



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
ST. LOUIS DISTRICT CORPS OF ENGINEERS
1222 SPRUCE STREET
ST. LOUIS, MISSOURI 63103-2833

March 1, 2013

Regulatory Branch

File Number: MVS-2011-805, 2011-806 & 2011-808 (P-2817)

Les Sterman

Southwestern Illinois Flood Prevention District Council

104 United Drive

Collinsville, Illinois 62234

Dear Mr. Sterman:

Enclosed are two copies of Department of the Army (DA) Provisional Permit P-2817 which, when issued, will authorize you to place fill material into waters of the United States for improvements on the three Metro East Levee systems, (Wood River, Metro East Sanitary District and Prairie du Pont/Fish Lake), to restore the level of protection to a 100-year certification provided by the respective Drainage and Levee District's such that the levee system will be eligible for accreditation in accordance with 44 CFR 65.10 criteria. A total of 28.2 acres wetlands and/or surface waters are to be impacted as a result of the project including 7.74 acres of impacts within Wood River, 0.78 acres of impacts within Metro East Sanitary District and 19.68 acres of impacts within Prairie du Pont/Fish Lake. The applicant shall provide at least 43.64 acres of compensatory wetland mitigation at an approved offsite location currently owned by Allied Waste in Madison County, Illinois. The three Levee Districts are located in Madison, St. Clair and Monroe counties, in southwestern Illinois within the Mississippi River floodplain.

Please note that by Federal law a DA permit **cannot** be issued until a State Section 401 Water Quality Certification has been issued or has been waived. As of this date, the Illinois Environmental Protection Agency (IEPA) **has not issued** water quality certification for your project. You may wish to contact the IEPA to determine the status of the water quality certification for your project. They may be contacted by telephone at 217-782-3362 or by mail at the address at the end of this letter.

In addition, a DA permit **cannot** be issued until a Section 408 approval has been granted by the U.S. Army Corps of Engineers. Therefore, this provisional permit **is not valid** and you are **not authorized** to commence work under this permit until; 1) You have received the State 401 Water Quality certification, 2) you have received Section 408 approval from the US Army Corps of Engineers, and 3) you and this District have appropriately signed the permit.

We request that you carefully review the enclosed permit to ensure that you understand and accept the conditions under which this permit may be granted. This letter contains an **Initial Proffered Permit** and a **Preliminary Jurisdictional Determination** for your project. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form.

If you request to appeal this determination you must submit a completed RFA form to the Mississippi Valley Division Office at the following address:

Ms. Tonya Acuff, Appeals Officer
Administrative Appeals Review Officer
Mississippi Valley Division
P.O. Box 80 (1400 Walnut Street)
Vicksburg, MS 39181-0080
Phone (601) 634-5820 Fax (601) 634-5816

In order for an RFA to be accepted, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP.

Should you decide to submit an RFA form, it must be received at the above address by **April 15, 2013**. It is not necessary to submit an RFA form to the Division Office if you do not object to the determination and or decision in the following attachments.

General conditions designated 1 through 6 and parts 2 through 6 of "Further Information" are standard conditions for all permits. Special conditions 1 through 18 specify measures to protect water quality at the worksite, establish wetland mitigation, and to fulfill compliance and monitoring guidelines.

Conditions of the State water quality certification, if issued, will become conditions to the final DA permit. We will notify you if the State's action on the required certification or concurrence precludes validation of the provisional permit in its current form, requiring further action. Substantial changes may require a modification of the current provisional permit or possibly re-evaluation, including issuing a new public notice.

When you receive the Section 401 water quality certification or we notify you that we consider the certification waived, you may accept the proposed terms and conditions of this initial proffered provisional permit by signing and dating both copies of the enclosure and returning both copies. The permit will become effective when signed by an authorized representative of this office. We will provide a copy of the signed permit to you at that time.

We appreciate any feedback that you are able to offer. Please consider filling out the customer survey at the following link: <http://per2.nwp.usace.army.mil/survey.html> to complete a quick, on-line survey regarding the Corps' Regulatory Program.

If you have any questions please contact Mr. Keith McMullen at (314) 331-8582. Please refer to file number **MVS-2011-805, 2011-806 & 2011-808**.

Sincerely,

Danny D. McClendon
Chief, Regulatory Branch

Enclosures

Copies Furnished: (w/o enclosures)

Heacock, IEPA
Diedrichsen, IDNR (OWR)
Mangan, USFWS
Yu, USEPA
Malone, IDNR

DEPARTMENT OF THE ARMY PERMIT

Permittee: Mr. Les Sterman, Southwestern Illinois Flood Protection Council (SIFPDC)

Permit No: MVS-2011-805, 2011-806 and 2011-808, P-2817

Issuing Office U.S. Army Engineer District, St. Louis

NOTE: The term "you" and its derivatives, as used in this permit, mean 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: The proposed project is for levee improvements on the three Metro East Levee systems, (Wood River, Metro East Sanitary District and Prairie du Pont/Fish Lake), to restore the level of protection to a 100-year certification provided by the respective Drainage and Levee District's such that the levee system will be eligible for accreditation in accordance with 44 CFR 65.110 criteria.

A total of 28.2 acres wetlands and/or surface waters are to be impacted as a result of the project including 7.74 acres of impacts within Wood River, 0.78 acres of impacts within Metro East Sanitary District and 19.68 acres of impacts within Prairie du Pont/Fish Lake. Also, two streams within the Wood River Levee District will be impacted, a total of 1210 linear feet.

A total of 43.64 acres of compensatory wetland mitigation is required for wetland impacts and 2470 stream mitigation credits for stream impacts. The applicant has chosen to provide 52 acres of compensatory wetland mitigation at an approved offsite location currently owned by Allied Waste in Madison County, Illinois.

Project Location: The three Levee Districts are located in Madison, St. Clair and Monroe counties, in southwestern Illinois within the Mississippi River floodplain.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on December 31, 2018. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in 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 continuation sheet, pages 4 and 5 of this document for Special Conditions.

ENG FORM 1721, Nov 86

EDITION OF SEP 82 IS OBSOLETE

(33 CFR 325 (Appendix A))

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

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 authorization 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.

Special Conditions

1. This permit is not valid until the State of Illinois issues water quality certification. **The permittee must contact the Corps of Engineers upon issuance of water quality certification.** Upon receipt of the water quality certification, the permit may be revoked or a stop work order issued if the State of Illinois notifies us that the permitted activities are not being performed in conformance with the special conditions described in Illinois Environmental Protection Agency's Section 401 Water Quality Certification (WQC) conditions, if issued.
2. This permit is not valid until the US Army Corps of Engineers issues a Section 408 approval for each submitted bid package. This permit may be modified after subsequent bid packages, seeking Section 408 approvals, are submitted by the consultants for the applicant. All necessary offices at the Corps of Engineers shall be contacted with additional Section 408 bid package information each time additional information is available.
3. Final Section 404 approval will occur in the form of a final permit letter issued to the applicant once Section 401 WQC and Section 408 approvals have been secured. Construction associated with individual bid packages **shall not** begin until all required permits (Section 404, Section 401 and Section 408) have been issued by the Corps of Engineers and Illinois Environmental Protection Agency.
4. If any part of the authorized work is performed by a contractor and/or subcontractors, before starting work you shall provide and discuss the terms and conditions of this permit with them.
5. Construction activities within the compensatory wetland mitigation site, to include earthmoving, tree removal and other necessary site preparation activities shall be commensurate with wetland and stream impacts or within **60 days** from the date of final permit issuance.
6. A final draft compensatory wetland mitigation plan shall be submitted for review and approval **no later than 60 days** from the date of issuance of this provisional Section 404 permit.
7. The applicant shall provide **43.64** acres of compensatory wetland mitigation for the impacts to **28.2** acres of impacts to jurisdictional wetlands. In addition, the applicant shall provide **2470** stream credits for impacts to 1210 linear feet of stream channel being impacted by the project.
 - a. The wetland impacts include **1.71** acres of palustrine, forested (**PFO**) in Wood River, **0.46** acres in MESD and **1.03** acres in PDP; **0.16** acres of palustrine, emergent (**PEM**) in Wood River, **0.32** acres in MESD and **1.59** acres in PDP; **5.8** acres of palustrine, unconsolidated bottom (**PUB**) in Wood River; and **0.07** acres of **PEM/Farmed Wetland** in Wood River and **17.06** acres in PDP.
 - b. The stream impacts consist of **1210** linear feet along 2 stream channels within the Wood River Levee District.

c. Required mitigation includes the following: **3.2** acres of impacts to **PFO** at a **2.5:1** replacement ratio equates to **8** acres of mitigation. **2.07** acres of impacts to **PEM** at a **2:1** replacement ratio equates to **4.14** acres of mitigation. **5.8** acres of impacts to **PUB** at a **1:1** replacement ratio equates to **5.8** acres of mitigation. **17.13** acres of impacts to **PEM/Farmed Wetland** at a **1.5:1** replacement ratio equates to **25.7** acres of mitigation. In addition, the applicant shall provide **2470** stream credits for impacts to the **1210** linear feet of stream being impacted.

8. Financial assurances specified in the compensatory mitigation plan shall be secured within 90 days from the date of authorization by the Regulatory Branch Chief.

9. Maintenance, monitoring, and any corrective measures on the mitigation site shall be the responsibility of the permittee. This responsibility cannot be assigned to a third party, without express written approval from the Corps of Engineers. The permittee, the Corps, and the third party must agree to any transfer of responsibility from the permittee to a third party.

10. Monitoring of the compensatory wetland mitigation site shall be conducted annually for a minimum of 5 years following completion of construction, ensuring an 80% survival rate of planted species. An annual monitoring report must be submitted to our office at the end of each monitoring period in accordance with Regulatory Guidance Letter 08-03, Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment and/or Enhancement of Aquatic Resources; dated October 10, 2008. If, at the end of the 5-year monitoring period, the site is providing adequate functions and values, then additional monitoring will not be required.

11. If, at the end of the 5-year monitoring period, the site is not functioning, then corrective measures shall be implemented. Corrective measures shall be required to successfully meet the mitigation requirements. The applicant shall be required to implement contingency measure(s), including additional mitigation, to ensure compensation adequately offsets the loss of waters in association with the proposal. Any additional mitigation determined to be necessary by this office shall be subject to further monitoring and review to assess success. In the event that success criteria cannot be met, you shall ensure that additional wetland acreage shall be provided in order to compensate for temporal and functional loss of wetlands. In this case you shall ensure that the wetland mitigation areas meet the designated acreages and wetland types.

12. The applicant must continue to coordinate with the Illinois State Historic Preservation Agency (SHPO), Tribal Historic Preservation Offices (THPO) and the Corps of Engineers should **any** potential artifacts of historic significance be located during construction. Immediate contact with the SHPO, applicable THPO, and Corps of Engineers shall occur.

13. The applicant shall place a perpetual Declaration of Covenants and Restrictions with the County Recorder of Deeds thus restricting activities within the compensatory wetland mitigation areas. A registered land surveyor must prepare a legal description of the mitigation areas. A certified copy of the survey must be submitted for inclusion into the Declaration of Covenants and Restrictions. Upon submittal of this information, a copy of the Declaration of Covenants and Restrictions will be supplied for your final signature, notarization and recordation record from the County Recorder of Deeds Office. The Declaration of Covenants **shall** be finalized and a copy returned to the Corps of Engineers within **60** days following completion of the mitigation. Signage shall be posted around the protected mitigation areas notifying the public such areas are protected resources in perpetuity.

14. The applicant **must notify the Corps of Engineers should any change in size, location or methods to accomplish the work occur.** Changes could potentially require additional authorizations from the Corps as well as other Federal, state or local agencies. Since numerous bid packages are proposed to be submitted for the various project features, it is possible that impacts within the project area may increase or decrease. Updated plans depicting impacts to jurisdictional wetlands or water resources or avoidance of these areas previously proposed to be impacted, shall be submitted to the Corps of Engineers Regulatory Branch as soon as available. The Regulatory Branch will coordinate these changes with all Federal and State Resource agencies before making any decision whether to grant a permit modification to the applicant.

15. The applicant must notify the Corps of Engineers upon completion of all work relative to the project. A compliance inspection by the Corps will be carried out in order to witness that all conditions have been complied with during construction.

16. The Corps of Engineers shall remain as the immediate point of contact. The Corps of Engineers shall be allowed to inspect this project at irregular intervals to assure that conditions of this permit are in compliance. The failure to comply with the permit conditions will potentially result in enforcement actions by the Corps of Engineers.

17. Permittee shall allow representatives from the Corps office to inspect the authorized activity at any time deemed necessary to ensure compliance with permit conditions.

18. This permit does not obviate the permittee from obtaining any other federal, state or local authorization required by law for the activity authorized.