



**1.1 Introduction**

In addition to the environmental documents and reports required by other sections of this chapter, federal and state laws also require the issuance of special permits for projects affecting certain environmental areas. Early planning and coordination with the Wisconsin Department of Natural Resources (DNR), the Army Corps of Engineers (COE) and the U.S Fish and Wildlife Service, regarding permit requirements are essential to avoid unnecessary delays.

- Navigable waters of the United States are defined to mean waters that have been used in the past, are now used, or are susceptible to use as a means to transport interstate or foreign commerce up to the head of navigation (33 CFR 322.2). The Mississippi River and Lake Michigan are examples of navigable waters of the United States.
- Waters of the United States are defined to include the navigable waters of the United States plus the following:
  - All interstate waters including interstate isolated wetlands, and
  - Intrastate waters that are tributary to interstate waters (33 CFR 328.2).

Examples of waters of the United States include the Wisconsin River upstream from Tomahawk, the Kickapoo, Embarrass and Fond du Lac Rivers and adjacent wetlands.

- Calcareous fen is a wetland plant community dominated by grass species that receives an alkaline groundwater supply rich in calcium and magnesium bicarbonates. This plant community is ecologically unique and can contain a large number of rare plant species.

Federal permits are required for projects affecting the, waters of the United States and associated special aquatic sites, which include wetlands. The Clean Water Act (CWA) requires a permit to discharge fill into Waters of the U.S. The COE regulatory branch is the permitting agency for CWA section 404 permits and has the authority to issue permits provided that the state water regulatory agency (DNR) has issued CWA section 401 water quality certifications<sup>1</sup>. To discharge fill into navigable waters of the U.S., both section 10 (Rivers and Harbors Act, 1899) and section 404 (CWA) permits are required. These permits are processed simultaneously from a single application. Excavation of material from Navigable Waters of U.S. requires a Section 10 permit only. Discharge of fill into Waters of the U.S. requires a Section 404 permit only. These requirements are summarized in the table below.

**Table 1.1 Permit Applicability Table**

Water Category	Activity	
	Excavate from Waters	Fill into Waters
Navigable Waters of U.S.	Section 10	Section 10/404
Waters of the U. S. (non-navigable)	-----	Section 404

Based on the project effect on waters and wetlands the Corps may require an individually processed 404 or 404/10 permit or determine the activity is covered by a general permit.

**1.2 Section 404 Permits**

Section 404 of the Clean Water Act requires permit authorization from the U.S. Army Corps of Engineers for the discharges of dredged or fill material into Waters of the United States. A 404 Permit is required regardless of whether the project area is located on public or private property, regardless of funding source and regardless of the type of environmental action.

Discharge of dredged material means placement of material dredged or excavated from waters or wetlands into

<sup>1</sup> For Native American reservations, water quality certification is coordinated with the U. S. EPA, not DNR.

Waters of the United States. This includes the re-deposition of dredged or excavated material within the Waters of the United States. Discharge of fill material means the placement of any material (usually upland soil, sand, gravel, riprap) into waters of the United States for the purpose of converting an aquatic site to upland or raising the bottom elevation of a water body. These water bodies are defined for inland fresh waters as follows:

1. The traditional navigable waters of the United States, including adjacent wetlands.
2. All tributaries to interstate navigable waters of the United States, including adjacent wetlands.
3. Interstate waters and their tributaries, including adjacent wetlands.
4. Waters of the United States and waters isolated from the tributary system whose degradation and destruction could affect interstate commerce or other Waters of the U.S.

### 1.2.1 Discharges Not Requiring Permits

In general, any discharge of dredged or fill material that may result from any of the following activities is not prohibited by, or otherwise subject to, regulation under Section 404:

1. Maintenance, including emergency reconstruction of recently damaged parts of transportation structures, bridge abutments or approaches, causeways, etc. Maintenance does not include any modification that changes the character, scope, or size of the original fill design.
2. Construction of temporary sedimentation basins on a construction site that does not include placement of fill material into waters of the United States.

For more information on discharges not requiring permits, see 33 CFR 323.4.

### 1.2.2 General Permits

Discharges of fill into waters of the U.S. may be authorized by COE district or division engineers on a regional basis and for a specified period of time. If a discharge of dredged or fill material is not exempted by Part 323.4 or permitted by a nationwide permit (33 CFR Part 330), an individually processed 404 Permit will be required.

The Corps authorizes general permits after consultation with the DNR and other regulatory agencies. General permits apply when the category or categories of activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts, or when the general permit would avoid unnecessary duplication of the regulatory control exercised by another federal, state or local agency.

### 1.2.3 Regional General Permit

The current regional general permit for Wisconsin (GP-001-WI) is extended with no changes to December 31, 2003, effective December 30, 1998. It was issued under a Public Notice dated February 15, 1994. The general permit with authorized activities and conditions is attached to the February Public Notice. Copies of this notice are available from COE.

To apply for authorization, complete the joint state/federal application form (see [Attachment 1.1](#) and the guidelines under "Individually Processed Permits"). The same information should be provided for both general and individual permit applications. The time for the Corps to process the general permit will be shorter since each application will not go to public notice and undergo a subsequent public interest review and environmental assessment by the Corps.

The general permit applies to all waters of the United States in Wisconsin, except designated federal wild and scenic rivers (portions of the St. Croix, Namekagon and Wolf Rivers).

There are 21 specific activities permitted by the general permit. The following six activities are appropriate to WisDOT projects.

1. Cofferdams or Caissons - Temporary dam-like structures or fills constructed around an excavation or construction area to exclude water, provided this activity is regulated by the DNR under Wisconsin Statute 30.12 and/or 30.20.
2. Dredging - The removal, by suction, scooping, or scraping devices, of materials channel-ward of the ordinary high water mark from navigable waters of the United States provided that the dredging is regulated by DNR under Wisconsin Statute 30.20, 30.203 or 30.124 and all dredged materials are placed on an upland site (not wetland, and above the ordinary high-water mark), or used for the construction of a specified activity authorized by this general permit.
3. Wing Dams and Deflectors - Structures or fills designed to divert the flow of a stream to maintain a stream channel with desired flows and depths and prevent or reduce erosion. These devices may not have protrusions that would catch debris. They should slope upward toward the bank (if connected to the bank) to prevent scouring. To qualify for this permit the activity must be regulated by the DNR

under Wisconsin Statute 30.12.

4. Bridge and Culvert Improvement or Replacement - Fill placed in wetlands and water bodies in conjunction with the improvement or replacement of bridge and culvert crossings for municipal, township, county, state or federal projects. The replacement of historic bridges must be coordinated with the State Historic Preservation Office. In addition, the existing structure must be removed and the replacement must be constructed on the same or similar alignment with hydraulic capacity that is consistent with the state and federal regulations and requirements. The placement of fill material into wetlands is authorized for widening of the road approaches to conform with the width or alignment of the new structure. All excess material must be placed at an upland location. This general permit does not authorize projects involving a channel change. To qualify for this permit, the structure (including Trans. 207 projects), must be regulated in its entirety by the DNR under Wisconsin Statute 30.10, 30.12, 30.123 or 30.23. This authorization applies to DOT projects reviewed by DNR under liaison procedures provided DNR conditions or restrictions are incorporated into the project.
5. Removal of Structures - The removal of any structures from a water body. The term "structure" shall include but not be limited to any pier, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, permanently moored floating vessel, piling, or aid to navigation. The removal of a structure may include removal of a minimal amount of material provided the entire activity has been reviewed and approved by DNR.
6. Fills Associated with Highway Improvements - Highway improvement projects that include reconditioning the roadbed, shoulder and pavement widening and resurfacing. The permit may not be used for projects that include addition of a new lane or lanes. **The project must be in compliance with the WisDOT/DNR liaison procedure.** The total fill area must not exceed 2 acres and compensatory mitigation will be performed to offset lost wetland values and functions.

NOTE: The determination on whether the project described in the application meets the provisions of this general permit resides with the Corps.

The following activities are excluded from this general permit by special condition.

1. Activities behind state approved bulkhead lines or in lakebed grant areas.
2. Activities denied by any agency or municipality having permitting authority.
3. Activities that do not conform to an approved land use plan (e.g., Regional 208 planning documents, municipal and county ordinances, municipal wetland protection and management plans, tribal ordinances, etc.).
4. Activities that would have more than a minimal effect on the quality of the human environment.
5. Fills for industrial, commercial, or residential development, or fills for associated general landscaping (lawns, gardens, parking lots, etc.)
6. Activities in or affecting components of a designated federal wild and scenic river system (portions of the St Croix, Namekagon and Wolf Rivers).
7. Activities on federal lands unless performed by, or approved or authorized by, the administering (managing) agency.
8. Activities that would have an adverse effect on navigation (if considered unacceptable by the Corps).
9. Activities that may have an effect on Federally listed endangered or threatened wildlife or plants, or their critical habitat.
10. Activities causing interstate conflicts concerning alternative uses of available aquatic resources.
11. Activities normally regulated by the DNR, but which are exempt under Wisconsin Statute.
12. Activities involving the excavation or discharge of material containing toxic or hazardous pollutants in concentrations sufficient to invoke applicable provisions of the Toxic Substances Control Act or the Resource Conservation and Recovery Act.
13. Activities in which the DNR's decision to permit the activity is overturned by a hearing examiner or court of law.

#### 1.2.4 General Permits/Letter of Permission

General permit authorization under permit GP/LOP-98-WI is effective April 17, 2000 to April 16, 2005. The Corps St. Paul district issued permits GP/LOP to replace all section 404 Nationwide Permits in Wisconsin except within the exterior boundaries of Indian reservations. GP/LOP-98-R applies within these areas. The full text of these

general permits and letter of permission can be viewed at the following internet site <http://www.mvp.usace.army.mil/regulatory/>.

The general permits under GP/LOP-98-WI are organized into four categories as summarized below. For a complete description see the Corps St. Paul Internet site above. Projects that cannot be authorized by these general permits or a letter of permission must be individually processed. The Corps retains discretionary authority to require individual permit review for any activity meeting general permit or letter of permission criteria.

Permitted activities under the GP/LOP common to DOT operations are given in the following abbreviated list.

1. Non-Reporting General Permit - This GP is intended for very low impact activities that do not require COE notification but should still be mentioned in the project's environmental document. The following highway-related activities are considered eligible for authorizing under this GP. Item numbers refer to the list shown in GP/LOP-98-WI.
  - "1" Maintenance activities. "Discharges of dredged or fill material for the repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill provided that the structure or fill is not to be put to uses differing from those uses specified..." This activity used to be covered under nationwide permit (NWP) 3 for 404 projects. The usual type of project is a culvert or bridge replacement on the same alignment and same type of structure.
  - "11" Bank Stabilization. "Discharges of dredged or fill material for bank stabilization activities necessary for erosion prevention provided that no material is placed in wetlands and the bank stabilization activity will not exceed an average of one cubic yard per running foot ..." below ordinary high water. No length limit or total discharge is given. This activity used to be covered under NWP 13 for 404 projects.

No application is required provided the project meets the permit criteria. If there is any doubt about the applicability of the non-reporting GP, submit a completed state-federal joint application form to the Corps. The Corps can then determine the applicability and verify the permit status for project documentation. This permit is not authorized for effects of discharge to calcareous fens, federal and state wild and scenic rivers or coastal wetlands in ridge and swale complexes.

2. Provisional General Permit/Letter of Permission. - This GP or LOP is issued provided that DNR has issued 401 water quality certification. The following highway-related activities are eligible for authorizing under this GP.
  - "2" U.S. Coast Guard Approved State or Federally Funded Bridges. "Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States.... provided that such fills have been authorized by the U.S. Coast Guard as part of a bridge permit." This activity used to be covered under NWP 15 for 404 projects.
  - "3" Return Water from Upland Contained Disposal Areas. For WisDOT this work is usually associated with hydraulic dredging projects. This activity used to be covered by NWP 16 for 404 projects.
  - "4" Structural Discharges. "Discharges of material such as concrete, sand, rock, etc. into tightly sealed forms or cells where the material will be used as a structural member such as.... bridge support.... retaining wall." This activity used to be covered by NWP 25 for 404 projects.

A permit application is required. Submit a completed joint state-federal application form ([Attachment 1.1](#)) to the Corps for their review and determination of provisional general permit eligibility. Work is authorized when the provisional GP confirmation letter is received and DNR confirms that state water quality certification has been granted or waived.

Information in addition to the completed joint form may be required depending on the project and Corps permit reviewer. When applicable the coastal zone consistency determination from DOA must be sent as an attachment as well as the 401 water quality certification from DNR.

The provisional GP is not authorized for activities associated with calcareous fens and federal and state wild and scenic rivers. The Corps may require a formal wetland delineation according to the 1987 Corps delineation manual procedure.<sup>2</sup>

3. Provisional Letter of Permission. - The Corps has established a provisional LOP for the following WisDOT activity.
  - "2" "Discharges for highway projects administered by the Wisconsin Department of Transportation... to maintain/upgrade existing public roads within established transportation corridors, that impact less than 5 acres of wetland/water area and are subject to review and

<sup>2</sup> This manual is available at <http://el.erdc.usace.army.mil/wetlands/pdfs/wlman87.pdf>

concurrence under the DNR/WisDOT Cooperative Agreement or are reviewed and approved under Trans 207,..... may be authorized under this LOP on a non-provisional basis.”

A permit application is required. Submit a completed joint state-federal application form ([Attachment 1.1](#)) to the Corps for their review and determination for provisional letter of permission eligibility. The Corps may require formal wetland delineation according to the 1987 Corps delineation manual procedure (see the footnote on the previous page).

Activities associated with either calcareous fens or federal and state wild and scenic rivers are excluded from authorization under this LOP. Also, diversions of water of more than 10,000 gallons/day of surface water or groundwater into or out of the Great Lakes Basin are excluded.

4. **Programmatic General Permit.** - This GP is applicable to all section 404 activities that are regulated by the DNR under Chapter 30 or 31, Wisconsin Statutes. The project is authorized when a GP confirmation letter is received from the Corps and a State Chapter 30 or 31 permit has been issued by DNR. Projects supervised by WisDOT are covered by the WisDOT-DNR cooperative agreement and the Chapter 30 permit process is carried out through the liaison agreement. Rarely does WisDOT obtain a Chapter 30 permit, so this GP would not apply to most WisDOT projects. This GP may be applicable to some Chapter 31 activities or Transportation Economic Assistance (TEA) projects not supervised by WisDOT.

A permit application is required. Complete a joint state-federal application form (see [Attachment 1.1](#)) and submit it to the Corps for their review and determination for programmatic general permit eligibility.

Water diversions of greater than 10,000 gal/day out of the Great Lakes Basin, listed impaired waters, <http://dnr.wi.gov/topic/impairedwaters> calcareous fens and federal and state wild and scenic rivers are excluded from permit authorization.

### 1.2.5 Individually Processed Permits

If an activity is not covered by an exemption, general permit, or letter of permission, it may require an individual Section 404 Permit. For further clarification and updates on regulatory changes, contact the U.S. Army Corps of Engineers or the Bureau of Equity & Environmental Services (BEES).

### 1.2.6 Application for Section 404 Permits

Early coordination with the DNR, the U.S. Fish and Wildlife Service, and the Corps is required whenever a wetland, floodplain, stream, river, or water body is likely to be impacted by dredging or filling. The scope of the project is coordinated with the local DNR and the Corps of Engineers early in the planning process to avoid delays near project completion. Coordination with DNR is done through the established liaison process.

The Corps of Engineers must obtain water Quality Certification from the DNR for Section 404 activities. The DNR can grant, waive, or deny a Section 401 water quality certification. Notify DNR of any wetlands or water bodies that may be affected by the project early in the planning of the project. The Section 401 certification process is usually initiated by submitting the 404 permit application to the local DNR office when application is made to the Corps of Engineers. The DNR will coordinate the certification with the Corps of Engineers during the 404 permit process.

Submit Section 404 applications approximately eight months to one year before the estimated construction start date. A validated permit should be secured before PS&E preparation and before the Design Study Report has been approved. The earlier the correct information is made available, the sooner the processing can begin. Processing of a routine Section 404 Permit application by the Corps is variable. Larger projects will require closer coordination and review and can take longer to process. If the project is controversial and involves major impacts on wetlands or water bodies, coordinate closely with the DNR and the Corps by requesting pre-application consultation or an informal meeting on the project. Close and early coordination will assist in reducing delays caused by a lack of information.

When WisDOT is conducting the preliminary engineering for a local unit of government, it may submit an application on the applicant's behalf. If WisDOT is not doing the preliminary engineering, the local unit of government or a consultant would prepare and submit the application. The local unit of government or the consultant may want to review the application with the region. For all WisDOT supervised projects, the state [project identification number](#) will be present on exhibits and the heading of the transmittal letter.

### 1.2.7 Guidelines for 404 Permit Application

A complete 404 permit application consists of the application form, exhibits and drawings, and attachments.

1. **Application Form** - [Attachment 1.1](#) is a copy of the Sample Joint State-Federal Application Form. This form is available on the internet at the following internet address. Click here and see pages 4-5.

**Block 1 Applicant** - Do not use the name of an individual here. For state projects the name should be "The Wisconsin Department of Transportation" and the address should be the region address. Telephone number should be that of the individual signing the application for WisDOT. The name and telephone number of the individual auditing the progress of the application should be stated in the transmittal letter to the Corps.

**Block 2** - If the Department is submitting the application this may be left blank. For local projects this may be completed for the engineering consulting firm.

**Block 3 Name and address of property owner** - If construction is within WisDOT right-of-way, then WisDOT is the property owner and "Department of Transportation" can be inserted in this box. If an easement was obtained for the project, insert the name and address of the landowner from whom the easement was obtained.

**Block 4** - Insert an "x" into first "No" box.

**Block 5 Project location** - If the fill will be on a single site (bridge replacement) all the information in the block should be completed. If there are several fill sites on the project, a table can be constructed listing each site and referenced in this block; e.g. "(see table 1)". This table should contain a site identifier (number or letter), which is referenced on a USGS 7.5 minute quadrangle map or other suitable map. The reference to the map can be done with station numbers provided they are on the map. For each site provide the following information as appropriate.

- a. Volume and type of fill (e.g. "clean upland granular fill") to be placed at each site (source of material if known).
- b. Volume and type of excavated material at each fill site.
- c. The total volumes of excavated and fill material for the project.
- d. The area at each site to be filled and the total area to be filled.
- e. Where the excess excavated material will be placed.
- f. Type of wetland at fill site (Prefer use of WisDOT Wetland Bank type description, [FDM 24-5 Attachment 10.2](#). The Wisconsin wetland inventory or national wetland inventory systems may also be used).

Where WisDOT plans show volume and area in metric measure, provide a conversion table from metric to English.

**Block 6. Adjoining property owners** - List property owners adjacent to areas where fill activities into waters or wetlands are being conducted. This list must give the name and correct address. For projects having several wetland fill sites, this list can be continued onto a separate page and referenced from block 6.

**Block 7. Project information** - For extensive projects refer to a separate page.

- a. Describe proposed activity. This block should contain a description of the project, including type of construction and what structures will be replaced. Information from the following environmental screening worksheets can be useful in completing this block.
  - First Basic Sheet
  - Wetlands Impact Evaluation Factor Sheet
  - Streams & Floodplains Impact Evaluation Factor Sheet
  - Lake or Water Body Impact Evaluation Factor Sheet

If the environmental document will be attached to the permit the project information can be summarized and reference made to the appropriate pages in the document.

- b. Purpose and need of project. This can be summarized from the environmental document's first basic sheet, items 2 and 3. Include other alternatives considered and stated in the environmental document. Explain why there is no practicable alternative to discharging fill into water or wetland, or why the "avoid" alternative cannot be done.
- c. Permits. Indicate the status of the WisDOT/DNR liaison process and, when applicable, the coastal zone consistency determination.
- d. Work dates. Give approximate dates when work will begin and end.
- e. No part of the project should be complete. Insert an "X" in the "No" box.

Signature of Applicant and Date signed. Signature of the authorized agent, the Region Director or the Director's designate, and the date of signature.

2. Exhibits and drawings - Locations, dimensions and other features important to the application should be clear and well labeled. Clearly show the waters and wetlands into which all fill or excavated material will be placed. All drawings must be on 8.5 x 11 inch paper and in black and white. No color shading should be used. Use black and white crosshatch, dot pattern, half tones or other material to differentiate areas. If possible use graphic bar scales rather than ratio scales.
  - a. Vicinity map or project location map. Illustrate the project limits on a USGS 7.5 minute quadrangle map or project plan sheet. Do not use a county plat map. County highway maps can be used to supplement the vicinity map.
  - b. Plan view. Show the portion of the project where dredge and fill activities are taking place. If project plan and profile sheets are used, do not include the profile portion. Provide only the information relevant to the highway work, location data, and fill activities. Equations and geometric data can be eliminated.
  - c. Typical cross section. Provide a single cross sectional view showing typical road and shoulder construction through waters or wetlands. If construction is not consistent throughout the length of the project, the cross section should show the most consistent design. If there is a major difference in cross section treatment from one project segment to another (e.g. use of geotextile on one section, but not another, change in side slopes from 4:1 to 2:1 or 8:1), then cross section diagrams should be represented separately. If the fill is in a waterway, the ordinary high watermark and 100-year flood elevations may be included.
  - d. Plan and section views of all structures and work in navigable waters of the United States or waters of the United States.
3. Attachments - The Final Environmental Impact Statement (FEIS) should be submitted with the application. Approved Environmental Assessments (EA) or environmental reports (ER) should also be submitted with the application. If EA or ER documents are pending approval, they should be submitted with the application and stamped "Preliminary Not Approved."
  - a. Correspondence. Submit copies of any letters indicating previous coordination with state (DNR, DATCP, DOA) and federal (U.S. F&WS, EPA, FHWA) agencies regarding environmental issues. If the project was controversial in the planning stages, provide information showing how controversy was resolved.
  - b. Mitigation plan. Document in a mitigation plan any commitments made to any resource agencies (EPA, Corps, Fish & Wildlife Service, DNR, DOA) to replace wetlands lost to the project. To expedite the 404-permit process this plan should accompany the permit application. (Note: Compensational wetland mitigation should be resolved during the environmental process rather than during the 404 permit process). If impacts are being debited from a statewide wetland bank, include a table with acres, type of wetlands impacted, ratio of replacement for each type and total debit.

### 1.2.8 Application Submittal

Routinely, the permit application should be sent to the St. Paul District Office. If the project is in a county or counties served by a Corps area office then the application can be sent to that office. For example, the Northeast Region may send applications to the Corps Area office in Green Bay office, the Southeast Region to the Waukesha office, etc.

- Copies: Total = 4
- The original to the Corps (1)
- One copy to the U.S. Fish & Wildlife Service (1)
- One copy to DNR region for water quality certification evaluation. (A cover letter to DNR should accompany this copy reminding DNR not to forward it to the Corps, but to use it for their evaluation for 401 certification). (1)
- One copy to the region's project file. (1)

**Table 1.2 Submittal Addresses**

Corps of Engineers	District Engineer St. Paul District, Corps of Engineers Army Corps of Engineers Centre 190 Fifth Street East St. Paul, Minnesota 55101 Telephone: (612) 290-5375
U.S. Fish & Wildlife Service	Area Supervisor U.S. Fish & Wildlife Service Division of Ecological Services 2661 Scott Tower Drive New Franken, WI 54229 Telephone: (920) 866-3650
Department of Natural Resources	DNR Region (see DNR Region List)
Department of Administration	Federal Consistency Coordinator Address (See FDM 5-10-35)

**1.2.9 Permit Process Stages**

1. Submit completed application.
2. The Corps reviews the application and determines 404 jurisdiction and completeness of information. The Corps also requests 401 water quality determination from DNR. The DNR should make a preliminary determination at this time or defer to a time later in the process.  
  
The time from the submittal of the application to the issue of the Public Notice should take approximately 31 to 51 days. If more than 45 days have passed and a Public Notice has not been issued, ask the Corps about the status of the application.
3. Public Notice is written and issued for a period of 15, 20 or 30 days depending on type and/or magnitude of the project. During this period the public is invited to comment on the permit application. An opportunity for public hearing is stated. The purpose of the public hearing is to obtain additional information to complete the public interest review. Usually the information is complete before the Public Notice is issued and hearings are seldom held.
4. During the public notice period EPA and Fish & Wildlife Service must comment to the Corps on the permit application as defined in the Public Notice. If there is no comment there is "no action" from those agencies. Any adverse written comment from EPA and Fish & Wildlife Service will be sent to WisDOT (applicant's address) for response. Response to EPA and Fish & Wildlife Service comment is directed to the Corps. Written response to comments from other entities will depend on how that comment may influence the permit. The Corps should be consulted on the necessity to comment in writing.
5. The public notice period ends at the expiration date. (Note: This date may be extended by EPA or Fish & Wildlife Service if an adequate reason is given). The WisDOT person or authorized agent responsible for monitoring the application should call the Corps project manager (listed in the public notice listed under "Replies/Comments") the day following the expiration date to find out if the public notice expiration date has been extended and if any comments from the public were received that were not sent on to WisDOT and the status of the application.
6. The Corps conducts an internal public interest review based on public comment and prepares an environmental assessment.
7. If in the public interest review the permit application is not judged contrary to the public interest, the Corps issues the invalidated permit. The WisDOT contact person should review any special conditions (page 2, item 6). If there are no special conditions or if they are agreed to then the permit is signed by the Region Director or authorized agent and returned to the Corps. If the conditions are not agreed to then they should be discussed with the Corps until an agreement is reached.
8. Corps returns the counter-signed validated permit and instructions for the use of the white card. This

concludes the permit process.

Note the permit expiration date, which is given as the last day (December 31) of the third year from the permit issue date. The validity of the permit usually does not exceed three years and may be less than three years depending on when during the year the permit was issued. If a project has not been started or completed before the expiration date, the permit may be extended provided the project has not changed with respect to the discharge of fill in the waters of the U.S. The extension can be accomplished by writing the Corps project manager (see contact person on 404 Public Notice) requesting the extension, stating the circumstances and indicating if there are or are not changes to the project. The 404 permit identification number must be cited in order for the Corps to retrieve the project file.

**1.2.10 Distribution of Copies after Application.**

1. Copies of the public notice, invalidated permit and validated permit must be placed in the region project file.
2. Invalidated Permit to U.S. Fish & Wildlife Service.

The following is a list of the DNR region contacts.

**Table 1.3 DNR Region Water Management Coordinators \***

Region	Address & Telephone No.
South Central	3911 Fish Hatchery Road Fitchburg, WI 53711 (608)375-3308
Southeast	2300 Dr. Martin Luther King, Jr. Dr. P.O. Box 12436 Milwaukee, WI 53212 (920) 263-8500
North East	1125 North Military Avenue P.O. Box 10448 Green Bay, WI 54307 (414) 492-5800
West Central	P.O. Box 4001 Eau Claire, WI 54701 (715) 839-3700
Northern	Box 818 Rhineland, WI 54501 (715) 365-8900
Northern	810 W. Maple St. Spooner, WI 54801 (715) 635-2101

\*Use the title "Environmental Analysis & Review Specialist" when addressing communications to the respective DNR regions

U.S. Fish & Wildlife Service field review requests or other contacts for projects involving in stream of the Mississippi River, the Duluth Harbor, or in stream of the St. Croix River should be directed to the Minnesota address below. For all other waterways address correspondence to the Wisconsin address below.

Area Supervisor  
U.S. Fish and Wildlife Service  
Division of Ecological Services  
1015 Challenger Court  
Green Bay, Wisconsin 54311  
Telephone: (920) 465-7740

Area Supervisor  
U.S. Fish and Wildlife Service  
Division of Ecological Services  
4101 East 80<sup>th</sup> Street  
Bloomington, Minnesota 55425-1665  
Telephone: (612) 725-3548

**1.3 Section 9 Permits and Application**

Construction of a new bridge or causeway or the reconstruction or modification of an existing bridge or causeway across navigable waters of the U.S. may be under U.S. Coast Guard jurisdiction. In Wisconsin navigable waters of the U.S. are “presently used and/or susceptible to use in natural condition, or by reasonable improvement, as a means to transport interstate or foreign commerce” If the Coast Guard has jurisdiction over the waterway where the bridge or causeway is to be constructed, a section 9 permit will be required for the structure. Attendant features requiring excavation of and fill into commercially navigable waters will require coordination with the Corps of Engineers and possible application for a Section 10, individual 404 or 404 general permit.

To determine if a stretch of the commercial waterway is under Coast Guard jurisdiction, contact the Coast Guard either one of the two Coast Guard districts that include Wisconsin. As a general rule commercial waterways that enter Lake Michigan and Lake Superior are in the 9th district in Cleveland and those that enter into the Mississippi River are in the 8th in St. Louis. For minor exceptions the applicant will be referred by one district to the other. The general contact for each district is:

8 <sup>th</sup> Coast Guard District	9 <sup>th</sup> Coast Guard District
1222 Spruce Street	1240 East Ninth Street
St. Louis, Missouri 63103-2832	Cleveland, Ohio 44199
Telephone: (314) 539-3900 ext 3	Telephone: (216) 902-6084

Section 9 waterways are within section 10 jurisdiction. The list of Navigable Waters of the United States given under section 10 permits can be used as a guideline when contacting the Coast Guard on their jurisdiction.

The information needed for a Coast Guard section 9 permit is found in the [Bridge Permit Application Guide](#) which can be accessed on the Internet at [www.uscg.mil/hg/g-o/g-opt/g-opt.htm](http://www.uscg.mil/hg/g-o/g-opt/g-opt.htm)

**1.4 Section 10 Permits**

Section 10 of the Rivers and Harbors Act states that any work in or affecting navigable waters of the United States (commercially navigable waters) requires a permit from the Corps of Engineers. Such work includes dredging, channelization, excavation, filling, construction of piers, breakwaters, bulkheads, revetments, power transmission lines, aids to navigation, and sewer outfalls over commercially navigable waters.

If a Section 10 Permit is needed for the discharge of fill, a Section 404 Permit would also be required. Both permit applications are submitted to the Corps simultaneously as a Section 10/404 application. Individual inquiries on a project basis should be made to:

District Engineer  
 U.s. Army Corps of Engineers  
 St. Paul District: attn: CO-R  
 190 Fifth Street East  
 St. Paul, Minnesota, 55101  
 Telephone (651) 290-5375

A water quality certification from the DNR is required for a joint Section 10/404 Permit. Refer to the procedures for a Section 404 application earlier in this chapter.

If a Section 10 Permit is needed for excavation in navigable waters of the United States and there is no discharge of fill, a section 404 permit would not be required. A section 10 permit application would be submitted using the same procedure as the individual 404 permit application. If excavation utilizes hydraulic dredging in section 10 waters and carriage water is returned from the discharge site, the activity is covered by NWP 16<sup>3</sup>, but requires the water quality to be certified by the DNR.

Waters covered by Section 10 of the 1899 Rivers and Harbors Act are listed below.

**Table 1.4 Navigable Waters of the United States within Wisconsin**

NAME OF WATERWAY	HEAD OF NAVIGABILITY
Ahnapee River (Algoma Harbor)	2 Miles above 4th Street bridge at Algoma, between secs. 15 and 16, T. 25 N., R. 25 E, Kewaunee County
Bad River	Approximately 23 miles above mouth at the gauging station in sec. 2, T. 46 N., R. 3 W., Ashland County

<sup>3</sup> While nationwide permits (NWPs) are no longer valid for 404 permits, they are still valid for Section 10 permits.

Black River	Navigable throughout
Bois Brule River	Navigable throughout
Chippewa River	Navigable throughout
Duck Creek	2.7 miles above mouth to the Chicago and Northwestern railroad tracks in sec. 10, T. 24 N., R. 20 E., Brown County
East River	Fixed highway bridge at Baird Street 1.35 miles above mouth in T. 24, N., R. 21 E., Brown County
East Twin River	Approximately 3 miles above mouth between secs. 23 and 26, T. 20 N., R. 24 E., Manitowoc County
Fox River (includes Little Lake Butte des Morts)	To its juncture with the Wolf River in Winnebago County
Green Bay	Navigable throughout
Kenosha Harbor	Navigable throughout
Kewaunee River	Kewaunee Harbor to 6.5 miles above mouth between secs. 14 and 23, T. 23 N., R. 24 E., Kewaunee County
Kinnickinnic River (Milwaukee Harbor)	Fixed bridge at Lincoln Avenue 2.12 miles above mouth, between secs. 5 and 8, T. 6 N., R. 22 E., Milwaukee County
Lake Butte des Morts	Navigable throughout
Lake Michigan	Navigable throughout
Lake Poygan	Navigable throughout
Lake Winneconne	Navigable throughout
Manitowoc River Manitowoc Harbor	Navigable throughout
Menomonee River (Milwaukee Harbor)	Fixed railroad bridge at Canal Street, 2.9 miles above mouth, T. 7 N., R. 22 E., Milwaukee County (South Menominee and Burnham Canals are navigable throughout)
Milwaukee River (Milwaukee Harbor)	Fixed bridge at North Humboldt Blvd., approximately 2.9 miles above mouth. sec. 21, T. 7 N., R. 22 E., Milwaukee County
Mississippi River	Navigable throughout in Wisconsin (to Prescott)
Namekagon River	Navigable throughout
Nemadji River	14 miles above mouth in the SE ¼ SE ¼ sec. 22, T. 48 N., R. 14 W., Douglas County
Oconto River	Oconto Harbor, 1 mile above mouth, upper city wharf, sec. 20, T. 28 N., R. 22 E., Oconto County
Pecatonica River	Main stem to mile 154.2 to mouth of Mineral Point Branch (County Highway 0), in sec. 1, T. 3 N., R. 2 E., LaFayette County; and East Branch to State Highway 81 in Argyle, in sec. 26, T. 3 N., R. 5 E., LaFayette County
Pensaukee River	Fish wharves, 3/4 mile above mouth (Pensaukee Harbor) in sec. 11, T. 27 N.,
Peshigo River	Fish wharf, 114 mile above mouth in Secs. 13 and 14, T. 29 N., R. 23 E., Marinette County
Port Washington	Navigable throughout
Rock River	Mile 290 at Horicon in sec. 6, T. 11 N., R. 16 E., Dodge County
Root River (Racine Harbor)	Former bridge at Leudtke Court, approximately 2.38 miles above mouth, in sec. 8, T. 3 N., R. 23 E., Racine County

Sheboygan River (Sheboygan Harbor)	Railroad bridge below New Jersey Avenue, approximately 2.38 miles above mouth, in sec. 22, T. 15 N., R. 23 E., Sheboygan County
St. Croix River	Navigable to approximately mile 133, to mouth of the Namekagon River
Sturgeon Bay and Lake Michigan Ship Canal	Navigable throughout
Suamico River (Big Suamico River)	Carp pond, 2 miles above mouth in sec. 23 T. 25 N., R. 20 E., Brown County
Thornapple River	Navigable throughout
West Twin River(Two Rivers Harbor)	7 miles above mouth between secs. 19 and 30, T. 20 N. 7 R. 24 E., Manitowoc County
White River	Navigable throughout
Wisconsin River	330 miles above mouth at Tomahawk, WI
Wolf River	Leeman bridge (County Highway F) near Leeman, 96.2 miles above Main Street bridge at Oshkosh between sea, 4 and 9, T. 24 N., R. 16 E., Outagamie County

**1.5 Nationwide Permits (Section 10 Waters)**

Nationwide permits (NWP) are "a type of general permit issued by the Chief of Engineers and are designed to regulate, with little if any delay or paperwork, certain activities having minimal impacts" (33CFR 330.1(b)). NWPs are no longer valid for Section 404 permits but they are still valid for Section 10 permits. NWPs are issued, reissued, modified or revoked every five years following a period of public comment. As a result of public comment and discussion with the state water regulatory agency (DNR) the Corps district announces regional conditions for the state. Nationwide permits were reissued effective June 5, 2000. The Corps reissues, voids or adds new nationwide permits five years from the effective date. A NWP automatically expires if it is not modified or reissued five years after its effective date. The final rule on the most recent NWP reissue and program regulations can be found in 33 CFR Part 330 (click here <http://www.gpoaccess.gov/cfr/index.html> and perform a search on 33CFR330).

If a NWP was authorized for a project before the effective date of the reissue of nationwide permits, the project must be under construction or under contract for the NWP to remain authorized. The construction must be completed within 12 months of the effective date of reissue.

**1.5.1 Guideline on Nationwide Permit Applicability**

A highway project is considered as a single entity, therefore individual wetland losses are cumulative over the project. Based on the notification the Corps makes the final determination on nationwide permits.

No nationwide permits apply to fills into federal wild scenic rivers, which include portions of the St Croix, Namekagon and Wolf rivers.

Certain nationwide permits contain a notification condition.

Corps NWP Notification [33 CFR 330.1 (e)(1-3)] requires advanced notification be made to the Corps in writing prior to commencing the project. For WisDOT this should be initiated early in the environmental process and will require at a minimum the following information.

- Location of wetland proposed to be filled,
- Size of wetland,
- Quantity and area of proposed wetland fill and
- Type of wetland.
- A description of the project and its purpose.

Completion of joint 10/404-permit application form 3500-53 ([Attachment 1.1](#)) is recommended for notifications.

In the Coastal Zone of the state (see [FDM 5-10 Attachment 35.1](#) and [FDM 5-10 Attachment 35.2](#)) the section 401 water quality certification must first be sent to the federal consistency coordinator in the department of administration to obtain a Coastal Zone Consistency Determination (CZC). Then both the section 401 water quality certification and the CZC must accompany the permit requested to the COE.

Not all nationwide permits are applicable to WisDOT projects. Those nationwide permits applied to WisDOT projects in Section 10 waters are:

**NWP 3. Replacement of previously authorized structure.**

"The repair, rehabilitation or replacement of any previously authorized, currently serviceable structure or fill .... provided .... does not result in a deviation from the plans of the original structure ...." [33 CFR 330].

- Conditions: No regional conditions added by DNR. No outside action required if the criteria for the NWP are met.
- Project Type: Bridge, culvert or pier.
- Example: In kind replacement. A single span structure for a single span structure on existing alignment or a culvert for a culvert. Not Applicable: Box culvert for span structure, two span (requires pier in water) from single span (no pier), any approach fills into adjacent wetlands and if new structure is too far (e.g. > 50 ft or from the existing site. Fills into waters of U.S. for temporary bypasses are not covered.
- Careful use of this NWP is advised.

**NWP 13. Bank Stabilization.**

Activity less than 500 ft long and limited to less than an average of 1 CY per running ft along bank with waters of U.S. A greater length and additional riprap can be authorized through the notification process. The activity is necessary for erosion control, not used in excess, not placed in special aquatic sites or wetlands or placed to impair surface water flow and may not contain materials containing wastes. [33 CFR 330].

- Conditions: No regional conditions added by DNR. Corps' general condition on NWP notification required.
- Project Type: Bridge and Roadway.
- Example: Placement of riprap at bridge abutments or on steep roadway slopes adjacent to open water.

**NWP 14. Road Crossing.**

Temporary and permanent fills that provide a crossing of a waterway or wetland adjacent to a waterway or both. The discharge of fill into waters and wetlands must affect an area no more than one-half acre [33 CFR 330 Appendix A (B)(14)].

- Conditions: Regionally conditioned.
- Project must be carried out in accordance with established DOT/DNR liaison procedures. Corps' general condition on NWP Notification required.
- Project Type: Primarily bridge, but can include crossings of small wetlands isolated from and adjacent to the tributary system.
- Example: Bridge replacement project requiring fills for approach work into adjacent wetlands or waters or both. Also included are fills required for temporary bypasses (attendant feature) used in bridge replacement projects. Roadway widening project that requires fill into adjacent causes a wetland loss of one-third acre.

**NWP 23. Categorically Excluded Federal Aid Project.**

Federally aided project which is categorically excluded under the National Environmental Policy Act. [33 CFR 330].

- Conditions: Regionally conditioned. Project must be carried out in accordance with established WisDOT/DNR liaison procedures. NWP notification is not required.
- Example: Federally aided bridge or roadway project. This NWP is rarely used in Wisconsin.

**NWP 25. Discharge of Concrete Into Tightly Sealed Forms or Cells.**

Applies to concrete poured for bridge piers and abutments. [33 CFR 330 Appendix A (B)(25)].

- Conditions: No regional conditions added by Wisconsin DNR. No outside action if criteria of NWP are met.
- DOT Project Type: Primarily Bridge.
- Example: Replacement of a single span overhead truss with a two span deck girder requiring placement of a concrete pier into the waterway.

**NWP 33. Temporary Construction, Access and Dewatering.**

"Temporary structures and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided the associated permanent activity was previously authorized by the Corps of Engineers or the Coast Guard, ...." [33 CFR 330].

- Conditions: Regionally conditioned. Project must be carried out in accordance with established WisDOT/DNR liaison procedures. Corps' general condition on NWP Notification required.
- DOT Project Type: Primarily bridge and a 404 permit or Coast Guard permit has been issued. (New NWP as of January 1992).
- Example: During construction of a permitted bridge it is determined that a temporary causeway is needed to move equipment for bridge work. Notification by contractor or DOT to the Corps would amend the existing permit with NWP.

**Other nationwide permits that may potentially be used by DOT are:**

**NWP 16. Return Water From Upland Contained Disposal Area.**

- Hydraulic dredging projects. Individual 401 water quality certification required.

**NWP 36. Boat Ramps. Boat ramp construction.**

**1.6 Migratory Bird Treaty Act of 1918**

All birds listed as migratory are protected by the Migratory Bird Treaty Act (MBTA). This law protects the birds, their eggs, young and active nests. Active nests are those with eggs or young. A nest that is being constructed but not occupied with eggs or young is considered inactive. The cliff swallow, barn swallow, and eastern phoebe are migratory birds that commonly nest on bridges. Therefore, construction and maintenance operations on bridges may come into conflict with this law. Other migratory birds, including rough-winged and bank swallows, nest in burrows formed in face cuts which may be found in borrow sites. The MBTA and its permit process also apply to these conditions. (An exception to the no protection of empty nests is the Bald and Golden Eagle Protection Act, where eagle nests and nesting trees are protected).

During the environmental phase of preliminary design, bridges or other structures that serve as a surface for migratory bird nesting should be identified and described in the environmental document<sup>4</sup>. Prior to its replacement or destruction, a bridge should be rechecked for the presence of nesting migratory birds and arrangements made accordingly, such as removal of inactive nests in the early spring, fall or winter, and preventing birds from creating active nests, e.g. scrapping off or hosing off inactive nests, or netting.

Destruction of active nests is a violation under the Act. The U.S. Fish and Wildlife Service (FWS) will permit incidental destruction of nests during the non-nesting season, which is usually between August 30 of one year and May 1 of the next year.

Designers shall apply for a FWS depredation permit when public safety is involved and methods to prevent nesting cannot be implemented, e.g., structures are too high or inaccessible to remove inactive nests. If removal of inactive nests occurs as described above, most bridges will not need a depredation permit.

For greatest efficiency, the application for the permit should be initiated with the U.S. Department of Agriculture-Wildlife Services (USDA-WS). Contact the appropriate USDA-WS district office (see [Attachment 1.2](#)) and request an application form and the information sheet that will provide guidance in completing the application. Return the completed application to the USDA-WS office. The USDA-WS will do an on-site evaluation for FWS and then submit the application with the evaluation to FWS for permit review.

FWS Division of Migratory Birds will review the permit application and either issue or deny the permit. They may also apply specific conditions to the permit after coordination with the applicant. All effort should be made in project planning, timing and construction site preparation to avoid the conditions requiring the need for permit application. (see [FDM 5-5-10](#) and [FDM 20-5-10](#)). Contact the Regional Environmental Impact Coordinator, or Gary Birch (608) 266-1017 (BEES) for specific guidance.

**LIST OF ATTACHMENTS**

[Attachment 1.1](#) State/Federal Application for Water Regulatory Permits & Approvals

[Attachment 1.2](#) USDA Wildlife Services Office Locations

**FDM 21-30-5 State Permits**

*November 26, 1997*

**5.1 WisDOT Exemptions from DNR Permits**

In the Cooperative Agreement between the two agencies, the Wisconsin Department of Transportation (WisDOT) and the Wisconsin Department of Natural Resources (WisDNR) have agreed "that in the interest of fulfilling their respective duties, and to provide a reasonable and economical procedure for carrying them out in

<sup>4</sup> See [FDM 21-15-5, Attachment 10](#) "Lake or Water Body Impact Evaluation, Factor Sheet, Item 12"

a manner that is in the total public interest, the (Wis) DOT and DNR will consult and cooperate with each other.....etc.". In that spirit and, more specifically, as a result of 30.12(4) Wisconsin Statutes, the WisDOT's activities in connection with highway and bridge design, location, construction, reconstruction, maintenance, and repair are exempt from the permit requirements established under the following Wisconsin Statutes:

Chapter 29.29	Noxious Substances
Chapter 30.11	Establishment of Bulkhead Lines
Chapter 30.12	Structures and Deposits in Navigable Waters
Chapter 30.195	Changing of Stream Courses
Chapter 30.196	Enclosure of Drainage Areas
Chapter 30.20	Removal of Material from Beds of Navigable Waters
Chapter 59.971	Zoning of Shorelands on Navigable Waters
Chapter 87.30	Floodplain Zoning
Chapter 144	Water, Sewage, Refuse, Mining and Air Pollution
Chapter 147	Pollution Discharge Elimination

### **5.2 WisDNR Air Quality Permit Exemptions and Requirements**

A project must meet the criteria in NR 411.04 to be exempt from air quality indirect source permit requirements. A "Construction Permit" must be obtained for projects which fail to meet the criteria in NR 411.04

### **5.3 WisDNR Permit for Construction Over or Adjacent to Navigable Waters**

All work over, on or adjacent to navigable waters shall be so conducted that free navigation of the waterways will not be impeded and existing navigable depths will not be impaired except as allowed by permit issued by the governmental authority. Construction shall not start until all permits have been received.

Applications for U.S. Coast Guard Temporary Permits and Wisconsin Department of Natural Resources Erection Scheme Permits shall be submitted by the contractor to WisDNR, Bureau of Law Enforcement, Boating Law Administrator. One copy of each permit issued shall be provided to the project engineer for posting at the field office prior to commencing construction activities that affect navigation.