

**DEPARTMENT OF THE ARMY
REGIONAL GENERAL PERMIT**

Permittee: The General Public

Permit No: RGP-05, North Slope (POA-2013-00094)

Issuing Office: U.S. Army Engineer District, Alaska

Issuance Date: February 11, 2021

Expiration Date: February 10, 2026

NOTE: The term “wetlands,” as used in this permit, refers to jurisdictional wetlands, a category of waters of the United States (WOTUS). The term “you” and its derivatives, as used in this permit, means the permittee or any future transferee. The term “this office” refers to the Alaska District of the U.S. Army Corps of Engineers (Corps), Regulatory Division, having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

REGIONAL GENERAL PERMIT AUTHORIZATIONS

The general public is authorized to perform work across the North Slope (as defined by the boundaries of the North Slope Borough, see Enclosure 1) in accordance with the terms and conditions of this regional general permit (RGP) as specified below, after satisfying all the applicable conditions.

Under the authority of Section 404 of the Clean Water Act (Public Law 95-217, 33 U.S.C. 1344 et. Seq.) and Section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403), the Secretary of the Army authorizes the discharge of dredged and/or fill material by the general public into WOTUS across the North Slope of Alaska in accordance with terms and conditions of this RGP.

AUTHORIZED ACTIVITIES

This RGP-05, authorizes the discharge of dredged and/or fill into WOTUS for the purpose of new construction or the expansion of existing pads and accompanying infrastructure, linear projects, and coastal erosion.

Maximum Acreage Limitations:

1. The following acreage limitations for single and complete projects apply to discharges authorized by RGP-05:
 - a. Discharges for development of a new fill pad (and accompanying infrastructure) or the expansion of an existing fill pad may not exceed ten (10) acres of impacts to WOTUS, including wetlands. Repeated use of this RGP for the same facility or

project may authorize no more than twenty (20) acres of total discharge for the term of this RGP. After impacting ten (10) acres for a project, the proposal may be subject to an elevated review if more than 50% of an increase in impacts is requested.

- b. Discharges for development of new linear projects may not exceed ten (10) acres to waters of the U.S., including wetlands. Discharges for widening existing roads are authorized without a defined acreage limit – however, the applicant shall identify a clear purpose and need for the expansion, to be verified by the district engineer.
- c. Discharges for coastal erosion projects may not exceed twenty (20) acres.

Excluded Areas and Activities (this exclusion does not apply to coastal erosion projects):

- 1. Under this RGP, dredged and/or fill material may not be discharged into or within:
 - a. Five hundred (500) feet of marine, estuarine, or the major riverine waters listed here: Colville, Kuparuk, Sagavanirktok, Shaviovik, Kadleroshilik, and Canning; or,
 - b. One hundred (100) feet of other riverine waters, lacustrine waters, or the following types of palustrine wetlands with:
 - i. an unconsolidated bottom (PUB),
 - ii. the subclass 2 (PEM2, indicating the presence of *Arctophyla*), or
 - iii. a water regime modifier of F, G, H, L, or N (PEMF/G/H/L/N, including beaded streams).

The 100' and 500' setbacks from the specified waters must be indicated on project plans and staked in the field. The district engineer may waive this criterion by making a written determination concluding that the discharge will result in minimal adverse effects (potential examples include projects in villages, road crossings, or expansions of existing projects).

- 2. Discharges associated with the development of new wastewater treatment facilities or landfills are not authorized by this RGP.
- 3. Activities that are denied any required local, State or Federal authorization are not authorized by this RGP.

APPLICATION PROCEDURES

Individuals wishing to perform work under this RGP may use the General Permit Site Description (Enclosure 2) and must also include the additional information listed below. Submit the completed application package to the Corps by email to: regpagemaster@usace.army.mil, or at the following address for verification and coverage under this RGP: U.S. Army Corps of Engineers, Regulatory Division, North Section Chief (CEPOA-RD-N), Post Office Box 6898, JBER, Alaska, 99506-0898.

- 1. Four types of drawings (see enclosed figures 1-4) that include:

- a. Vicinity map depicting the location of the project in a map such as a 1:63,360 USGS quadrangle map and on a smaller scale map of Alaska (see enclosed example Figure1).
 - b. Delineation of the project should provide a map showing Cowardin wetland classifications, and distances from project activities to the Cowardin classifications (listed in number 1 under Excluded Areas and Activities above), drainage patterns, and topography.
 - c. Plan view of the project showing the layout of building, roads, and other projects features in relation to adjacent features such as ponds and creeks (to scale if possible). Plans must include total footprint size of project fill pad and show location and size of proposed culverts.
 - d. Cross section of fill including approximate side slopes. The cross section represents the project as it would appear if cut internally for display (see enclosed example Sheet 4 of Figures 1-4). Since drawings may be replicated, use clear, heavy lines. Drawings do not have to be prepared by a professional but should be clear and easily understood.
2. The type of material and location of the material source to be used as fill for the project.
 3. Photographs (if available) or any other information that would verify that the proposed work is in WOTUS and meets the conditions of this RGP. This could include the project footprint overlaid on an aerial photo.
 4. A mitigation statement should be included describing how impacts to WOTUS are to be avoided, minimized and compensated for, or a statement explaining why compensatory mitigation should not be required for the proposed impacts. See Mitigation Statement section below and the attached GP Pre-Construction Notification for further information.
 5. Previous permit identification numbers for any prior Corps permits associated with the proposed project (such as expansion of an existing fill area).
 6. Complete Form 500 Traditional Land Use Inventory (TLUI) Clearance with the North Slope Borough and provide a copy of the completed form with your application submittal. Instructions and the application forms for the TLUI Form 500 can be found at <http://www.north-slope.org/departments/planning-community-services/applications-and-forms>.

Corps Verification Process:

1. Applicant submits a request to the Corps for a permit by methods outlined in the verification procedures above. No work may be performed under this RGP until written verification is obtained from the Corps.
2. The Corps reviews the verification submittal and preliminarily determines whether this RGP is applicable, or based upon review, the Corps notifies the applicant that this RGP is not appropriate for the proposed project.
3. The Corps will send the project plans to appropriate agencies and Tribes for review. The agencies have ten (10) calendar days from the date the Corps sends the project plans to them, to contact the Corps by letter or by email with comments on the

project. If the agencies need additional time to provide substantive, site-specific comments, the Corps will wait an additional fifteen (15) calendar days to receive the comments before making a permit decision. Specific condition recommendations by the agencies will be incorporated as appropriate.

4. The Corps issues the applicant an RGP verification letter.

Mitigation Statement:

By following the RGP acreage limitations and avoiding excluded areas and activities as described under Authorized Activities above, the applicant will have ensured that the project has been designed to avoid and minimize impacts to high value functioning WOTUS.

For all projects covered by this RGP, the district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

- a. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent to wetlands to the maximum extent practicable at the project site (i.e., on site).
- b. Mitigation in all its forms (avoiding, minimizing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effect to the aquatic environment are minimal.
- c. Compensatory mitigation will be considered on a case by case basis for all wetland losses, unless the district engineer determines in writing that either some other form of mitigation would be environmentally preferable or the adverse effects of the proposed activity are minimal and provides a project-specific waiver for this requirement. For wetland losses the district engineer may determine on a case by case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic must comply with the applicable provisions of 33 CFR 332.

The prospective permittee is responsible for proposing an appropriate compensatory mitigation option, if compensatory mitigation is required, to ensure that the activity results in minimal adverse effects on the aquatic environment in the following order of preference:

- a. *Mitigation bank credits.* When permitted impacts are located within the service area of an approved mitigation bank, and the bank has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the sponsor.
- b. *In-lieu fee program credits.* Where permitted impacts are located within the service area of an approved in-lieu fee program, and the sponsor has the appropriate number and resource type of credits available, the permittee's compensatory mitigation requirements may be met by securing those credits from the sponsor. Where permitted impacts are not located in the service area of an approved mitigation bank, or the approved mitigation bank does not have the appropriate number and resource type of credits available to offset those

impacts, in-lieu fee mitigation, if available, is generally preferable to permittee-responsible mitigation.

- c. *Permittee-responsible mitigation under watershed approach.* Where permitted impacts are not in the service area of an approved mitigation bank or in-lieu fee program that has the appropriate number and resource type of credits available, permittee-responsible mitigation is the only option.
- d. *Permittee-responsible mitigation through on-site and in-kind mitigation.* In cases where a watershed approach is not practicable, the district engineer should consider opportunities to offset anticipated aquatic resource impacts by requiring on-site and in-kind compensatory mitigation. The district engineer must also consider the practicability of on-site compensatory mitigation and its compatibility with the proposed project.
- e. *Permittee-responsible mitigation through off-site and out-of-kind mitigation.* If, after considering opportunities for on-site, in-kind compensatory mitigation, the district engineer determines that these compensatory mitigation opportunities are not practicable, are unlikely to compensate for the permitted impacts, or will be incompatible with the proposed project, and an alternative, practicable off-site and/or out-of-kind mitigation opportunity is identified that has a greater likelihood of offsetting the permitted impacts or is environmentally preferable to on-site or in-kind mitigation, the district engineer should require that this alternative compensatory mitigation be provided.

Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the RGP authorization, instead of components of a compensatory mitigation plan.

Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of this RGP, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with this RGP.

CONDITIONS

The work authorized by this RGP is subject to the following general conditions and any special conditions necessary to reduce impacts to the minimal level.

Special Conditions: Any verification issued may include special conditions that this office determines are necessary to ensure compliance with the conditions of the RGP and to ensure that the activity will not result in more than minimal individual or cumulative adverse impacts to the aquatic ecosystem or other public interest factors.

General Conditions:

1. **Permit Expiration.** This RGP is effective for 5 years from the date of issuance unless otherwise modified, suspended, or revoked. Discharges authorized by this RGP generally must be completed by the date specified in the Corps authorization letter. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this RGP will remain authorized provided the activity is completed within twelve months of the date of this RGP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization. Activities completed under the authorization of this RGP continue to be authorized by the RGP.
2. **Notification.** The applicant must submit the required project information to the Corps. Written verification that the project may proceed under RGP-05 must be received from the Corps prior to commencing construction.
3. **Excluded Areas** (this general condition does not pertain to coastal erosion projects). Fill material shall not be discharged within 500 feet of marine or estuarine waters, or the Colville, Kuparuk, Sagavanirktok, Shaviovik, Kadleroshilik, and Canning rivers; or within 100 feet of other riverine waters, lacustrine waters, or the following types of palustrine wetlands with: an unconsolidated bottom (PUB), the subclass 2 (PEM2, indicating the presence of Arctophyla), or a water regime modifier of F, G, H, L, or N (PEMF/G/H/L/N, including beaded streams), unless a waiver is received from the district engineer.
4. **Avoidance and Minimization.** To the maximum extent practicable, the activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent to wetlands on the project site (i.e., on site). Side slopes on fill embankments should generally be no greater than 2:1 horizontal to vertical. For fill pads, the fill area shall be minimized by consolidating activities to the maximum extent practicable.

Any portion of a pipeline must maintain a 7-foot minimum clearance, including any vibration dampeners, from the ground surface. The pipelines, when parallel to roads or other pipelines shall be a minimum of 500 feet away from the road wherever practicable to provide for movement of wildlife.

5. **Maintenance of Hydrology Patterns.** Site preparation and fill placement shall be conducted in a manner that prevents adverse hydrologic effects. Natural drainage patterns shall be maintained using appropriate ditching, culverts, storm drain systems, and/or other measures to prevent ponding or drying. Ponding and/or dewatering of areas adjacent to fills that results in a measurable change in site hydrology or drainage from the pre-project condition indicates non-compliance with this condition.

- 6. Soil Erosion and Sediment 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 must be permanently stabilized at the earliest practicable date. Increased water turbidity and sediment beyond the fill footprint indicates non-compliance with this condition. Erosion control products should be removed when fill has been stabilized and they are no longer necessary.
- 7. Flagging.** The boundaries of the fill area in wetlands shall be clearly delineated with stakes and/or flagged prior to construction to prevent inadvertent encroachment beyond the authorized area of fill placement. No fill or construction materials shall be stockpiled in WOTUS outside the delineated project boundary.
- 8. Suitable Fill Material.** All fill material shall come from existing, authorizes gravel sources, this RGP does not allow the development of new gravel material sites. Fill material must be comprised of clean materials. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, cement, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
- 9. Permafrost.** Fill thickness shall be a minimum of five (5) feet to provide thermal stability and prevent detrimental thermal degradation of underlying permafrost. Signs of thermokarsting or standing water where it didn't previously occur, indicate non-compliance with this condition. Applicants may propose the use of rigid insulation to allow shallower fill embankments. An individual verification approving the use of rigid insulation will include specific conditions identifying the required depth of fill.
- 10. Water Quality Certification.** You must comply with all conditions specified as part of the Alaska Department of Environmental Conservation (ADEC) Certificate of Reasonable Assurance, which is part of this RGP. Material must be available at the site to contain and clean up incidental spills and leaks and must be used to contain and clean up any petroleum product spilled as a result of construction activity.
- 11. Contaminated Sites.** A soil remediation plan shall be approved by the ADEC prior to commencing work on a site containing contaminated soil as defined by the Toxic Pollutant List referred to as Table 1 in Section 307 of the Clean Water Act and by Alaska State Law, 18 AAC 70 Alaska Water Quality Standards, 18 AAC Oil and Hazardous Substance Pollution Control, and 18 AAC 78 Underground Storage Tanks. If contaminated soils are discovered during the activity, ADEC shall be contacted, and work shall commence only upon receiving ADEC approval.
- 12. Hazardous Waste.** This RGP does not allow the construction of landfills including the disposal of hazardous waste. These materials are defined in the Solid Waste Disposal Act, as amended by the Resource Conservation Recovery Act (RCRA), 42 U.S.C. 6901 et seq., and the Comprehensive Environmental Response,

Compensation, and Liability Act (CERCLA). Contact the ADEC or the U.S. Environmental Protection Agency for information about hazardous substances.

13. Endangered Species. Activities covered under this RGP shall follow the Minimization Measures of the current Programmatic Biological Opinion for Wetland Impacts on the North Slope (PBO) written by the Fairbanks Fish and Wildlife Field Office Endangered Species Branch of the U. S. Fish and Wildlife Service (FWS), when the project is within the PBO boundaries (Utqiagvik and the rest of the Barrow Triangle are outside the boundary of the PBO). These activities will be coordinated with FWS to determine whether the cumulative effect limits identified in the PBO have been reached.

For projects in the exclusion areas of the PBO the Corps will initiate informal consultation with FWS. The applicant would be required to follow the project specific Minimization Measures set forth in the corresponding FWS Biological Opinion.

14. Migratory Birds. Discharges are prohibited from June 1st through July 31st, to avoid impacts to active bird nests, nestlings, and nesting habitat during the bird nesting season. Land-disturbing activities such as clearing, excavation, and hydro-axing should be avoided from June 1st through July 31st, as these activities can damage nests and eggs, and cause injury or death to nestlings.

Lighting for the project shall be shielded down lighting and shall be attached to buildings unless in the middle of a storage/parking area. Any lighting less than a mile from the coast shall be shielded to the east.

If utilities (i.e., power, communication and fiber optic lines) are not placed within the fill pad, they shall be hung in trays with pipelines to minimize impacts of potential bird collisions with the lines. New power lines on pad shall have bird diverters.

15. Essential Fish Habitat. The activity must not adversely affect Essential Fish habitat (EFH).

16. Floodplains. The activity must comply with applicable FEMA approved state or local floodplain management requirements. Fuel storage tanks shall be located above the 100-year flood level and must be designed to withstand a 100-year flood event when a 100-year flood level has been established for a site. If the 100-year flood level has not been established for a site, the tank flood design shall be developed by an engineer to withstand flood levels based on anecdotal evidence, physical evidence, climate data, and good engineering judgment.

17. Stream Crossings. This condition applies to the construction of culverts and bridges within/over fish bearing waters. Natural stream channels conveying perennial flow are presumed to be fish bearing. It does not apply to culverts whose sole purpose is to provide cross-drainage or equalization within wetlands. This RGP

only authorizes the construction of culverts and bridges within/over entrenched channels with narrow floodplains (i.e., ratio of flood prone width/ordinary high water mark (OHWM) width < 2.2). Authorized stream crossing structures are restricted to:

1. full-span bridges without structures or fill below the stream's OHWM or
2. a single embedded metal culvert or a bottomless arch with a minimum effective culvert width of at least 120% of the channel width at the OHWM.

The bottom (invert) of circular culverts shall be countersunk at least 30% of the culvert diameter below the surface of the streambed. The invert of squash pipe arches shall be countersunk at least 20% of the culvert rise below the surface of the streambed.

Stream crossing structures other than above (e.g., culverts with an effective width less than 120% of the channel width); or within/over channels with extensive flood plains (i.e. ratio of flood prone width/OHWM width > 2.2) require authorization via individual permit.

18. Cultural Resources. This RGP requires consultation with the State Historic Preservation Office (SHPO) for projects determined by USACE to be an undertaking with the potential to affect historic properties. If a determination of eligibility for a potential historic property in the project area has not been previously completed, an evaluation of its potential significance using the National Register Criteria (36 CFR 60.4) must be completed. If USACE determines the project would have 'no effect', or 'no adverse effect' the RGP may be verified after SHPO review. Discharges that are determined to have an 'adverse effect' to a historic property would be required to go through the individual permit process. The activity must not adversely affect subsistence resources.

19. Inadvertent Discoveries. 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.

20. Invasive Plant and Animal Species. Measures should be implemented to prevent the introduction and spread of invasive plant and animal species, such as washing equipment to remove dirt and debris that might harbor invasive seeds before entering the jobsite, using weed-free fill, disposing of spoil and vegetation contaminated with invasive species appropriately, and re-vegetating with local native plant species.

21. Maintenance. You must maintain the authorized activity in good state, and in conformance with the conditions of this RGP. The permittee may transfer the permit

to a third party in compliance with the Section on **Transfer of General Permit Verification**. Should the permittee cease to maintain the authorized activity, or should they desire to abandon the project without a transferee, then the permittee must obtain approval from this office, which may require restoration of the area.

22. Inspections. You must permit the district engineer, or his designated representative(s), to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the conditions of this RGP. Reports shall be prepared for all field inspections and entered into the official RGP file.

23. Modification by Other Authorizations. If the work proposed under this RGP is subsequently modified by other Federal, State, or local governmental organization, a modification of the RGP including verification by the Corps to perform activities under this RGP may need to be obtained.

24. Use of Multiple General Permits, including Nationwide Permits. The use of this RGP in conjunction with other RGPs or Nationwide Permits (NWP) for a single and complete project is prohibited, except when the acreage loss of WOTUS authorized by the RGP and/or NWP does not exceed the acreage limit of the RGP/NWP with the highest specified acreage limit.

25. Transfer of Regional General Permit Verification. If the permittee sells or transfers the lease on the property associated with a RGP verification, the permittee may transfer this RGP verification to the new owner by submitting a letter to the Corps to validate the transfer. A copy of this RGP verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures of work authorized by this RGP are still in existence at the time the property is transferred, the conditions of this RGP, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this RGP and the associated liabilities associated with compliance with its conditions, the signature of the transferee and date appear below."

(Transferee signature)

(Date)

(Printed name)

COMPLIANCE

Compliance with the RGP requires strict adherence to the conditions specified both herein and any special conditions within the verification letter. Corps representatives may inspect sites to determine whether the work is being, or has been, performed in accordance with the conditions of this RGP.

Should the Corps determine that an activity is not in compliance with the RGP, the permittee may be required, at their expense, to implement corrective measures, remove fill and/or restore any areas affected by the noncompliance, in accordance with 33 CFR Part 326 and Section 309 of the Clean Water Act. Noncompliance could also result in suspension, revocation or modification of the RGP authorization (pursuant to 33 CFR 325.7), initiation of legal action by the Federal Government, issuance of a monetary penalty ranging from \$21,934 to \$53,833 per day of violation, and/or imprisonment for up to one year.

In addition, periodic field inspections shall be undertaken by this office of projects authorized under this RGP. Reports shall be prepared for all field inspections and entered into the official RGP file. The Regulatory Division shall maintain a file of RGP-related documents and monitoring efforts. Information contained in this RGP file shall provide the basis for the decision whether or not to revise or renew this RGP. If it is determined that projects authorized by this RGP result in greater than minimal adverse environmental impacts, then this RGP shall be modified, suspended, or revoked to prevent further impacts.

FURTHER INFORMATION

- 1. Congressional Authorities.** Authorization to undertake the activities described above is pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 403)
- 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 RGP does not grant any property rights, either in real estate or material, or any exclusive privileges; and it does not authorize any injury to property, invasion of rights, or infringement of federal, state, or local laws or regulations.
 - c. This permit does not authorize the interference with any existing or proposed federal projects.
- 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 resulting from other permitted or non-permitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof resulting from current or future activities undertaken by or on behalf of the United States which in the public interest.
 - c. Damages to persons, property, or to other permitted or non-permitted activities or structures caused by an activity authorized by this permit.
 - d. Design or construction deficiencies associate 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 provided by the applicant.

5. Reevaluation of Decision. This office may reevaluate its decision on RGP verification at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. The permittee fails to comply with the conditions of this permit.
- b. The information provided by the permittee in support of the application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces, which this office did not consider in reaching the original public interest decision.

Reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for conditions of the permit and for the initiation of legal action where appropriate.

6. Reevaluation of this RGP. This office may also reevaluate its decision to issue the RGP-05 at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following: significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7.

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

FOR THE DISTRICT COMMANDER:



Shannon Morgan
Chief, North Branch
Regulatory Division
Alaska District Corps of Engineers

February 11, 2021

Date



THE STATE
of **ALASKA**
GOVERNOR MICHAEL J. DUNLEAVY

Department of Environmental Conservation

DIVISION OF WATER
Wastewater Discharge Authorization Program

555 Cordova Street
Anchorage, Alaska 99501-2617
Main: 907.269.6285
Fax: 907.334.2415
www.dec.alaska.gov/water/wwdp

January 15, 2020

United States Army Corps of Engineers (USACE)
Alaska District, Regulatory Division
Attn: Colonel Phillip J. Borders
P.O. Box 6898
JBER, Alaska 99506-0898

Re: USACE, North Slope Activities Regional General Permit
POA-2013-094 (RGP-05), Multiple Waterways

Dear Colonel Borders:

In accordance with Section 401 of the Federal Clean Water Act of 1977 and provisions of the Alaska Water Quality Standards, the Department of Environmental Conservation (DEC) is issuing the enclosed Certificate of Reasonable Assurance for placement of dredged and/or fill material in waters of the U.S., including wetlands and streams, associated with development across the North Slope of Alaska.

DEC regulations provide that any person who disagrees with this decision may request an informal review by the Division Director in accordance with 18 AAC 15.185 or an adjudicatory hearing in accordance with 18 AAC 15.195 – 18 AAC 15.340. An informal review request must be delivered to the Director, Division of Water, 555 Cordova Street, Anchorage, AK 99501, within 20 days of the permit decision. Visit <http://dec.alaska.gov/commish/review-guidance/> for information on Administrative Appeals of Department decisions.

An adjudicatory hearing request must be delivered to the Commissioner of the Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, PO Box 111800, Juneau, AK 99811-1800, within 30 days of the permit decision. If a hearing is not requested within 30 days, the right to appeal is waived.

By copy of this letter we are advising the U.S. Army Corps of Engineers of our actions and enclosing a copy of the certification for their use.

Sincerely,

A handwritten signature in black ink that reads "James Rypke".

James Rypke
Program Manager, Storm Water and Wetlands

Enclosure: 401 Certificate of Reasonable Assurance

cc: (with encl.)

Mary Romero, USACE, Anchorage
Jack Winters, ADF&G Habitat Anchorage

Fairbanks USFWS Field Office
Matt LaCroix, EPA, AK Operations

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CERTIFICATE OF REASONABLE ASSURANCE

In accordance with Section 401 of the Federal Clean Water Act (CWA) and the Alaska Water Quality Standards (18 AAC 70), a Certificate of Reasonable Assurance, is issued to USACE Alaska District Regulatory Branch (Attn: Colonel Phillip J. Borders) for placement of dredged and/or fill material in waters of the U.S. including wetlands and streams in association with development across the North Slope of Alaska.

Regional General Permit-05 (RGP-05) was developed to streamline the permitting process for development across the North Slope of Alaska. The North Slope is defined by the boundaries of the North Slope Borough. The activities intended for authorization under RGP-05 are the discharge of dredged and/or fill material into waters of the United States (WOTUS) for the purpose of new construction or the expansion of roads, existing pads, and accompanying infrastructure, linear projects, and coastal erosion.

The following acreage limitations for single and complete projects would apply to discharges authorized under RGP-05:

- a) Discharges for development of a new fill pad (and accompanying infrastructure) or the expansion of an existing fill pad would not exceed ten (10) acres. Repeated use of this RGP for the same facility or project would authorize no more than twenty (20) acres of total discharge for the term of this RGP. After impacting ten (10) acres for a new project, any additional proposal may be subject to an elevated review if more than 50% of an increase in impacts is requested.
- b) Discharges for development of new linear projects would not exceed ten (10) acres. Discharges for widening existing roads could be authorized without a defined acreage limit – however, the applicant would need to identify a clear purpose and need for the expansion, and it would need to be verified by the district engineer.
- c) Discharges for coastal erosion projects would not exceed ten (10) acres.

The following areas and activities are excluded from coverage under this RGP:

1. Discharges within:
 - a) Five hundred (500) feet of marine, estuarine, or the major riverine waters listed here: Colville, Kuparuk, Sagavanirktok, Shaviovik, Kadleroshilik, and Canning; or
 - b) One hundred (100) feet of other riverine waters, lacustrine waters, or the following types of palustrine wetlands with:
 - i. an unconsolidated bottom (PUB),
 - ii. the subclass 2 (PEM2, indicating the presence of *Arctophyla*), or
 - iii. a water regime modifier of F, G, H, L, or N (PEMF/G/H/L/N, including beaded streams).
2. Discharges associated with the development of new wastewater treatment facilities;
3. Activities that are denied any local, State, or Federal authorization.

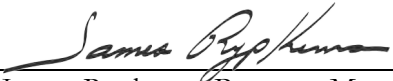
A state issued water quality certification is required under Section 401 because the proposed activity will be authorized by a U.S. Army Corps of Engineers permit POA-2013-94 (RGP-05) and a discharge of pollutants to waters of the U.S. located in the State of Alaska may result from the proposed activity. Public notice of the application for this certification was given as required by 18 AAC 15.180 in the Corps Public Notice POA-2013-94 posted from June 25 to July 25, 2019. The proposed activity is located within the North Slope Borough, Alaska.

The Department of Environmental Conservation (DEC) reviewed the draft regional general permit and certifies that there is reasonable assurance that the proposed activities, as well as any discharge which may result, will comply with applicable provisions of Section 401 of the CWA and the Alaska Water Quality Standards, 18 AAC 70, provided that the following additional measures are adhered to.

1. Reasonable precautions and controls must be used to prevent incidental and accidental discharge of petroleum products or other hazardous substances. Fuel storage and handling activities for equipment must be sited and conducted so there is no petroleum contamination of the ground, subsurface, or surface waterbodies.
2. During construction, spill response equipment and supplies such as sorbent pads shall be available and used immediately to contain and cleanup oil, fuel, hydraulic fluid, antifreeze, or other pollutant spills. Any spill amount must be reported in accordance with Discharge Notification and Reporting Requirements (AS 46.03.755 and 18 AAC 75 Article 3). The applicant must contact by telephone the DEC Area Response Team for Northern Alaska at (907) 451-2121 during work hours or 1-800-478-9300 after hours. Also, the applicant must contact by telephone the National Response Center at 1-800-424-8802.
3. Runoff discharged to surface water (including wetlands) from a construction site disturbing one or more acres must be covered under Alaska's General Permit for Storm Water Discharges from Large and Small Construction Activities in Alaska (AKR100000). This permit requires a Storm Water Pollution Prevention Plan (SWPPP). For projects that disturb more than five acres, this SWPPP must also be submitted to DEC (William Ashton, 907-269-6283) prior to construction.
4. During the work on the culverts and bridges, construction equipment shall not be operated below the ordinary high water mark if equipment is leaking fuel, oil, hydraulic fluid, or any other hazardous material. Equipment shall be inspected and recorded in a log on a daily basis for leaks. If leaks are found, the equipment shall not be used and pulled from service until the leak is repaired.
5. All work areas, material access routes, and surrounding wetlands involved in the construction project shall be clearly delineated and marked in such a way that equipment operators do not operate outside of the marked areas.
6. Natural drainage patterns shall be maintained, to the extent practicable, without introducing ponding or drying.
7. Excavated or fill material, including overburden, shall be placed so that it is stable, meaning after placement the material does not show signs of excessive erosion. Indicators of excess erosion include: gullying, head cutting, caving, block slippage, material sloughing, etc. The material must be contained with siltation best management practices (BMPs) to preclude reentry into any waters of the U.S., which includes wetlands.
8. Include the following BMPs to handle storm water and total storm water volume discharges as they apply to the site:

- a. Divert storm water from off-site around the site so that it does not flow onto the project site and cause erosion of exposed soils;
 - b. Slow down or contain storm water that may collect and concentrate within a site and cause erosion of exposed soils;
 - c. Place velocity dissipation devices (e.g., check dams, sediment traps, or riprap) along the length of any conveyance channel to provide a non-erosive flow velocity. Also place velocity dissipation devices where discharges from the conveyance channel or structure join a water course to prevent erosion and to protect the channel embankment, outlet, adjacent stream bank slopes, and downstream waters.
9. Fill material (including dredge material) must be clean sand, gravel or rock, free from petroleum products and toxic contaminants in toxic amounts.
 10. Any disturbed ground and exposed soil not covered with fill must be stabilized and re-vegetated with endemic species, grasses, or other suitable vegetation in an appropriate manner to minimize erosion and sedimentation, so that a durable vegetative cover is established in a timely manner.
 11. If your project is not completed by the time limit specified under USACE Permit and will continue, or for a modification of the USACE permit, you must submit an application for renewal of this certification at least 30 days before the expiration date or any deadline established by USACE for certification action on the modification, or 30 days before the proposed effective date of the modification, whichever is sooner.

Date: January 15, 2020



James Rypkema, Program Manager
Storm Water and Wetlands

Appendix A – Glossary

Compensatory mitigation: means the restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Credit: means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at a compensatory mitigation site. The measure of aquatic functions is based on the resources restored, established, enhanced, or preserved.

Debit: means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the loss of aquatic functions at an impact or project site. The measure of aquatic functions is based on the resources impacted by the authorized activity.

Enhancement: the manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s) but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): the manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions.

Functions: means the physical, chemical, and biological processes that occur in ecosystems.

In-lieu fee program: a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for DA permits. Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. However, the rules governing the operation and use of in-lieu fee programs are somewhat different from the rules governing operation and use of mitigation banks. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument. <https://ribits.usace.army.mil/>.

Mitigation bank: a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. In general, a

Glossary (continued)

mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument. <https://ribits.usace.army.mil/>.

Performance standards: mean observable or measurable physical (including hydrological), chemical and/or biological attributes that are used to determine if a compensatory mitigation project meets its objectives.

Permittee-responsible mitigation: an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

Practicable: available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Preservation: the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Restoration: the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Service Area: means the geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu fee program, as designated in its instrument.

Single and complete project: all aspects of development including those planned for the future must be included in the application.