

2019 INDIANA REGIONAL GENERAL PERMIT NO. 1 EXCERPT

C. Excluded Activities

1. Activities that are denied any required local, State, or Federal authorization.
2. Activities that the Districts determine to have the potential to cause unacceptable adverse impacts on aquatic resources or other public interest factors. The Districts may, on a case-by-case basis, require an Individual Department of the Army (DA) permit. The Districts will notify the applicant that the project does not qualify for the RGP and instruct the applicant on the procedures to seek authorization under a standard Individual DA permit. The Districts may also require an Individual DA permit for any After-the-Fact application and/or any unauthorized activity regardless of whether or not the loss of waters meets the upper threshold limitation of 1.0 acre of impacts to wetlands, 1,500 linear feet (not to exceed 1.0 acre) of stream impacts, or 2 acres of open water impacts.

D. Maximum Limitations

The following impact limitations apply to all activities authorized by the RGP, with the exception of bank stabilization, boat ramps, agricultural activities, and mining activities. For impact limitations pertaining to these activities, see the "Activity Categories and Conditions" section of this document for further discussion regarding maximum limitations;

1. Loss of waters of the United States (U.S.), including wetlands, is limited to 1.0 acre or less. However, loss of open waters (excluding natural waterbodies) is limited to 2.0 acres or less. Open waters includes ponds, impoundments, and borrow/mined pits;
2. Loss of waters of the U.S. is limited to 1,500 linear feet of stream channel, not to exceed 1.0 acre;
3. Dredging in navigable waters is limited to 10,000 cubic yards;
4. Structures and fills for docking and mooring are limited to similar permitted structures and fills in the vicinity; and
5. "Piecemealing" of projects in order to meet these thresholds will not be allowed.

RESTRICTIONS: The work authorized by this RGP would also be subject to the attached General Conditions (see Appendix 1) and any other Special Conditions necessary to reduce impacts to the minimum level.

E. Mitigation Requirements

The District Engineer may determine that the adverse effects of the proposed activity are minimal, and require no mitigation. Otherwise, mitigation will be required as follows, with the exception of bank stabilization, minor discharges, excavation, and agricultural activities (see "Activity Categories and Conditions" section of this document for further discussion regarding mitigation requirements).

1. Impacts resulting from the loss of waters by relocation, encapsulation, or channelization of greater than 300 linear feet of ephemeral, intermittent, or perennial stream shall require mitigation;
2. The loss of greater than 0.10 acre of special aquatic sites (including wetlands) and/or loss of waters of the U.S. causing more than minimal effects shall require mitigation;
3. Other work or structures in waters of the United States will be evaluated on a case-by-case basis and may require mitigation to reduce the impacts to minimal levels;
4. Any required compensatory mitigation must meet the standards set forth in Title 33 CFR Parts 325 and 332, Compensatory Mitigation for Losses of Aquatic Resources, as published April 10, 2008 in the Federal Register, Vol. 73, No. 70, and any district guidance.
5. If the proposed project will result in more than minimal adverse environmental effects, the District Engineer will require the applicant to submit a mitigation proposal, which must comply with Corps of Engineers compensatory mitigation regulations and guidance.

F. Agency Contact Information (see IN RGP published 12/12/2019, effective 12/15/19)

G. Information Requirements (see IN RGP published 12/12/2019, effective 12/15/19)

H. Implementation Procedure (see IN RGP published 12/12/2019, effective 12/15/19)

I. Activity Categories and Notifications

BANK STABILIZATION ACTIVITIES

This activity includes bank stabilization necessary for erosion prevention. The District Engineer may require mitigation for this activity on a case-by-case basis.

1. The proposed bank stabilization activity shall be justified based on a demonstrated need for erosion prevention. This category does not include maintenance activities.
2. Proposed fill is limited to two (2) cubic yards per running foot, unless the District Engineer waives this criterion or the RGP linear foot limitation by making a written determination concluding that the discharge will result in minimal adverse effects on the aquatic environment. EPA and IDEM will be notified by the Corps that the RGP linear foot and/or cubic yards per foot limitation has been waived.

3. The District Engineer will decide, on a case-by-case basis, if projects involving the use of vegetative and biotechnical practices will be subject to length restrictions. Biotechnical practices are defined as bank stabilization practices that benefit the aquatic environment by incorporating organic materials to produce functional structures, provide wildlife habitat, and provide areas for revegetation. Examples of biotechnical practices include, but are not limited to: a) adequately sized riprap or A-Jack structures keyed into the toe of the slope with native plantings on the banks above; b) vegetated geogrids; c) coconut fiber (coir) logs; d) live, woody vegetative cuttings, fascines or stumps; e) brush layering; and f) soil lifts.
4. Riprap 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.
5. Bank stabilization shall be constructed using clean fill materials. The following materials may be used: rock, quarry stone, fieldstone, clay, granular fill, broken concrete, steel or vinyl sheet piling, cellular blocks, fabric formed concrete, concrete filled fabric mats, gabion baskets, rock and wire mattresses, sand/cement filled bags, geotechnical fabric materials, non-invasive vegetation, and treated timber. If broken concrete is used, it must be free from asphalt and oils, in addition all protruding material such as reinforced rods shall be cut flush with the surface of the concrete and removed from the construction area.
6. All material utilized shall be properly sized or anchored to resist anticipated forces of wave action.

Notification: The permittee shall submit a pre-construction notification to the District Engineer prior to commencing the activity if the bank stabilization activity: (1) Involves discharges into special aquatic sites, including wetlands; or (2) is in excess of 300 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark.

TRANSPORTATION PROJECTS

This activity includes the construction, expansion, modification or improvement of linear transportation projects including roads, bridges, runways and taxiways, bike/pedestrian pathways, and railroads. Temporary structures, fills, and work necessary to construct linear transportation projects are also included.

1. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.
2. Crossings of waterways and/or wetlands must be culverted, bridged, or otherwise designed to prevent the restriction of expected high water flows. The crossing must be designed as to not impede low water flows or the safe passage of fish and aquatic organisms.

Notification: The permittee must submit a pre-construction notification to the District Engineer prior to commencing the activity if: (1) The loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands.

RESIDENTIAL, COMMERCIAL, INSTITUTIONAL, INDUSTRIAL AND RECREATIONAL DEVELOPMENTS

Activities include the construction or expansion of a single residence, a multiple unit residential development, a residential subdivision, commercial and institutional buildings, and recreational facilities. Attendant features may include but are not limited to roads, parking lots, garages, yards, infrastructure and utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, golf courses, hiking trails, bike paths, horse paths, nature centers and campgrounds. The maximum impact limitations will be applied on a cumulative basis for activities that are part of a larger common plan of development or sale.

Notification: The permittee must submit a pre-construction notification to the District Engineer prior to commencing the activity.

BOAT RAMPS

Activities required for the construction of boat ramps.

1. The proposed boat ramp shall not exceed 60 feet in width, unless the District Engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects on the aquatic environment. EPA and IDEM will be notified by the Corps that the RGP maximum width limitation has been waived. Boat ramps should be constructed of crushed stone, concrete, gravel, or other suitable material. Boat ramps constructed of asphalt are not authorized under this permit.

Notification: The permittee must submit a pre-construction notification to the District Engineer prior to commencing the activity if: (1) The discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width.

MINOR DISCHARGES AND EXCAVATION ACTIVITIES

Activities include minor discharges of dredged or fill material into waters of the U.S. and reshaping of existing drainage ditches. The District Engineer may require mitigation for this activity on a case-by-case basis.

1. Projects involving the grading or reshaping of existing drainage ditches may not increase the slope of the ditch banks, the drainage capacity, nor can they expand the area drained by the ditch (as originally constructed).
2. All dredged/excavated materials will be disposed of in upland location(s) landward of the OHWM with no placement in, or return to, any waterway or wetland. Any excess material that cannot be accommodated on the permittee's upland property shall be placed in an upland location without any return to a waterway or wetland.

Notification: The permittee must submit a pre-construction notification to the District Engineer prior to commencing the activity if: (1) The discharge or the volume of material excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands.

AGRICULTURAL ACTIVITIES

Agricultural activities including the construction of building pads for farm buildings; installation, placement or construction of drainage tiles, ditches or levees; the relocation of existing serviceable drainage ditches constructed in waters of the U.S.; and similar activities. The District Engineer may require mitigation on a case-by-case basis, and may waive the RGP linear foot limitation by making a written determination concluding that the discharge will result in minimal adverse effects on the aquatic environment. EPA and IDEM will be notified by the Corps that the RGP linear foot limitation has been waived. This RGP does not affect those agricultural activities that are exempt in accordance with 33 CFR Part 323.4, or are exempt under CWA Section 404(f)(1)(A).

Notification: The permittee must submit a pre-construction notification to the District Engineer prior to commencing the activity.

MINING ACTIVITIES

Mining activities are authorized under this category, except for coal mining activities. This RGP does not affect those mining activities that are exempt in accordance with 33 CFR Part 323.4.

1. The District Engineer may waive the RGP linear foot and cubic yards per foot of fill limitation by making a written determination concluding that the discharge will result in minimal adverse effects on the aquatic environment. EPA and IDEM will be notified by the Corps that the RGP linear foot and cubic yards per foot limitations have been waived.
2. If reclamation is required by other statutes, a copy of the reclamation plan must be submitted with the permit application.

Notification: The permittee must submit a pre-construction-notification to the District Engineer prior to commencing the activity.

APPENDIX 1: GENERAL CONDITIONS

1. *Navigation:* (a) No activity authorized by the RGP may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the

permittee's expense on authorized facilities in navigable waters of the United States. (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army, or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. *Aquatic Life*: No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

3. *Spawning Areas*: Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. *Shellfish Beds*: No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to an authorized shellfish harvesting activity, or is a shellfish seeding or habitat restoration activity.

5. *Suitable Materials*: No activity, including structures and work in waters of the U.S. or discharges of dredged or fill material, may use unsuitable material, including auto bodies, tires, garbage or debris, scrap lumber, metal refuse, roofing materials, asphalt or other bituminous material, broken concrete containing asphalt, or any material which would cause water pollution as defined by the Indiana Department of Environmental Management.

6. *Water Supply Intakes*: The permittee shall not perform any work under the RGP where the discharge of dredged and/or fill material will occur in the proximity of a public water supply intake except where the activity is for the repair or improvement of the public water supply intake structures or adjacent bank stabilization.

7. *Safety of Impoundment Structures*: To ensure that all impoundment structures are safely designed, the District Engineer may require non-federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons, i.e., a licensed engineer. The District Engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

8. *Adverse Effects from Impoundments*: If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. *Management of Water Flows*: To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. *Fills Within 100-Year Floodplains*: The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. *Equipment*: All construction equipment shall be refueled and maintained on an upland site away from existing streams, drainage ways and wetland areas. Heavy equipment working in wetlands must be placed on mats, or other measures taken to minimize soil disturbance.

12. *Soil Erosion and Sedimentation Controls*: Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. *Removal of Temporary Fills*: Temporary fills must be removed in their entirety and the affected areas returned to pre-

construction conditions (i.e., elevation, contours, re-establishment of vegetation, etc.).

14. *Proper Maintenance*: Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable general conditions, as well as any activity-specific conditions added by the District Engineer to an RGP authorization.

15. *Single and Complete Project*: The activity must be a single and complete project. The RGP cannot be used more than once for the same single and complete project.

16. *Endangered Species*: (a) No activity is authorized under the RGP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under the RGP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. (b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the District Engineer with the appropriate documentation to demonstrate compliance with those requirements. The District Engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the RGP activity, or whether additional ESA consultation is necessary. (c) Non-federal permittees must submit a pre-construction notification to the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work. The District Engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-federal applicant of the Corps determination within 45-days of receipt of a complete pre-construction notification. In cases where the non-federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps. (d) As a result of formal or informal consultation with the USFWS the District Engineer may add species-specific regional endangered species conditions to the RGP. (e) Authorization of an activity under the RGP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS Service, the ESA prohibits any person subject to the jurisdiction of the United States to take listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. (f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS or their webpages on the Internet.

17. *Migratory Birds and Bald and Golden Eagles*: The permittee is responsible for obtaining any "take" permits required under the USFWS' regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the USFWS to determine if such "take" permits are required for a particular activity.

18. *Migratory Bird Breeding Areas*: Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

19. *Historic Properties*: The permittee shall not perform any activity under the RGP which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places until the District Engineer has complied with the provisions of 33 CFR Part 325, Appendix C. The permittee must notify the District Engineer if the activity authorized by the RGP may affect any historic properties listed, determined to be eligible or which the permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin construction until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the IDNR, Division of Historic Preservation and Archaeology.

If the permittee discovers any previously unknown historic or archaeological remains while accomplishing the activity authorized by the RGP, work must be immediately stopped and the Corps immediately notified. The District will initiate the Federal, tribal 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.

20. Discovery of Previously Unknown Remains and Artifacts: If you discover any previously unknown historic, cultural, or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the District Engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The District Engineer will initiate the federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

21. Mitigation: The permittee shall provide a mitigation proposal that meets the standards set forth in Title 33 CFR Parts 325 and 332, Compensatory Mitigation for Losses of Aquatic Resources, as published April 10, 2008 in the Federal Register, Vol. 73, No. 70, and any District guidance for any activity where the adverse impact (i.e., loss of waters) on special aquatic sites (including wetlands) exceeds 0.10 acre (4,356 sq. ft.) or is determined to be more than minimal impact. The permittee shall also provide a mitigation proposal that meets the standards set forth in Title 33 CFR Parts 325 and 332, Compensatory Mitigation for Losses of Aquatic Resources, as published April 10, 2008 in the Federal Register, Vol. 73, No. 70, and any District guidance for any channelization, encapsulation, or relocation of greater than 300 linear feet of stream, unless there is no net loss of function, in which case the District Engineer will determine, on a case-by-case basis, if mitigation is required.

22. Water Quality: If an individual 401 WQC is required, the permittee must provide a copy of it to the Corps. The permittee must comply with any case specific special conditions added by the Corps or by the Section 401 WQC. The conditions imposed in the Section 401 WQC are also conditions of this RGP.

23. Minimization/Avoidance: Discharges of dredged or fill material into waters of the U.S. must be minimized or avoided to the maximum extent practicable at the project site (i.e. on-site). In determining the minimal impact threshold, the Districts will consider the direct and secondary impacts of the fill or work and any mitigation measures.

24. Access: Representatives from the Corps of Engineers and/or IDEM may inspect any authorized activity or mitigation site at any time deemed necessary to ensure compliance with the terms and conditions of the RGP, Section 401 WQC, and applicable laws.

25. Construction Period: If construction of the project has commenced, or is under contract to commence prior to the expiration date, the applicant must complete the project within one (1) year of the RGP expiration date. If you find you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 3 months prior to the expiration date.

26. Reporting: The permittee, after completion of work under the RGP, shall submit a signed certification letter regarding the completed work and required mitigation, if applicable. The certification letter will include a statement that the work was done in accordance with the RGP authorization including compliance with all general and special conditions and completion of mitigation work.

27. Activities Affecting Structures or Work Built by the United States: An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate approval from the District under 33 USC 408.