



US Army Corps
of Engineers
St Paul District

Public Notice

ISSUED: October 23, 2012

EXPIRES: November 21, 2012

MODIFICATION OF DEPARTMENT OF THE ARMY PERMIT 81-172-13

REFER TO: 81-172-13

1. PURPOSE AND BACKGROUND

The purpose of this notice is to solicit public comments regarding the modification of Department of the Army (DA) permit 81-172-13. DA permit 81-172-13 was issued to the Eveleth Taconite Company (EVTAC) in 1982 with an expiration date of December 31, 2042. The DA permit authorized the discharge of dredged and fill material into 2,200 acres of wetlands for the construction of two tailings basins (numbers 2 and 3 at the EVTAC facility). The permit contained a special condition requiring the permittee to study the feasibility of developing and sustaining wetlands or open water areas on deactivated tailings basins. However, there was no explicit requirement to mitigate the wetland impacts resulting from the authorized discharges. In December 2003, Eveleth Taconite Company filed for bankruptcy and the mine site was purchased by United Taconite LLC (UTAC). The DA permit was transferred from EVTAC to UTAC at the time the mine was sold and assumed the responsibility for compliance with the terms and conditions of the DA permit. The project is located near the City of Eveleth, St. Louis County, Minnesota. The project location is shown on the attached Figure 1. A copy of the original validated permit and a retyped version of the permit text are also attached to this public notice.

Open-pit mining at United Taconite involves the excavation of large quantities of rock and surface overburden to extract the desired iron-ore. First, waste rock and surface overburden are separated out from ore. The remaining ore is then crushed and finely ground for processing with various chemicals and separation processes to extract the final product (taconite). The bi-product of this crushing and processing are tailings. At the average taconite mine in Minnesota, tailings material accounts for 33 to 75% of the material mined from an open-pit. The tailings are moved from the processing facility to a "tailings basin" where they are dewatered and stockpiled. This basin essentially serves as a contained disposal area for the tailings.

Construction of tailings basin 2 was completed sometime prior to 1991 and resulted in impacts to approximately 800 acres of waters and wetlands. This tailings basin is currently being utilized for the disposal of tailings at the UTAC mine site and is expected to reach full capacity within the next 8 to 10 years assuming current market conditions persist. To date, the only portion of tailings basin 3 that has been constructed is the shared perimeter dike with tailings basin 2. According to UTAC, construction of the remainder of tailings basin 3 would commence around 2020. Construction and utilization of tailings basin 3 would impact approximately 1,300 acres of wetland and adjacent waterways.

2. REPLIES/COMMENTS

The Corps is seeking public comments related to the decision to modify the permit, including but not limited to, a condition requiring compensatory mitigation for the unavoidable impacts to wetlands for the construction of tailings basin 3. Interested parties are invited to submit to this office written facts, arguments, or objections within 30 days of the date of this notice. These statements should bear upon the suitability and adequacy of the proposal and should identify any public interest factors the Corps should consider when evaluating the proposed permit modification.

Replies may be addressed to Regulatory Branch, ATTN: Tim Smith, St. Paul District, Corps of Engineers, 180 Fifth Street East, Suite 700, Saint Paul, MN 55101-1678.

Or, if you have questions about this project, call Tim Smith in the St. Paul District office of the Corps, telephone number (651) 290-5432.

To receive Public Notices by e-mail, go to the St. Paul District web page at <http://www.mvp.usace.army.mil/regulatory/> and sign up by clicking on "Email Notification of Public Notices" on the left side of the website under "Notices".

3. FEDERALLY-LISTED THREATENED OR ENDANGERED WILDLIFE OR PLANTS OR THEIR CRITICAL HABITAT

In the time since the permit was issued in 1981, the Canada lynx has been listed as a threatened species in the project area. The UTAC site is located within the geographic range of the Canada lynx. The Corps' original Endangered Species Act (ESA) consultation did not address effects to this species resulting from the construction of the tailings basins. The Corps recently conducted an initial review of available information regarding the Canada lynx and concluded that the project area does not support a resident population, is not located within designated critical habitat, and is not located within a known wildlife corridor. As a component of the permit modification process, the Corps will consult with the U.S. Fish and Wildlife Service regarding potential effects to the Canada lynx from construction of tailings basin 3.

4. JURISDICTION

The wetlands and waters impacted by the discharge of dredged or fill material associated with the construction of tailings basin 3 were determined to be waters of the United States when the permit application was reviewed and approved in 1982 and are subject to Corps jurisdiction under Section 404 of the CWA.

5. STATE SECTION 401 WATER QUALITY CERTIFICATION

The state Section 401 authority in Minnesota is the Minnesota Pollution Control Agency (MPCA). According to information in the Corps' administrative record, the MPCA did not object to issuance of the permit provided that EVTAC comply with all of the MPCA permits required for the project.

6. HISTORICAL/ARCHAEOLOGICAL

This project was coordinated with the State Historic Preservation Office (SHPO) in 1981. The SHPO responded to the public notice by indicating that there were no sites of historic, architectural, cultural, or archaeological significance located in the project area. The Corps has initiated consultation with Native American Tribes with respect to the permit modification.

7. PUBLIC HEARING REQUESTS

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to provide additional public input regarding the proposed permit modification. Requests for public hearings shall state, in detail, the reasons for holding a public hearing. A request may be denied if substantive reasons for holding a hearing are not provided or if there is otherwise no valid interest to be served.

8. PUBLIC INTEREST REVIEW

The decision whether to modify the permit will be based on a thorough evaluation of the public interest factors relevant to the modification. All factors which may be relevant to the proposal will be considered.

FOR THE DISTRICT ENGINEER:

Tamara E. Cameron
Chief, Regulatory Branch

Enclosure

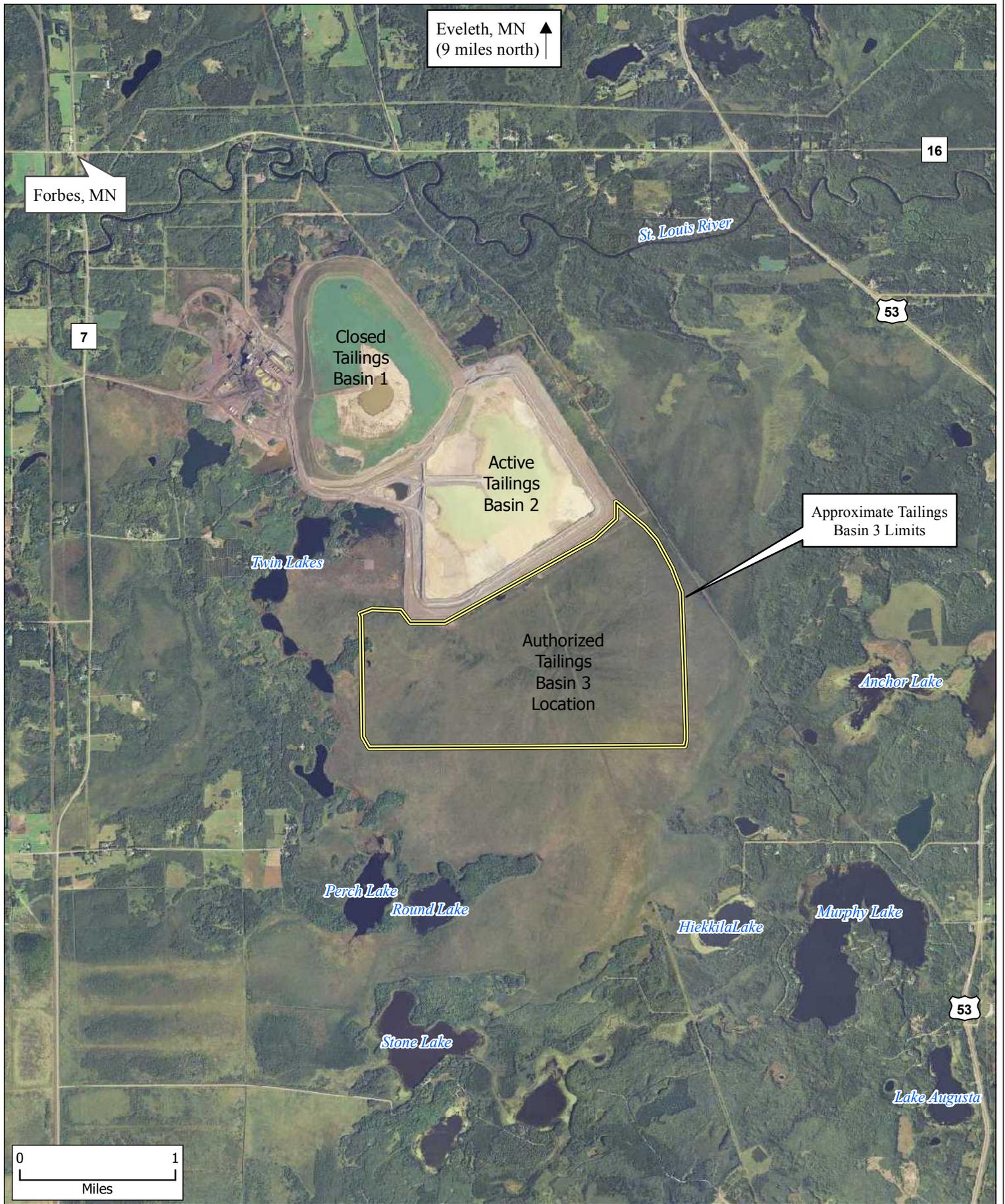


US Army Corps
of Engineers
St. Paul District

United Taconite Permit 1981-172-13



2010 FSA Aerial Imagery from LMIC WMS Server



Application No.: 81-172-13

Name of Applicant: Eveleth Taconite Company and Eveleth Expansion Company

Issuance Date: 4 Jan 1982

Expiration Date (If applicable): N/A

Department of the Army Permit

() Referring to written request dated March 1981 for a permit to perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403).

(X) Discharge dredged or fill material into waters of the United States upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 404 of the Federal Water Pollution Control Act (86 Stat. 816, P.L. 92-500).

() Transport dredged material for the purpose of dumping it into ocean waters upon the issuance of a permit from the Secretary of the Army acting through the Chief of Engineers pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (86 Stat. 1052: P.L. 92-532);

**Eveleth Taconite Company and Eveleth Expansion Company c/o Oglebay Norton Company Box 90
Eveleth, Minnesota 55734**

is hereby authorized by the Secretary of the Army:

to (see attached sheet, 1A)

In **wetlands adjacent to Twin Lakes**

at secs. 7, 8, 17, 18, 19 and 20, T. 56 N., R. 17 W., and Secs. 13 and 24, T. 56 N., R. 18 W., St. Louis County, Minnesota

in accordance with the plans and drawings attached hereto which are incorporated in and made a part of this permit (on drawings: give file number or other definite identification marks.)

Four pages, labeled 81-172-13, pages 1 of 4 through 4 of 4

Subject of the following conditions.

I. General Conditions:

a. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in General

Conditions j or k hereto, and in the institution of such legal proceedings as the United States Government may consider appropriate, whether or not this permit has been previously modified, suspended or revoked in whole or in part.

b. That all activities authorized herein shall, if they involve, during their construction or operation, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Federal Water Pollution Control Act of 1972 (P.L. 92-500 86 Stat. 816), the Marine Protection, Research and Sanctuaries Act of 1972 (P.L. 92-532. 86 State. 1052), or pursuant to applicable State and local law.

c. That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of the permit, be modified, if necessary to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implement on a plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

d. That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

e. That the permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife, and natural environmental values.

f. That the permittee agrees that he will prosecute the construction or work authorized herein in a manner so as to minimize any degradation of water quality.

g. That the permittee shall permit the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

h. That the permittee shall maintain the structure or work authorized herein in good condition and in accordance with the plans and drawings attached hereto.

i. That this permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.

j. That this permit may be summarily suspended, in whole or in part, upon a finding by District Engineer that immediate suspension of the activity authorized herein would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of the notice. Within ten days following receipt of this

notice of suspension, the permittee may request a hearing in order to present information relevant to a decision as to whether his permit should be reinstated, modified or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the permit will either be reinstated, modified or revoked.

k. That this permit may be either modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after receipt by the permittee of written notice of such action which shall specify the facts or conduct warranting same unless (1) within the 30-day period the permittee is able to satisfactorily demonstrate that (a) the alleged violation of the terms and conditions of this permit did not, in fact, occur or (b) the alleged violation was accidental, and the permittee has been operating in compliance with the terms and conditions of the permit and is able to provide satisfactory assurances that future operations shall be in full compliance with the terms and conditions of this permit; or (2) within the aforesaid 30-day period, the permittee requests that a public hearing be held to present oral and written evidence concerning the proposed modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

l. That in issuing this permit, the Government has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

m. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.

n. That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspension of work, if for a period of more than one week, resumption of work and its completion.

o. That if the activity authorized herein is not started on or before 31st day of December 1982. (one year from the date of issuance of this permit unless otherwise specified) and is not completed on or before 31st day of December, 2041. (three years from the date of issuance of this permit unless otherwise specified) this permit, if not previously revoked or specifically extended, shall automatically expire.

p. That this permit does not authorize or approve the construction of particular structures, the authorization of approval of which may require authorization by the Congress or other agencies of the Federal Government.

q. That if and when the permittee desires to abandon the activity authorized herein, unless such abandonment is part of a transfer procedure by which the permittee is transferring his interests herein to a third party pursuant to General Condition t hereof, he must restore the area to a condition satisfactory to the District Engineer.

r. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.

s. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

t. That this permit may not be transferred to a third party without prior written notice to the District Engineer, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferee subscribing to this permit in the space provided below and thereby agreeing to comply with all terms and conditions of this permit. In addition, if the permittee transfers the interests authorized herein by conveyance of realty, the deed shall reference this permit and the terms and conditions specified herein and this permit shall be recorded along with the deed with the Register of Deeds or other appropriate official.

II Special Conditions

1. The applicant shall establish study sites on deactivated basin no. 1 to determine the feasibility of developing and sustaining wetland and/or open water areas on deactivated tailings basins no. 2 and 3. The applicant shall submit the study plans for these study sites to the District Engineer for approval concurrently with or before the applicant submits deactivation plans to the Minnesota Department of Natural Resources (DNR). The applicant shall report the results of the studies on basin no. 1 to the District Engineer. Reclamation in accordance with the results of the studies on basin no. 1 shall be applied to the subsequent deactivated tailings basins no. 2 and 3 to the fullest extent operationally and economically practicable according to the "state of the art" at the current time, subject to the concurrence of State and other governmental authorities having jurisdiction. The applicant shall submit the final study plans for reclamation of basins no. 2 and 3 to the District Engineer for approval concurrently with or before the applicant submits deactivation plans to the DNR.
2. Refer to the Standard Conditions attachment.

The following Special Conditions will be applicable when appropriate.

STRUCTURES IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES:

- a. That this permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.
- b. That no attempt shall be made by the permittee to prevent the full and free use by public of all navigable waters at or adjacent to the activity authorized by this permit.
- c. That of the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
- d. That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary of his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from permittee.
- e. Structures for Small Boats: That permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

MAINTENANCE DREDGING:

- a. That when the work authorized herein includes periodic maintenance dredging, it may be performed under this permit for N/A years from the date of issuance of this permit (ten years unless otherwise indicated):
- b. That the permittee will advise the District Engineer in writing at least two weeks before he intends to undertake any maintenance dredging.

DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES:

- a. That the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the FWPCA and published in 40 CFR 230;
- b. That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;
- c. That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

- d. That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system.

DUMPING OF DREDGED MATERIAL INTO OCEAN WATERS:

- a. That the dumping will be carried out in conformity with the goals, objectives, and requirements of the EPA criteria established pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, published in 40 CFR 220-228.
- b. That the permittee shall place a copy of this permit in a conspicuous place in the vessel to be used for the transportation and/or dumping of the dredged material as authorized herein.

In addition to general and special conditions, this permit is subject to the following standard conditions, as applicable:

1. All work or discharges to a watercourse resulting from permitted construction activities, particularly hydraulic dredging, must meet applicable Federal, State and local water quality and effluent standards on a continuing basis.
2. Measures must be adopted to prevent potential pollutants from entering the watercourse. Construction materials and debris, including fuels, oil and other liquid substances, will not be stored in the construction area in a manner that would allow them to enter the watercourse as a result of spillage, natural runoff, or flooding.
3. If dredged or excavated material is placed on an upland disposal site (above the ordinary high watermark), the site must be securely diked or contained by some other acceptable method that prevents the return of potentially polluting materials to the watercourse by surface runoff or by leaching. The containment area, whether bulkhead or upland disposal site, must be fully completed prior to placement of any fill material.
4. Upon completion of earthwork operations all exposed slopes, fills and disturbed areas must be given sufficient protection by appropriate means such as landscaping, or planting and maintaining vegetative cover to prevent subsequent erosion.
5. All fill (including riprap), if authorized under this permit, must consist of suitable material free from toxic pollutants in other than trace quantities. In addition, rock or fill material used for activities dependent upon this permit and obtained by excavation must either be obtained from existing quarries or the source borrow site must be identified and approved by the District Engineer.
6. If cultural, archaeological or historical resources are unearthed during activities authorized by this permit, work will immediately halt and the St. Paul District's Regulatory Functions Branch contacted at 612-725-7557 for further instruction.
7. An investigation must be made to identify water intakes or other activities which may be affected by suspended solids and turbidity increases caused by work in the watercourse, and sufficient notice must be given to the owners of the affected activities to allow them to prepare for any changes in water quality.
8. A contingency plan must be formulated which would be effective in the event of a spill. This requirement is particularly applicable in operations involving the handling of petroleum products. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, to minimize any contamination resulting from this spill, and to immediately notify the U.S. Coast Guard at telephone number 800-424-8802, and the Minnesota Pollution Control Agency at (612) 296-7373.