinator, 605-747-2933, tjwhipple@hotmail.com

Standing Rock Sioux Tribe

Allyson Two Bears Environmental Director 701-854-3823 atwobears@standingrock.org

Doug Crow Ghost Water Administrator 701-854-8534 dcrowghost@standingrock.org

Ronni Chase Alone Water Quality Coordinator 701-854-8614 rchasealone@standingrock.org

Sisseton-Wahpeton Oyate

Dustin Opsal, Environmental Director, 605-698-8388, dustinO@swo-nsn.gov

Rhonda Bear, Water Quality Coordinator, 605-698-6575, rhondab@swo-nsn.gov

Yankton Sioux Tribe

Richard Leasure Environmental Director 605-384-5012 ysteppgap4@hotmail.com

Gregory Drapeau Water Quality Coordinator 605-384-5012 drapeaugreg@yahoo.com