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**VIA ELECTRONIC FILING**

October 27, 2023

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
U.S. Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

Re: STB Finance Docket No. 36734: *Soo Line Railroad Company a/k/a CPKC –  
Petition for Declaratory Order*

Dear Ms. Brown:

Please find enclosed for filing the Petition for Declaratory Order of Soo Line Railroad Company a/k/a CPKC. The filing fee has been paid via Pay.Gov.

Please do not hesitate to contact me with any questions.

Sincerely,

/s/ David F. Rifkind

Counsel for Soo Line Railroad Company

Enclosures

cc: Wisconsin Attorney General's Office (via FedEx)  
Wisconsin Department of Natural Resources (via FedEx)

FILED  
October 27, 2023  
SURFACE  
TRANSPORTATION BOARD

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October 27, 2023  
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 36734

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SOO LINE RAILROAD COMPANY a/k/a CPKC

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**PETITION FOR DECLARATORY ORDER**

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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 36734

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SOO LINE RAILROAD COMPANY a/k/a CPKC

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**PETITION FOR DECLARATORY ORDER**

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Soo Line Railroad Company a/k/a CPKC (“CPKC”)<sup>1</sup> respectfully petitions the Board to issue, pursuant to its authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321, a declaratory order that the Interstate Commerce Commission Termination Act, 49 U.S.C. § 10101, *et seq.* (“ICCTA”) preempts enforcement of Wisconsin’s pre-construction, environmental permitting requirements with respect to the emergency repair and maintenance of a railroad bridge in Milwaukee, Wisconsin.

In late 2017, CPKC discovered that the Menomonee River had severely eroded the river bed surrounding and under an abutment on a CPKC railroad bridge. The bridge needed emergency repair. CPKC notified the Wisconsin Department of Natural Resources (“DNR”) of its plans for this emergency repair. In response, DNR cited certain state law provisions that, according to DNR, required extensive studies, a different repair method, and a lengthy permit process before

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<sup>1</sup> For ease of reference, “CPKC” is used to refer to Soo Line Railroad Company throughout this petition, without regard to the timing of specific referenced events relative to the 2023 merger between the Canadian Pacific and Kansas City Southern rail systems.

the work could be done. Due to the urgency and seriousness of a potential bridge failure, and consistent with Board and Court precedent that the ICCTA preempts state pre-construction permitting requirements, CPKC made the emergency repairs in line with accepted practice, causing the least disruption to the busy freight and passenger rail line, and holding to the highest degree of safety.

Nearly six years later, DNR threatens to file suit against CPKC to (a) to force CPKC to undo the bridge repair in order to implement DNR's preferred repair method, and (b) penalize CPKC for its alleged failure to obtain state pre-construction permits.<sup>2</sup> Accordingly, CPKC seeks a declaratory order affirming that the state's pre-construction environmental permitting requirements, and by extension any legal action seeking to enforce such requirements, are federally preempted.

### **FACTUAL BACKGROUND**

CPKC owns and operates a freight and passenger rail line that travels in and through Milwaukee, Wisconsin. At milepost 88.74 on the Watertown subdivision of the rail line crosses the Menomonee River via a bridge (hereafter, "Bridge 88.74"). Bridge 88.74 is located on a busy, urban stretch of main line. Each day, up to sixteen freight trains use the bridge. *See* Verified Statement of Karl Rittmeyer ¶ 3. Those trains carry a variety of freight including, at times, hazardous materials. *Id.* In addition, Amtrak's Empire Builder line uses the bridge twice a day, and Amtrak

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<sup>2</sup> The two legal claims are based on the same underlying facts, but will apparently be filed as separate actions for procedural reasons under Wisconsin law.

may soon add another train, the Great River Rail, providing Chicago- Milwaukee- Twin Cities service. *Id.*

Bridge 88.74 is 165 feet long with 2 main tracks, each with four individual, 41-foot-long steel and concrete spans. *Id.* ¶ 4, Ex. 1. The original bridge was built in 1872 as a single-track bridge. *Id.* ¶ 4. New concrete piers and abutments were constructed in 1898 and the piers and abutments were extended in 1909 to accommodate a double track. *Id.* The Menomonee River is heavily industrialized and, over time, the State of Wisconsin and/or the City of Milwaukee has modified the river's course and flow. *Id.* In addition, the Menomonee has been renaturalized both up and downstream of Bridge 88.74 through the removal of concrete channel lining. *Id.* However, the eastern "bank" adjacent to Bridge 88.74 still has a masonry retaining wall in line with abutment No. 1, the easternmost abutment, that artificially alters the flow of the river. *Id.* While up to at least 1937 the Menomonee flowed under the center spans (spans 2 and 3), over time the flow was shifted eastward so that the deepest and fastest part of the current is at the eastern edge, adjacent to abutment No. 1. *Id.* The two westernmost spans have now been filled in. *Id.* This unnatural flow condition, which was not caused by CPKC, results in the Menomonee having unusual depth and speed at abutment No. 1. *Id.*

**I. CPKC discovers an emergency condition at Bridge 88.74 in 2017.**

In October 2017, CPKC inspected Bridge 88.74 as part of its annual inspection protocol. *See Rittmeyer V.S.* ¶ 5. The inspecting engineer, Karl Rittmeyer, discovered that the bridge had substantial scour around and under Abutment No. 1. *Id.*, Ex. 2. Scour occurs when fast flowing water around the base of

an abutment removes loose sediment, creating scour holes around and, in the worst cases, under the abutment. *Id.* ¶ 5. Further inspection revealed that scour had created a hole exposing the bottom of the abutment, meaning it was no longer fully in contact with the river bed. *Id.* This created an emergency situation: because one of the abutments was no longer fully supported by the river bed, the bridge was in danger of becoming structurally unsound. *Id.* In Rittmeyer’s professional opinion, repairs were needed immediately. *Id.*

**II. CPKC determines a grout mat is the best option for the emergency repairs to Bridge 88.74.**

To fortify the abutment, CPKC planned to pump concrete grout to fill the void under Abutment No. 1. *See* Rittmeyer V.S. ¶ 6. To secure the repaired abutment properly, and in light of the continued fast river flow around Abutment No. 1, CPKC also needed to protect against future scour around and under the newly placed grout. *Id.* ¶ 7. CPKC then evaluated two options to secure the repaired abutment: the placement of either an articulated “grout mat” or rip rap on the river bed adjacent to abutment No. 1. *Id.* ¶¶ 7-8.

A grout mat is a geo-fabric casing with pockets filled by cement grout, like an air mattress filled with concrete. *Id.* ¶ 7. Relatively thin, it provides flexible and durable protection against scour. *Id.*

“Rip rap” refers to loose stones or boulders of a selected diameter that, when placed around the abutment, would not be dislodged by the fast moving water as easily as the sediment on the bottom. Rip rap needs to be placed deep enough to

protect to the depth of the scour and in a layer thick enough so that friction between the individual boulders anchors the rocks against the current. *Id.* ¶ 8.

Following analysis by CPKC internal engineers, and by CPKC's engineering firm HDR, CPKC ultimately chose the grout mat as the superior option under the circumstances for several reasons. *Id.* ¶ 9.

Most importantly, rip rap was not a feasible solution at this site. *Id.* ¶ 8. The characteristics of the river at this location required large boulders, two to three feet in diameter. *Id.* The depth of the scour required the rock to be laid in a thickness of approximately five feet. *Id.* Proper placement of rip-rap at the required depth would have required CPKC to excavate at least five feet below the river bed and fill that excavation with rock to maintain a constant river bed elevation. *Id.* But the scour had already created a void under Abutment No. 1 and excavation would exacerbate that void. *Id.* Excavation of the river bed also risked unsettling the footing of the adjacent Pier No. 2, and causing serious environmental impacts. *Id.* This option was deemed impractical and potentially unsafe. *Id.*

As an alternative approach, to achieve the required depth, CPKC considered simply piling five feet of rip rap next to Abutment No. 1. *Id.* However, this approach would have raised the river bed elevation, essentially blocking the river. *Id.* Blocking the river would impede fish passage and navigation, and increase flood risk.

Because of these practical impediments and concerns, CPKC engineers determined that a grout mat was a superior solution to address the emergency

situation. *Id.* at 9. First, the grout mat could be installed more quickly than rip rap. *Id.* ¶ 7. Second, because installation of the grout mat required no excavation, it would not exacerbate the void beneath the abutment, and would have far less impact on the river and other structures such as the retaining wall. *Id.* ¶¶ 7-8. Third, the grout mat would add, at most, only 8 inches in elevation to the river bed—CPKC subsequently determined it did not raise the elevation. *Id.* ¶¶ 7, 15. Indeed, grout mats are widely used to protect bridge abutments and have been approved by the Wisconsin Department of Transportation regulations. *Id.* ¶¶ 9, 17, Ex. 12.

### **III. CPKC informs DNR that it will make the repairs under the federal Regional General Permit.**

On October 30, 2017, CPKC notified the DNR via email that CPKC needed to perform emergency repair work on Bridge 88.74, including work on the bed of the Menomonee River. *See* Rittmeyer V.S. ¶ 6, Ex. 3. In order to “discharge” anything into a “water of the United States,” including any material necessary to make bridge repairs, a project proponent, like CPKC, must obtain a permit under the federal Clean Water Act (“CWA”) § 404, 33 U.S.C. § 1344 (“§ 404”). These permits are issued by the U.S. Army Corps of Engineers (“Corps”), exercising authority provided by the federal statute. *Id.*

Although there is an individual § 404 process for large projects, most activities fit within “general permits” issued for specific activities. Section 404(e) authorizes the Corps to issue these “general” permits:

on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary [of the Army, acting through the Chief of Engineers]



determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.

13 U.S.C. § 1344; *see generally* *Sierra Club v. U.S. Army Corps of Engineers*, 464 F. Supp. 2d 1171, 1185 (M.D. Fla. 2006), *aff'd*, 508 F.3d 1332 (11th Cir. 2007). These general permits can be Nationwide (“NWP”), or they can cover selected states in the form of Regional General Permits (“RGP”). In this case, the Corps issued an RGP for Linear Transportation covering Minnesota and Wisconsin.

Once a general permit is issued by the Corps, a state must certify the permit pursuant to § 401 of the CWA. *See* 33 U.S.C. § 1341 (“§ 401”); *see also* 33 C.F.R. § 330.4(c)(1). The state can deny certification, approve certification, or certify with conditions. In most cases, the state “blanket” certifies the general federal permit, meaning the proponent need not obtain an individual § 401 certification. If the state denies *blanket* certification of the general permit, a project can still use the general permit for federal purposes but it must obtain an *individual* § 401 certification from the state. It was unclear whether Wisconsin had blanket certified the RGP in place during 2017, so CPKC proceeded as if it needed an individual § 401 certification.

In the October 30, 2017 email, CPKC stated it would proceed under RGP 002-WI, the operative Linear Transportation permit, and requested state certification. *See* Rittmeyer V.S. ¶ 6, Ex. 3. The email also notified the DNR that CPKC would forgo state and local permitting, as those permitting requirements are preempted by the ICCTA. *Id.*

#### IV. DNR demands a state permit.

On November 2, 2017, the DNR responded via email that the bridge repair would require a permit under Wisconsin Statutes Chapter 30.12(a) (“Chapter 30”). See Rittmeyer V.S. ¶ 10, Ex. 4. Chapter 30 is a state law that requires a permit to place material on the bed of a navigable waterway. DNR also stated that the grout mat would not be approved. *Id.* Instead, the DNR demanded “traditional rock”—*i.e.*, rip rap—be used and appeared to condition its issuance of a Chapter 30 permit on CPKC’s use of rip rap. *Id.* DNR also stated that CPKC would need to undertake bed elevation and stabilization studies both up and downstream to account for the renaturalization process. *Id.*

CPKC responded to DNR by email on November 3, stating that, as previously indicated, it would forego a Chapter 30 permit and was instead seeking only the § 401 state certification for the RGP. *Id.* ¶ 11, Ex. 5. CPKC explained that the work was an emergency and required “immediate remediation.” *Id.* Performance of the studies demanded by DNR could not be accomplished given the urgency of the necessary stabilization work. *Id.* ¶ 10. The email also set forth an analysis that showed the grout mat “constitutes the minimal adverse impacts,” and that rip rap not feasible at the site. *Id.* ¶ 11, Ex. 5. CPKC notified DNR that it would start work the week of November 6, 2017. *Id.*

On November 8, 2017, DNR requested additional information and explanation regarding the use of a grout mat. *Id.* ¶ 11, Ex. 6. CPKC provided this information on November 10. *Id.*

On November 17, 2017, CPKC contractors completed the emergency repairs necessary to protect the bridge. As planned, CPKC pumped concrete under the abutment. *Id.* ¶ 7. The grout mat was then placed on the river bed adjacent to the abutment to enable the repair and to protect the abutment from future scour. *Id.* This work complied with the Wisconsin Department of Transportation regulations referenced above, specifically, Special Provision SPV.0035, which both allows and sets forth specific requirements for using grout mats to protect abutments *Id.* ¶¶ 9, 17, Ex. 12 pp. 10-16.

**V. Wisconsin DNR issues a Notice of Violation; CPKC applies for a Permit under protest.**

In a letter dated March 13, 2018—six months after the repair—the DNR issued a Notice of Violation (“NOV”) to CPKC alleging violations of Chapter 30 and Wisconsin Administrative Code § 299.03(1). *Id.* ¶ 13, Ex. 7. NR 299 sets forth Wisconsin’s procedure for issuing the state water quality certification required by CWA § 404 permits. The NOV did not explain why the certification was withheld but offered to schedule a conference. *Id.* Ex. 7.

On March 29, 2018, CPKC responded to the NOV. *Id.* ¶ 13, Ex. 8. CPKC agreed to meet with DNR, but reiterated that it stood by its emergency repair decisions. *Id.* It also noted that its repairs complied with the applicable RGP, and that any additional State law requirements were preempted by the ICCTA. *Id.*

The parties met in April 2018. DNR again asked CPKC to apply for a Ch. 30 permit. CPKC again disagreed that such a permit was required, given ICCTA preemption and CPKC’s compliance with the RGP, but offered to work with DNR to

address its concerns. DNR memorialized this meeting in correspondence dated April 27, 2018. *Id.* ¶ 14, Ex. 9.

On May 25, 2018, CPKC responded to clarify certain statements in DNR's summary. *Id.*, Ex. 10. CPKC's letter again explained the choice of the grout mat over rip rap. *Id.* CPKC also provided analysis and photos illustrating that the grout mat had not changed the river flow, and promised to supply documentation further illustrating that the river bed elevation was unchanged by the repair. *Id.* at 3, 5-6. CPKC provided that documentation on July 31, 2018. *Id.* ¶ 15, Ex. 11.

On October 30, 2018, CPKC applied under protest for a Chapter 30 permit, while at the same contending (1) Chapter 30 was preempted by the ICCTA and (2) a Chapter 30 permit was not needed because the grout mat was legally authorized and consistent with the RGP. *Id.* ¶ 16, Ex. 14.

**VI. Just months after the NOV was issued, Wisconsin approves permits and issues regulations that allow grout mats for bridge repairs.**

On February 18, 2018, the Corps revised the RGP and issued the RGP-002-WI (2018). DNR blanket certified this permit (with some conditions not relevant here). *Id.* ¶ 18, Ex. 13 pp, 19-22. In other words, had CPKC waited three months to make the bridge repairs—something it could not do because of the danger to life and property—it could have proceeded without the individual § 401 certification, regardless of ICCTA preemption.

On July 24, 2019, CPKC also supplied DNR with copies of the Wisconsin DOT regulations explicitly allowing grout mats for scour repairs in Wisconsin rivers. *Id.* ¶ 17, Ex. 12 at pp. 10-16. These regulations approve grout mats.

## VII. DNR puts CPKC’s permit application “on hold,” indefinitely.

In February 2020, now sixteen months<sup>3</sup> after CPKC had applied for the permit, and *more than two years after* CPKC first requested § 401 certification, DNR informed CPKC that the Chapter 30 permit was “on hold” due to “concerns” regarding “environmental impacts including impacts to fish passage, recreational use, floodplain elevations, and erosion.” *Id.* ¶ 19, Ex. 15.

CPKC was surprised by this “hold,” given the passage of time, and the fact that it had complied with each of DNR’s information requests. In March 2020, CPKC responded to the permit hold letter. *Id.* ¶ 20, Ex.16. CPKC’s letter laid out in extensive detail the history of the interactions and information exchanged between DNR and CPKC. *Id.* Ex 16, attachments A-K. It also sought a meeting to discuss the delayed permit application in an attempt to resolve the matter. *Id.*

DNR did not respond to the CPKC letter for over three years.

## VIII. Despite years of inaction, Wisconsin finally threatens suit.

On June 30, 2023, the State of Wisconsin, through its Attorney General (“Wisconsin”), threatened to prosecute CPKC for violations of § 30.12(1)(a) and NR 299.03(1), sending two draft complaints to CPKC’s outside counsel. *Id.* ¶ 21, Ex. 17 (Ch. 30 complaint) and 18 (NR 299 complaint). These threatened suits allege that CPKC took actions to repair the bridge without the state permits. Both draft

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<sup>3</sup> The CWA § 401(a)(1) requires a certifying state to “act on a request for certification within a reasonable period of time (which shall not exceed one year) ...” Wisconsin state law required the department to notify the applicant of its determination “within 120 calendar days.” Wisc. Admin Code. NR 299.05. The decision arrived long past either deadline.

complaints seek injunctive relief that would force CPKC to remove the grout mat and to alter its bridge to conform to standards set by the DNR.

Since that time, CPKC and the State have engaged in discussions in an effort to resolve the dispute amicably. Notwithstanding those efforts, the parties have been unable to resolve this dispute, necessitating the filing of this Petition.

### **LEGAL STANDARD**

The Board has discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 721 to begin a declaratory order proceeding to eliminate a controversy or remove uncertainty. Here, a controversy exists between the DNR and CPKC over repairs made to its bridge abutment. DNR contends that CPKC has violated state permitting requirements and that it must remove certain bridge repair elements and replace them with improvements preferred by the DNR. CPKC contends that state pre-construction permits are preempted by ICCTA; that its bridge repairs comply with federal law, including the CWA; and that DNR thus has no right to seek injunctive or any other relief associated with the alleged violations.

### **ARGUMENT**

The ICCTA preempts state law attempts to regulate a railroad's construction and maintenance of its rail facilities, including bridges. Under the Board's familiar framework, the Wisconsin statute and regulations at issue here are preempted.

#### **I. The ICCTA preempts state and local regulation of railroads.**

The Interstate Commerce Act was “among the most pervasive and comprehensive of federal regulatory schemes.” *Chi. & N.W. Transp. Co. v. Kalo*

*Brick & Tile Co.*, 450 U.S. 311, 318 (1981). For more than a century, the Supreme Court has made it clear that under the U.S. Constitution’s Supremacy Clause (Art. VI, cl. 2), state laws or regulations that are inconsistent with the Interstate Commerce Commission’s (“ICC”) plenary authority or with the Congressional policy reflected in the Interstate Commerce Act were preempted. *Id.*

In 1995, Congress terminated the ICC with the ICC Termination Act of 1995, or ICCTA, 49 U.S.C. § 10101, *et seq.* At the same time, Congress further broadened the express preemption provision contained in the already “pervasive and comprehensive” Interstate Commerce Act. *See Green Mountain R.R. v. Vermont*, 404 F.3d 638, 643 (2d Cir. 2005); *City of Auburn v. STB*, 154 F.3d 1025, 1029-31 (9th Cir. 1998). Section 10501(b) of the ICCTA states that “the remedies provided under [49 U.S.C. §§ 10101-11908] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State Law.” The Board and courts have observed that “[i]t is difficult to imagine a broader statement of Congress’s intent to preempt state regulatory authority over railroad operations.” *CSX Transportation, Inc. – Petition for Declaratory Order*, FD 34662 (STB Served May 3, 2005) (“CSX”) slip op. at 2; *City of Auburn*, 154 F.3d at 1030.

The ICCTA also replaced the ICC with this Board. *See Friberg v. Kansas City S. Ry. Co.*, 267 F.3d 439, 442 (5th Cir. 2001) (noting that with the ICCTA Congress abolished the ICC and replaced it with the STB to perform many of the regulatory functions previously performed by the ICC). The Board’s interpretations of the ICCTA carry great weight. “As the agency authorized by Congress to administer the

[ICCTA], the Transportation Board is uniquely qualified to determine whether state law should be preempted by the [ICCTA].” *Emerson v. Kansas City S. Ry. Co.*, 503 F.3d 1126, 1130 (10th Cir. 2007) (alterations in original) (quoting *Green Mountain*, 404 F.3d at 642).

To determine whether a state law claim is preempted by § 10501(b), the Board has developed a two-part framework. State actions that directly conflict with the Board’s exclusive federal regulation of railroads are *per se* preempted. *CSX* at 3. Such actions include “any form of state or local permitting or preclearance that, by its nature, could be used to deny the railroad the ability to conduct its operations.” *Id.*; see also *Soo Line R.R. Company Petition for Declaratory Order (“Soo Line”)*, FD 35850, 2014 WL 7330097, slip op. at 4 (S.T.B. served Dec. 22, 2014). They also include “actions by states or localities that would impinge on matters directly regulated by the Board— such as the construction, operation, and abandonment of rail lines.” *CSX* at 3. If an action falls into one of these two categories, the preemption analysis is addressed not to the reasonableness of the action, but to the act of regulation itself. *Id.* “Once the parties have presented enough evidence to determine that an action falls within one of those categories, no further factual inquiry is needed.” *Id.* The action is *per se* unreasonable.

The second form of preemption analysis concerns state actions that affect railroads but do not fall within the above categories. These actions are not *per se* preempted, but are nonetheless preempted if they “unreasonably interfere” with



railroad transportation. *Id.* For those actions, the Board undertakes “a factual assessment” of the degree of interference. *Id.*

As discussed below, Wisconsin’s enforcement actions, based on purported violations of state pre-construction permitting requirements, are an attempt to regulate railroads and are therefore preempted.

**II. The ICCTA preempts Chapter 30 because it is a state law that requires a pre-construction permit.**

The first permit requirement Wisconsin seeks to enforce against CPKC is Wisconsin Statutes Chapter 30, specifically § 30.12(1)(a), which requires a permit before depositing materials in navigable waters. *See* V.S. of Rittmeyer, Ex. 17, Chapter 30 Complaint. “Chapter 30 embodies a system of regulation of Wisconsin’s navigable waters pursuant to the public trust doctrine.” *ABKA Ltd. P’ship v. Wisconsin Dept. of Nat. Res.*, 648 N.W.2d 854, 858 (Wisc. 2002). The issuance of individual permits is governed by § 30.12(3m). The statute states DNR “shall issue” a permit if (1) the structure or deposit will not materially obstruct navigation; (2) the structure or deposit will not be detrimental to the public interest; and (3) the structure or deposit will not materially reduce the flood flow capacity of a stream. *Id.* The ICCTA preempts Chapter 30 both categorically and “as applied.”

**A. Chapter 30 is categorically preempted because it requires a pre-construction permit.**

The Board has long held that pre-construction permits are categorically preempted because they interfere with interstate commerce by their nature. *See Cities of Auburn & Kent, Wa-Petition for Declaratory Order-Burlington N. R.R. Co.-*

*Stampede Pass Line*, 2 S.T.B. 330, 338 (S.T.B. 1997), *aff'd sub nom. City of Auburn* 154 F.3d 1025 (stating “state or local laws that would impose a local permitting or environmental process on [railroad’s] operations on, or maintenance or upgrading of, the Stampede Pass line are preempted to the maximum extent permitted by the Constitution”); *Joint Petition for and Declaratory Order—Boston and Maine Corp. and Town of Ayer, MA*, 5 S.T.B. 500 (S.T.B. 2001) (“*Town of Ayer*”), *decision adopted*, 191 F.Supp.2d 257 (D. Mass. 2002) (affirming the Board’s determination that town’s pre-construction permit requirement was preempted by the ICCTA); *Soo Line*, FD35850, slip op. at 5 (holding a state wetlands permit was categorically preempted by the ICCTA under “well-established preemption principles”).

Courts are in agreement. *See Green Mountain R.R. Corp. v. Vermont*, 404 F.3d 638, 642 (2d Cir. 2005); *City of Auburn*, 154 F.3d at 1031 (9th Cir. 1998). In *Green Mountain*, the State of Vermont required a pre-construction permit pursuant to a Vermont state law called “Act 250” for the development of a transload facility adjacent to the Connecticut River. *See* 404 F.3d at 640. The state permit application was evaluated based on ten criteria, including pollution and aesthetic harms. *Id.* The railroad had constructed a salt shed without a permit, and the state issued a notice of violation asserting that the construction method and the location violated Act 250’s permit requirements. *Id.* at 640-41.

The Second Circuit Court of Appeals affirmed the District Court’s holding that Act 250 was preempted by the ICCTA. *Id.* at 643. The court explained that pre-construction permit requirements are preempted for two reasons. First, they give

the local body the right to veto the construction of facilities vital to the interstate rail system. *Id.* Second, they can be so time-consuming that they allow the state to delay construction of railroad facilities almost indefinitely. *Id.* Importantly, however, preemption does not depend on the length or outcome of the permitting process, or even how reasonable it is: the state's *ability* to veto or delay is what is preempted. *Id.* at 644. It is the act of regulation itself that is preempted. *Id.*

Here, the § 30.12(a) permitting requirement is a textbook example of the kind of pre-construction state law permit that the ICCTA categorically preempts. The statute states that no person may deposit any material into a navigable water without a permit and it sets forth discretionary, open-ended criteria for granting such permits. The concerns raised by Wisconsin's application of Chapter 30 to CPKC are precisely those addressed in *Green Mountain*.

First, Chapter 30 gives DNR veto power over bridge repairs. The ICCTA expressly defines "railroad" to include "a bridge...used by or in connection with a railroad". 49 U.S.C. § 10102(6)(A). CPKC planned, proposed, and made repairs to safeguard its bridge, the rail system, and indeed the river itself. DNR demanded CPKC obtain a permit before making this emergency repair. It informed CPKC that it would not grant the permit unless CPKC used DNR's preferred repair method. It then rejected CPKC's permit application and now threatens to seek an injunction to undo CPKC's repairs. Like Act 250 in *Green Mountain*, Chapter 30 gives the State a veto over rail construction and is therefore preempted.

Second, the Chapter 30 permitting process illustrates the “indefinite” delays that state permitting can impose and that the ICCTA seeks to prevent. In response to CPKC’s notice of the need for emergency repairs, DNR proposed a lengthy, open-ended process of applications backed by studies—all with no guarantee of being able to fix the bridge. Tellingly, it has now been nearly *six years* since CPKC made the emergency repairs. In that time, CPKC has responded to every request from DNR, has met with the DNR on multiple occasions (including at the bridge site), and has even applied (under protest) for a permit that ICCTA clearly preempts. During this same time, DNR on multiple occasions went silent for long stretches, leaving CPKC in indefinite regulatory limbo. Yet this dispute continues. Had CPKC waited these six years for the DNR to issue a pre-construction permit before making repairs, CPKC would have been forced to take the bridge out of service, causing severe interference with interstate freight and passenger rail operations.

In short, the ICCTA categorically preempts Chapter 30.

**B. Chapter 30 would also be preempted “as applied.”**

For state law actions that affect rail transportation but that are not categorically preempted, the Board conducts a factual inquiry into whether the action “unreasonably interferes” with railroad transportation. *CSX* at 3. In a long line of cases, the Board and courts have found that state law actions that second-guess decisions about maintenance and repair of railroad tracks and bridges are preempted.

The Board's decision in *Tubbs* is instructive. *Thomas Tubbs, Tr. of the Thomas Tubbs Revocable Tr. & Individually, & Dana Lynn Tubbs, Tr. of the Dana Lynn Tubbs Revocable Tr. & Individually Petition for Declaratory Order*, FD 35792, 2014 WL 5508153 (S.T.B. served Oct. 31, 2014), *review denied*, 812 F.3d 1141 (8th Cir. 2015). In *Tubbs*, the railroad raised its embankment and “fortified the track structure” to prepare for anticipated flooding of the Missouri River. Slip op. at 2. The water breached the embankment anyway. *Id.* Neighboring landowners brought suit claiming that the railroad had not provided sufficient culvert drainage through the embankment. *Id.* The Board held the state law claims were preempted:

These claims are based on alleged harms stemming directly from the actions of a rail carrier, BNSF, in designing, constructing, and maintaining an active rail line—actions that clearly are part of “transportation by rail carriers” and therefore subject to the Board's exclusive jurisdiction under § 10501(b). If these claims were allowed to proceed, they would have the effect of managing or governing rail transportation. Whether BNSF took its actions before and during an emergency resulting from a massive flood, as here, or during normal circumstances, state and local regulation of actions based on the railroad's design, construction, and maintenance standards for railroad track are preempted under § 10501(b).

*Id.* at 4 (internal citations omitted).

The same principle applies to rail bridges. In *Griffioen v. Cedar Rapids & Iowa City Ry. Co.*, 914 N.W.2d 273, 279 (Iowa 2018), the Iowa Supreme Court held that a state law claim that second-guessed emergency actions taken by the railroad in an attempt to save its bridges was preempted. In rendering this decision, the court canvassed the long line of federal court precedent preempting state law claims regarding bridge maintenance, finding unanimity that state law attempts to

overrule or second guess railroad decisions about their infrastructure, especially those made during emergencies, were preempted by the ICCTA. *Id.* at 281-283 (collecting cases).

These decisions uphold the clear legislative purpose behind § 10501(b): “to prevent a patchwork of state and local regulation from unreasonably interfering with interstate commerce.” *Tubbs*, slip op. at 5. Such a patchwork of state and local regulations interferes “with the railroad’s ability to uniformly design, construct, maintain, and repair its railroad line.” *Id.* “The interstate rail network could not function properly if states and localities could impose their own potentially differing standards for these important activities, which are an integral part of, and directly affect, rail transportation.” *Id.*

CPKC analyzed, planned, and performed repairs on its bridge in line with industry practice, safety, and uniformity. Like the culvert in *Tubbs*, the grout mat was an integral part of the emergency repair CPKC made to its bridge. *See Rittmeyer V.S.* ¶¶ 6-7, 9. Because of the bridge’s condition, it was not feasible to excavate the river bed and place rip rap at a sufficient depth to protect the bridge abutment from scour. *Id.* ¶ 8. And it would have been futile to repair the abutment and leave it exposed to the same elements that endangered it before. *Id.* ¶ 7. CPKC needed to protect the grout pumped under the abutment and the best way to do this was the grout mat. *Id.*

Wisconsin here attempts to impose its own, unique permitting standard to overrule and interfere with CPKC’s ability to uniformly design, construct, maintain,

and repair its bridge. DNR attempted to halt the repairs and force the railroad to implement its specified repair method, which CPKC engineers determined was structurally inferior, more dangerous, and more expensive. *Id.* ¶¶ 7-9. Wisconsin is now seeking to force CPKC to undo, then redo, the repairs according to its dictates, and threatening to seek a state court injunction and to fine CPKC if it does not conform. Wisconsin's repair is more expensive, more dangerous, and, ironically, *more disruptive* to the river. *Id.* ¶¶ 8, 22. It would impose significant costs in time and money on CPKC and disrupt rail operations. *Id.* CPKC took action to protect it and Amtrak's employees, Amtrak's passengers who might be using the bridge and any people who, or wildlife that, might be underneath the bridge. Wisconsin's efforts to impose its will on CPKC is the essence of managing railroad transportation (i.e., bridge repair).

DNR's actions, if not preempted, threaten the very purpose of the ICCTA. Every state could exact a permit requirement and claim authority over the approximately 61,000 rail bridges in the United States. Every state could condition those permits on unique state law factors. The requirement here, Chapter 30, is based on the Wisconsin public trust doctrine, a matter of pure state law. *PPL Montana, LLC v. Montana*, 565 U.S. 576, 603 (2012); *Rock-Koshkonong Lake Dist. v. State Dept. of Nat. Res.*, 833 N.W.2d 800, 817 (Wisc. 2013) (holding public trust doctrine is "rooted in" the Wisconsin Constitution, art IX). Every state could impose its own public trust permit regime on any railroad running through that state. The

resulting patchwork would undermine uniformity, impose massive expenses on railroads, and degrade the interstate rail network.

DNR's imposition of the pre-construction Ch. 30 permit exerts the effect of managing or governing CPKC's design, repair, maintenance, and operation of its bridge and are therefore preempted by the ICCTA.

**III. The Wisconsin state water quality regulations, NR 299, are also preempted.**

Wisconsin's second draft complaint alleges that CPKC's emergency repairs also violated provisions of the Wisconsin Administrative Code Chapter NR 299 ("NR 299"). *See Rittmeyer V.S.* ¶ 21, Ex. 18. NR 299 was promulgated "to establish procedures and criteria for the application, processing and review of state water quality certifications required by" the Clean Water Act. NR 299.01. That is, NR 299 provides the procedure for Wisconsin's certifications pursuant to § 401 of the CWA. *See Factual Background I.C., supra.* But the substance of NR299 is provided *not* by federal law at all, but rather by the Chapter 30 permit requirement. DNR "typically" issues the certification required by NR 299 "in the form of a Ch. 30 permit." *See Rittmeyer V.S.* Ex. 17, NR 299 Complaint ¶ 39. Chapter 30, in turn, is based on the Wisconsin public trust doctrine, a matter of pure state law. *See Argument, II.B., supra.*

Despite NR 299's connection to the CWA, it remains state law and is preempted.



**A. NR 299 is categorically preempted state law.**

The ICCTA preempts all *state* pre-construction permitting, 49 U.S.C. 10501(b), but does not entirely displace the role of state and local agencies when a state is “implementing federal environmental statutes.” *Town of Ayer*, 5 S.T.B. 500, 508. Under the prevailing test, however, NR 299 does not “implement” a federal statute; it remains state law and is preempted on the same basis as Chapter 30.

A state law becomes imbued with federal authority only when the state is (1) exercising delegated authority, and (2) the state regulation is approved by the federal agency. The former commonly occurs when the state is delegated permitting authority by the federal regulator. *See Ass'n of Am. Railroads v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1098 (9th Cir. 2010); *United States Env'tl. Prot. Agency Petition for Declaratory Order*, FD 35803, 2014 WL 7392860 (S.T.B. served Dec. 30, 2014). The latter occurs when the state requirement is approved by the federal regulator. *See BNSF Ry. Co. v. Clark Cnty., Washington*, 11 F.4th 961, 968 (9th Cir. 2021). Absent delegation and approval, the state law does not implement a federal statute. In *Town of Ayer*, for example, the Board held that the ICCTA preempted the town's attempt to impose environmental conditions even though the Town claimed the conditions were necessary to satisfy the CWA and Safe Drinking Water Act. 500 S.T.B. at 509. Because the state law was neither delegated nor approved by the federal government, it did not have the “force and effect of federal law.” The preemption analysis proceeds as it would for any other state law.

In this case, DNR asserts that NR 299 provides the mechanism for Wisconsin to certify, under § 401, the § 404 permit necessary to repair the bridge. But the structure of § 401 does not imbue state certifications, including those made under NR299, with the force of federal law.

First, neither §§ 404 or 401 are federal delegations. While § 404 allows states to assume permit authority, *see* § 404(c), 40 C.F.R. § 231, Wisconsin has not assumed this permit authority. The Corps continues to hold exclusive permitting authority in Wisconsin, and it issued the RGP that covered the repair. *See Factual Background, I.C., supra*. Section 401 is also not a delegation because it is based on state, not federal, standards. The substance of NR299 is provided not by federal law at all, but rather by the Chapter 30 permit requirement. In other words, the Chapter 30 requirement, itself categorically preempted, is the substantive law that NR299 “implements.” Thus, NR 299 does not “implement” a federal law; it merely imposes state law.

Second, the federal regulators, whether it be the Corps or the EPA, did not approve, disapprove, or modify Wisconsin’s public trust-based § 401 certification criteria. The CWA allows states broad authority to add state law requirements: the only limit on the state’s § 401 authority is that the demand be “an appropriate requirement of state law.” 33 U.S.C. § 1341(d); *PUD No. 1 of Jefferson Cnty. v. Washington Dept. of Ecology*, 511 U.S. 700, 712. (1994). However, those requirements are not approved by the federal agency and therefore do not “implement” federal law.

Absent a delegation and approval, NR299 does not implement, and thus does not gain the force and effect of, federal law. Wisconsin cannot use § 401 to bootstrap the state requirements of Chapter 30 into federal law. NR299 is, like its substantive sister, Chapter 30, a state law requirement for a pre-construction permit. Like Chapter 30, it is categorically preempted.

**B. Even if NR 299 was implementing federal law, Wisconsin’s individual § 401 certification process cannot be harmonized with the ICCTA.**

When faced with two conflicting federal statutes, the Board or a court will first seek to harmonize the two rather than find that one preempts or repeals the other. *Town of Ayer*, 5 S.T.B. at 509 n. 28. But a state-implemented federal law that creates a patchwork cannot be harmonized with the ICCTA. *See Ass’n of Am. Railroads-Petition for Declaratory Order*, FD 36369, 2020 WL 7778233 (S.T.B. served Dec. 30, 2020) (“*Clean Water Act Guidance*”). Further, the Board has long held that state-implemented federal regulation that is unfairly enforced cannot be harmonized with the ICCTA. *See* 5 S.T.B. at 509 n. 28. In both cases, the state action is preempted by the ICCTA.

Here, Wisconsin’s enforcement of NR 299 cannot be harmonized with the ICCTA because it would create a patchwork of state law requirements that unreasonably interfere with railroad operations. Further, DNR is unfairly wielding its state regulatory authority against railroads to frustrate federal regulation.

1. Wisconsin’s application of water quality standards creates a patchwork of obligations that cannot be harmonized with ICCTA.

The Board has recently determined that a Clean Water Act permit issued under § 402, 33 U.S.C. § 1342<sup>4</sup>, likely could not be harmonized with the ICCTA. *See Clean Water Act Guidance*, slip op. at 11-12. That decision concerned the possibility that railroads would be required to obtain permits for coal dust. *Id.* at 5. The § 402 permit considered in *Clean Water Act Guidance*, which requires a permit for any “discharge” of pollutants, is similar to the § 404 permit at issue here, which governs permits for discharge of “dredged or fill materials.” *Compare* 33 U.S.C. §§ 1342 and 1344. *Unlike* § 404 permits, however, § 402 permit powers are, in nearly every state, delegated to the states. *See* § 402(b). And the EPA retains the power to veto these permits. *Id.* § 402(d)(2). Thus, there is little question that § 402 permits (again, unlike the § 404 permit at issue here) meet the delegation and approval test, and the analysis shifts to whether the two federal provisions could be harmonized.

Even considering the state-implemented § 402 permits as federal law, the Board advised that state-issued § 402 permits could not be harmonized with the ICCTA and would therefore be preempted. *Clean Water Act Guidance*, slip op. at 11-12. The state-issued, state-specific permits by their nature fragmented rail regulation. The “variability of permit conditions is an essential feature built into the structure of the [§ 402] permitting system to allow states to tailor their regulations to their policy goals, the specific characteristics of their waters, and the discharges

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<sup>4</sup> Section 402 permits are also known as National Pollutant Discharge Elimination System, or NPDES, permits.

at issue.” *Id.* at 10. The Board could not reconcile this variability with the ICCTA’s purpose of maintaining uniform regulation of interstate commerce. *Id.* Accordingly, the Board concluded that Section 10501(b) would likely preempt § 402. *Id.*<sup>5</sup>

The Board then issued guidance on how § 401 would interact with a *national* § 402 permit issued for railroad operations. The Board advised that, by contrast with a state-delegated permit, a uniform, national § 402 permit “might not be preempted.” *Id.* at 15 (emphasis added). But, according to the Board, the uniform, national § 402 permit, if issued, could not be subject to § 401 certification because § 401 is incompatible with the ICCTA:

The Board agrees that if states were to impose varying state-specific requirements on a rail car general permit issued by EPA via the [§ 401] certification process, any such requirements would likely also create a patchwork of differing regulations in irreconcilable conflict with the core purpose of § 10501(b). Therefore, any such additional state requirements would likely be preempted, even though a nationwide uniform general NPDES permit might not be.

*Id.* at 16. *The Board’s guidance covers the exact situation here.*

The Board’s concern with the § 401 certification of § 402 permits is equally applicable to the § 404 permit at issue here. As discussed above, the Corps issued a regional § 404 permits; Wisconsin attempted to impose “additional state requirements” via § 401. Here, as in *Clean Water Act Guidance*, those requirements create “an irreconcilable conflict with the ICCTA and thus § 401 must be

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<sup>5</sup> The Board stated that the result would be the same if considered under the repeal by implication analysis: the later-enacted statute, § 10501(b), would be given effect over the CWA. *Clean Water Act Guidance*, slip op. at 13, quoting *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 154 (1976).

preempted.<sup>6</sup> As discussed above, Wisconsin's § 401 requirements are themselves created by Chapter 30, which is preempted both categorically and as applied. *See* Argument, II.B, *supra*.

Allowing states to add state-specific requirements to the design and maintenance of railroad bridges under § 401 would undermine uniform regulation of rail transportation. Railroads would need to develop state-by-state procedures for inspecting, assessing, and repairing bridges, creating the patchwork of regulations that Congress sought to avoid in enacting ICCTA. These requirements would be layered onto the requirements imposed by federal law overseen by this Board and the Federal Railroad Administration. Indeed, as bridges often span state lines, such a fifty-state regime could lead to untenable situations. For example, a bridge over the St. Croix River between Minnesota and Wisconsin could be regulated by each state, with each imposing its own construction and maintenance requirements on the portion of the bridge within its jurisdiction.

State regulation of railroad bridge work via § 401 of Clean Water Act cannot be harmonized with ICCTA's purpose. As in the *Clean Water Act Guidance*, § 401 must give way to the federal uniformity of the ICCTA.

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<sup>6</sup> To be clear, CPKC is not seeking a Declaratory Order that § 404 is impliedly repealed by the ICCTA. The uniform § 404 permits issued by the Corps, like the hypothetical national § 402 permit, might not be preempted. In any event, CPKC is not seeking a declaration regarding the federal § 404 permit in this proceeding.

2. Wisconsin’s water quality regulations cannot be harmonized because they are applied unfairly and discriminate against rail transportation.

Even if § 401 could be harmonized with the ICCTA in general, the Board also considers whether the environmental statute is being “fairly enforced.” *Town of Ayer*, 500 S.T.B. at 509, n. 28. If the statutes can be harmonized, the analysis shifts to whether the statutes are repugnant in a specific instance:

Accordingly, individual situations need to be reviewed individually to determine the impact of the contemplated action on interstate commerce and whether the statute or regulation is being applied in a discriminatory manner, or being used as a pretext for frustrating or preventing a particular activity

*Id.* at 508-09. Wisconsin’s demand that CPKC seek individual § 401 certification is repugnant to the ICCTA in this matter because it is being applied unfairly to discriminate against railroads. Three examples illustrate this point.

First, Chapter 30—the substantive, state law source for a NR299 decision—specifically exempts certain non-railroad uses. For example, highways, but not railroads, are exempt from Chapter 30 permits. Wis. Stat. § 30.10. Further favoring highways and roads, DNR exempts bridge and culvert projects “under supervision of a municipality” from all state law water quality requirements.<sup>7</sup> Moreover, the Wisconsin DOT regulations specifically allow the use of grout mats under highway bridges. *See Rittmeyer V.S.* ¶ 17, Ex. 12. These projects occur in the same

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<sup>7</sup> [https://widnr.widen.net/s/brqmqmtctg/wdnr-gp2-2022\\_final](https://widnr.widen.net/s/brqmqmtctg/wdnr-gp2-2022_final)

waterways as Bridge 88.74, but because they involve roads, not rails, Wisconsin does not subject them to certification under NR 299.<sup>8</sup>

Second, Chapter 30.12 further exempts “[a] structure or deposit that is related to the construction, access, or operation of a new manufacturing facility in a navigable stream located in an electronics and information technology manufacturing zone.” Thus, Wisconsin treats electronics manufacturing facilities in certain designated zones more favorably than railroads, despite there being no discernible difference in the navigable waters at issue.

In both cases, and likely others, Wisconsin appears to treat *state* interests, in roads and manufacturing, more favorably than it does the *federal* interests in the free movement of interstate commerce. Nothing in the Clean Water Act makes these distinctions. The unfairness and discrimination at work here is purely a matter of state law. Hence, even if NR299 implements federal law (it does not), the state’s application of the law imports a level of unfairness into § 401 that the Board has held offends the ICCTA.

Third, the circumstances of the enforcement here suggest discrimination and unfairness. Time and again, Wisconsin has delayed its response to CPKC’s requests for, and provisions of, information. Wisconsin waited six months after the repair to issue a Notice of Violation. *See Factual Background, IV, supra.* CPKC supplied Wisconsin with every piece of information it requested and even applied for a

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<sup>8</sup> Such projects, of course, do need to obtain federal permits, typically in the form of general permits. *See Factual Background, III, supra.*



Chapter 30 permit, despite ICCTA preemption. *Id.* Wisconsin then sat on the application for sixteen months, violating its own statutory time frame, before stating the permit was “on hold.” *See* Factual Background, V, *supra*. Despite CPKC supplying even more information thereafter, and seeking a meeting, Wisconsin then went largely silent. Finally, three years later—nearly six years after the emergency repairs—Wisconsin is threatening to bring two separate enforcement actions in state court. This timeline is highly unusual and suggests Wisconsin is unfairly singling out the railroad for enforcement.

The unfair nature of this specific § 401 certification here is driven home by DNR’s actions less than three months after the bridge repair. In February 2018, DNR blanket approved a new RGP, 2018 RGP-002-WI to replace the version in place during the CPKC repairs. *Id.* Crucially, the approval did not even arguably require an individual § 401 certification for Linear Transportation projects.<sup>9</sup> In other words, in early 2018, *at the same time* DNR was demanding CPKC apply for a Chapter 30 permit and stating that the emergency repairs did not comply with state law, Wisconsin approved a general permit that would have allowed the project to proceed without individual certification.<sup>10</sup>

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<sup>9</sup> CPKC provided this new permit to DNR as part of their discussions in 2018. *See* Rittmeyer ¶ 18, Ex. 13; *see also*, Ex. 16 at pp. 3-4. DNR did not dispute that the repairs fit within the revised RGP.

<sup>10</sup> The current Transportation RGP also likely would not require an individual certification under § 401 for the CPKC bridge repair. Wisconsin blanket approved this regional permit.  
[https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RGP/WI\\_DNR\\_401.pdf?ver=5hkqn4yeUSK0gAVItVfh7A%3d%3d](https://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RGP/WI_DNR_401.pdf?ver=5hkqn4yeUSK0gAVItVfh7A%3d%3d)

If highway projects, electronic factories, and the same project a few months later are exempt from individual certification, there is no explanation for Wisconsin's discriminatory application of its state law. Wisconsin's attempt to use its § 401 authority to unfairly discriminate against railroads is preempted by the ICCTA.

### CONCLUSION

For the foregoing reasons, the Board should declare that the ICCTA preempts Wisconsin's state permitting requirements regarding CPKC's repairs to Bridge 88.74.

Respectfully submitted,

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*Attorneys for Soo Line Railroad Company a/k/a CPKC*

Dated: October 27, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of October 2023, I caused a copy of the foregoing CPKC'S PETITION FOR DECLARATORY ORDER to be served by first-class mail upon the following parties:

Wisconsin Attorney General's Office  
Wisconsin Department of Natural Resources

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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Finance Docket No. 36734

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SOO LINE RAILROAD COMPANY a/k/a CPKC

PETITION FOR DECLARATORY ORDER

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**Verified Statement of Karl Rittmeyer**

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1. My name is Karl Rittmeyer. I am employed by Soo Line Railroad Company a/k/a CPKC, in the capacity of Asst. Chief Engineer — Structures, officed in Bensenville, IL. I have held this position since 2018.

2. My current responsibilities include oversight of all bridges, culverts, retaining walls, pumping facilities, and related structures for the CPKC rail network in Minnesota and Wisconsin.

3. The purpose of my statement and accompanying exhibits is to provide information about how CPKC manages repair and maintenance of its rail bridges, including the bridge at issue in this suit: the bridge at MP 88.74 of the Watertown sub ("Bridge 88.74"). Bridge 88.74 spans the Menomonee River in Milwaukee, WI. Each day, up to sixteen freight trains use the bridge. Those trains carry all manner of freight, including hazardous materials. The Amtrak Empire Builder also travels over Bridge 88.74 twice daily, and Amtrak is considering adding an additional daily train between Milwaukee and the Twin Cities.

4. Attached hereto as Exhibit 1 is a rendering of the Bridge 88.74. Bridge 88.74 is 165 feet long with 2 main tracks, each with 4 individual 41-foot-long steel and concrete spans. The original bridge was built in 1872 as a single-track bridge. New concrete piers and abutments were constructed in 1898. The piers and abutments were extended in 1909 to accommodate a double track. The Menomonee River is heavily industrialized and, over time, the State of Wisconsin and/or the City of Milwaukee has modified the course and flow of the Menomonee. In addition, the Menomonee has been “renaturalized” both up and downstream of Bridge 88.74 through the removal of concrete channel lining. The eastern “bank” adjacent to Bridge 88.74 still has a masonry retaining wall in line with abutment No. 1, the easternmost abutment, that artificially alters the flow of the Menomonee River. While up to at least 1937 the Menomonee flowed under the center spans (spans 2 and 3), Wisconsin later changed flow, including by the construction of the Stadium Freeway, Wisconsin Hwy. 175, in 1962. As a result, the flow shifted eastward so that the deepest and fastest part of the flow is at the eastern edge, adjacent to abutment No. 1. The two westernmost spans have now been filled in. This unnatural flow condition, which was not caused by CPKC, results in the Menomonee having unusual depth and speed at abutment No. 1.

5. In October of 2017, I performed an inspection of Bridge 88.74 that revealed that the river had scoured the river bed around abutment No. 1, leaving a significant void below the abutment. *See Exhibit 2 (pictures)*. Scour is caused by water flow of sufficient velocity to result in erosion of river bed material. The piers

and abutments of Bridge 88.74 have spread footings with no deep piling, making them especially vulnerable to scour and undermining. Additional inspection showed that the scour was deep enough that abutment No. 1 was no longer fully in contact with the river bottom, creating the potential for structural instability. This was an emergency situation that needed to be addressed immediately.

6. CPKC immediately analyzed the situation and planned to make urgent, time-sensitive repairs. The first order of business was to stabilize the abutment by filling the scour hole with concrete grout. CPKC mobilized contractors, JF Brennan, as soon as possible to perform this work under an Emergency Work Order. CPKC notified Wisconsin DNR of the work on October 30, 2017. *See Ex. 3.*

7. After filling the scour void under abutment No. 1, CPKC needed to armor the restored abutment against future scour. Armoring the bridge was imperative for the repair to be successful. It would have been reckless, if not outright professional malpractice, to leave the repair exposed to immediate scour. To do this, CPKC considered various repair options, including the possibility of applying an 8" thick grout mat under span 1, between abutment No. 1 and pier No. 2, to protect the abutment from further scour. A grout mat, also known as a grout filled revetment mat, is a geo-fabric casing with pockets filled with cementitious grout, like an air mattress filled with concrete. Relatively thin at 8", it provides flexible and durable protection against scour. The grout mat could also be installed relatively quickly and without the use of large excavation machinery, minimizing the impact to the natural environment and reducing the chance of grout leaching into the river. A 24-inch

diameter geofabric grout bag was placed along the length of abutment No. 1 and filled with cementitious grout to permanently secure the concrete that had been pumped under the abutment both for stability and to prevent leaching into the Menomonee.

8. CPKC also considered using rip rap in lieu of a grout mat prior to performing the emergency repair work. CPKC ultimately rejected the rip rap option. This project would have required large 2-to-3-foot diameter boulders in a layer five feet thick. This would have required excavating the river bed to a depth of approximately 5 feet before the rock was placed to prevent channel blockage. Such excavation would have endangered the already exposed abutment No. 1 and would potentially have harmed pier No. 2. CPKC determined that it was not feasible and unsafe to excavate the Menomonee River at this location. Without the ability to excavate, the final rip rap elevation at abutment No. 1 would need to be several feet higher than the typical water level of the Menomonee (and much higher than the grout mat). It would essentially block the river. It would also have required accessing the river bed with large excavation machinery, causing potential environmental impacts in the area.

9. Comparing the two options—a grout mat or rip rap—installation of the grout mat posed less risk to the structural integrity of the bridge, was less invasive, and could be completed comparatively quickly. CPKC has installed grout mats at numerous bridges across the United States, including the Turkey River Bridge in Guttenberg, Iowa and the Cedar River Bridge in Charles City, Iowa. Accordingly, CPKC engineers, in consultation with HDR, an engineering firm, determined that



use of the grout mat was a superior choice for quickly addressing this emergency situation and stabilizing the bridge. CPKC selected the grout mat consistent with the principles it uses across its network and on other bridges in Wisconsin. Further, installation of the grout mat, grout bag and void grouting were in accordance with State of Wisconsin Department of Transportation Special Provision SPV.0035.

10. On November 2, 2017, CPKC's engineers, HDR, received an email from Wisconsin DNR. *See Ex. 4.* DNR stated they could not approve the grout mat and demanded erosion and stabilization studies be done before the work commenced. In my professional judgment, we did not have time to perform feasibility studies, nor were they necessary given the expectation of no or minimal change to the highly industrialized riverbed. The riverbed scour occurred as a direct result of artificial channelization, by no fault of CPKC, with adjacent highway bridges, retaining walls and concrete paved channels redirecting the flow of water towards Bridge 88.74.

11. CPKC, via its engineers HDR, responded on November 3, 2017. *See Ex. 5.* HDR responded further on November 10, 2017. *See Ex. 6.*

12. CPKC completed the installation of the grout mat on November 17, 2017. Installation of the grout mat has stabilized the bridge and has proven to be an effective solution for the last six years.

13. On March 13, 2018, CPKC received a Notice of Violation from the DNR. *See Ex. 7.* CPKC responded to this NOV on March 29, 2018. *See Ex. 8.*

14. In April 2018, CPKC met with DNR to discuss the repairs, the NOV, and permitting issues. On April 27, 2018, DNR memorialized this meeting. *See Ex. 9.* On

May 25, 2018, CPKC wrote to clarify some of the acts set forth in DNR's letter. *See* Ex. 10.

15. On July 31, 2018, CPKC provided river bed elevation maps that showed the grout mat did not significantly alter the river bed. *Id.* Ex. 11. In my professional judgment, these drawings prove that the elevation has not changed.

16. On October 30, 2018, as an accommodation to Wisconsin DNR, CPKC applied for a Clean Water Act § 401 water quality certification in the form of a Chapter 30 permit. *See* Ex 14

17. On July 24, 2019 CPKC supplied the Wisconsin DOT's regulations on the use of grout bags and mats. *Id.* Ex. 12.

18. On October 19, 2019, CPKC supplied the February 2018 versions of the permits that applied to bridge projects like Br. 88.74. *Id.* Ex. 13. CPKC, based on discussions with Wisconsin DNR at that time, believed DNR understood the necessity, permissibility, and advantages of the grout mat and that they would approve the permit when CPKC applied.

19. On February 14, 2020, DNR informed CPKC that the permit was "on hold" and requested CPKC respond further to the April 27, 2018 summary letter (Ex. 9). *See* Ex. 15.

20. On March 16, 2020 CPKC responded. *See* Ex 16. The letter recounts, and attaches, the long history of correspondence between the parties. *Id.*

21. On June 30, 2023, Wisconsin sent CPKC two draft complaints alleging violations dating back to 2017. *See* Exs. 17 (Ch. 30 complaint) and 18 (NR 299 complaint).

22. To remove the grout mat and excavate a sufficient depth to protect the footing with rip rap today would require invasive, expensive, and environmentally hazardous action by CPKC. Though the costs are highly variable to make such an unorthodox repair, the modifications would cost at least \$1M and \$2M dollars. It would require a specialized, non-standard design to protect the abutment during the excavation. And the work would disrupt the river bed of the Menomonee.

23. If CPKC is forced to remove the grout mat and install rip rap, it would likely require multiple daily track blocks of four-plus hours, disrupting freight and passenger traffic.

I, Karl Rittmeyer, verify under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

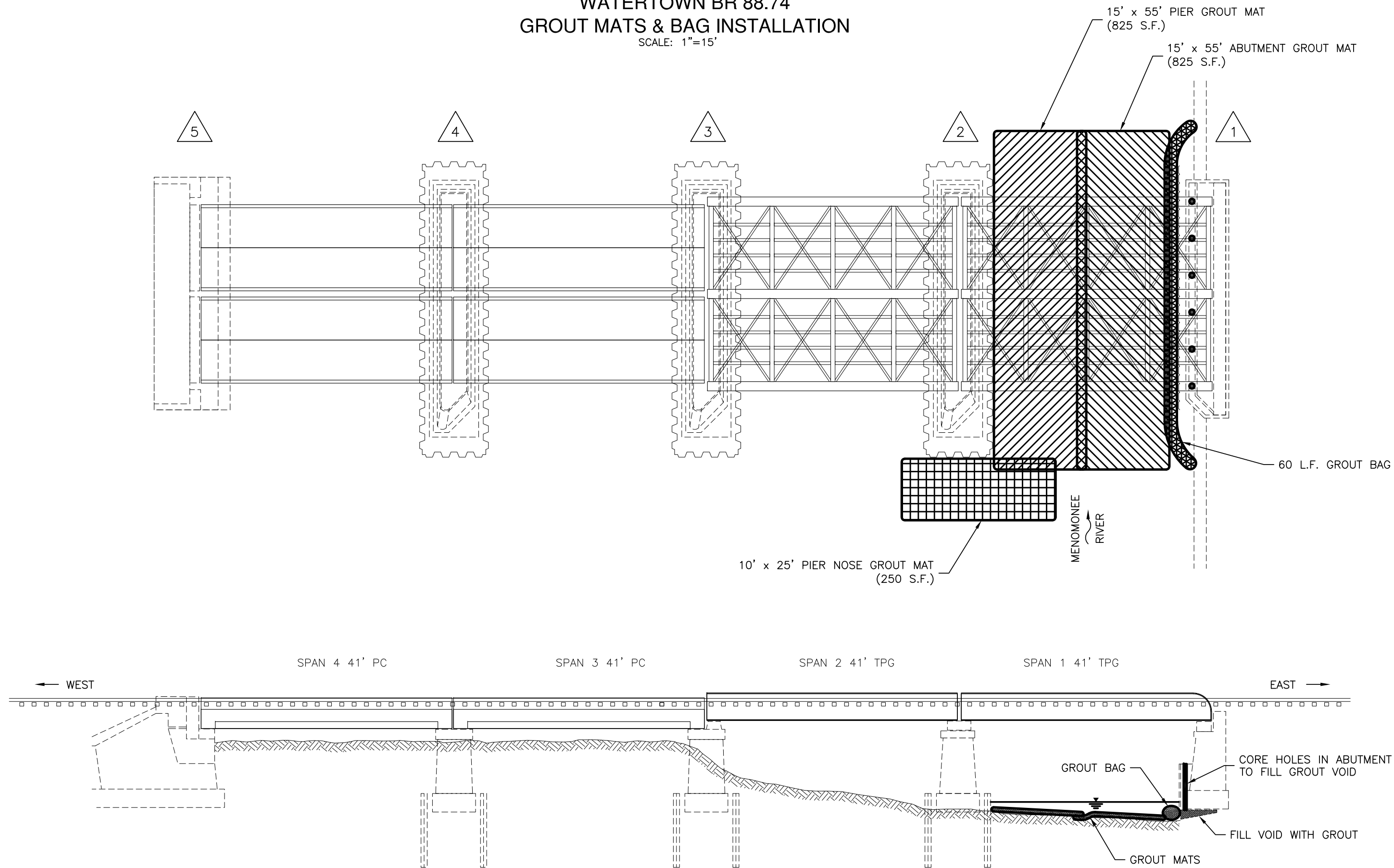
Executed on October 24, 2023.

Signed: *Karl Rittmeyer*  
CPKC  
Asst. Chief Engineer -Structures

**Exhibit 1**

# WATERTOWN BR 88.74 GROUT MATS & BAG INSTALLATION


SCALE: 1"=15'



# Vicinity Map

Canadian Pacific  
Watertown Sub  
Bridge 88.74 (B-18)

## Legend

 CPR - Br. 88.74 (B-18) - Watertown (2016)

Latitude: 43.042423°

Longitude: -87.972424°

CPR - Br. 88.74 (B-18) - Watertown (2016)

Google earth

© 2017 Google



600 ft

Rittmeyer V.S. Exhibit 1

**Exhibit 2**

## CPR Watertown BR 88.74 (B-18) – Photo Log



Photo 1 – Looking southeast at Abutment 1 of BR 88.74.



Photo 2 – Looking southeast at Abutment 1 of BR 88.74.



## CPR Watertown BR 88.74 (B-18) – Photo Log



Photo 3 – Tape measure extended 5' beneath footing of Abutment 1.



Photo 4 – Looking below the bottom of the sheet piling and into the void beneath the footing of Abutment 1.

**CPR Watertown BR 88.74 (B-18) – Photo Log**



Photo 5 – Full extension of 13' long tape measure under the Abutment 1 footing.

**Exhibit 3**

**From:** Keller, Michael <Michael.Keller@hdrinc.com>  
**Sent:** Monday, October 30, 2017 4:00 PM  
**To:** Elaine.Johnson@Wisconsin.gov  
**Cc:** Rute, Chris; Karl Rittmeyer  
**Subject:** CP Watertown BR 88.74 - Emergency Scour Repair - Request for 401 Approval  
**Attachments:** 2017-10-30 Watertown BR 88.74 - Request for 401 Approval.pdf

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

---

Elaine –

Attached is an advanced copy of a submittal to the WI DNR requesting 401 approval for an emergency scour repair project CP has planned for next week at Watertown BR 88.74. A hard copy of this submittal is in the mail, but I am emailing it to you today in order to give you as much time as possible for your review and response.

Please review and let me know if you have any comments or questions. Thanks in advance for your help.

Michael Keller, P.E.  
D 406.532.2233 M 406.546.8712

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**Karl Rittmeyer**  
Senior Bridge Engineer  
*East Region*

11306 Franklin Ave.  
Franklin Park, IL  
60131  
USA

Cell 224-500-4641  
Karl\_Rittmeyer@cpr.ca

October 30, 2017

Elaine Johnson  
Water Management Specialist  
WI DNR  
141 NW Barstow, Room 180  
Waukesha, WI 53188

**RE: Canadian Pacific – Watertown BR 88.74 (B-18), Emergency Scour Repair**

On behalf of Canadian Pacific (CP), I am writing to request WIDNR water quality certification under Section 401 of the Clean Water Act from the WI DNR. This is required under General Condition 26 of the USACE Regional (non-reporting) General Permit GP-002-WI. CP must repair a scoured condition under Abutment 1 of Watertown BR 88.74 (B-18).

Please find included with this submittal:

- Exhibit drawing containing the proposed project layout and elevation view showing the scour mitigation measures planned.
- Photo log of the existing conditions.

We believe this work qualifies as a non-reporting project under Regional General Permit GP-002-WI and does not require an individual Section 404 permit application for the following reasons:

- The project will repair an existing, previously authorized, currently serviceable structure, which will maintain the same use of carrying railroad traffic as when it was authorized. The existing structure is considered previously authorized as it was in place prior to December 18, 1968 (see 33 CFR 330.3).
- The structure is being restored to its original condition by pumping grout underneath the existing footing.
- Stream channel modifications, which are immediately adjacent to the structure and on CPR Right-of-Way, are limited to the minimum necessary and are intended to hold the channel elevation and prevent further undermining of the abutment.

Therefore, a copy of the enclosed information for this work is being sent to the US Army Corps of Engineers and the City of Milwaukee Floodplain Administrator for their information purposes only.

Watertown BR 88.74 is located in Miller Valley, WI crossing over the Menomonee River at these coordinates (43.042426, -87.972293). As shown in the attached drawing, CP plans to pump grout beneath the footing of Abutment 1 to fill any voids that exist; the total volume of grout is unknown. Additionally, in order to prevent further erosion of the river bed within Span 1, 1900 square feet of grout mats will be placed on the river bed.

As recently confirmed by the Surface Transportation Board, state and local permitting or preclearance requirements (including, but not limited to, building permits, zoning ordinances, and environmental and land use permitting requirements) are categorically preempted for the construction of rail facilities by the ICC Termination

Act of 1995 (ICCTA). *See Soo Line Railroad Company-Pet. For Declaratory Order*, FD 35850 at 4 (STB Dec. 22, 2014). Accordingly, this letter shall serve as notice that we are choosing to forgo the State of Wisconsin and City of Milwaukee permitting process. This letter and application is additionally being shared with the WI DNR for the purpose of meeting General Condition 26 of the USACE Regional General Permit GP-002-WI.

It is CP's intent to begin the emergency work the week of November 6th with the Contractor using State of Wisconsin Best Management Practices to protect the waterway during low flows. Material excavated and not reused in the project will be removed and disposed of off site. Native grasses will be planted on disturbed areas when work is complete.

Should you have any questions please feel free to contact HDR Project Manager Michael Keller at 406-532-2233 or myself at 224-500-4641.

Sincerely,



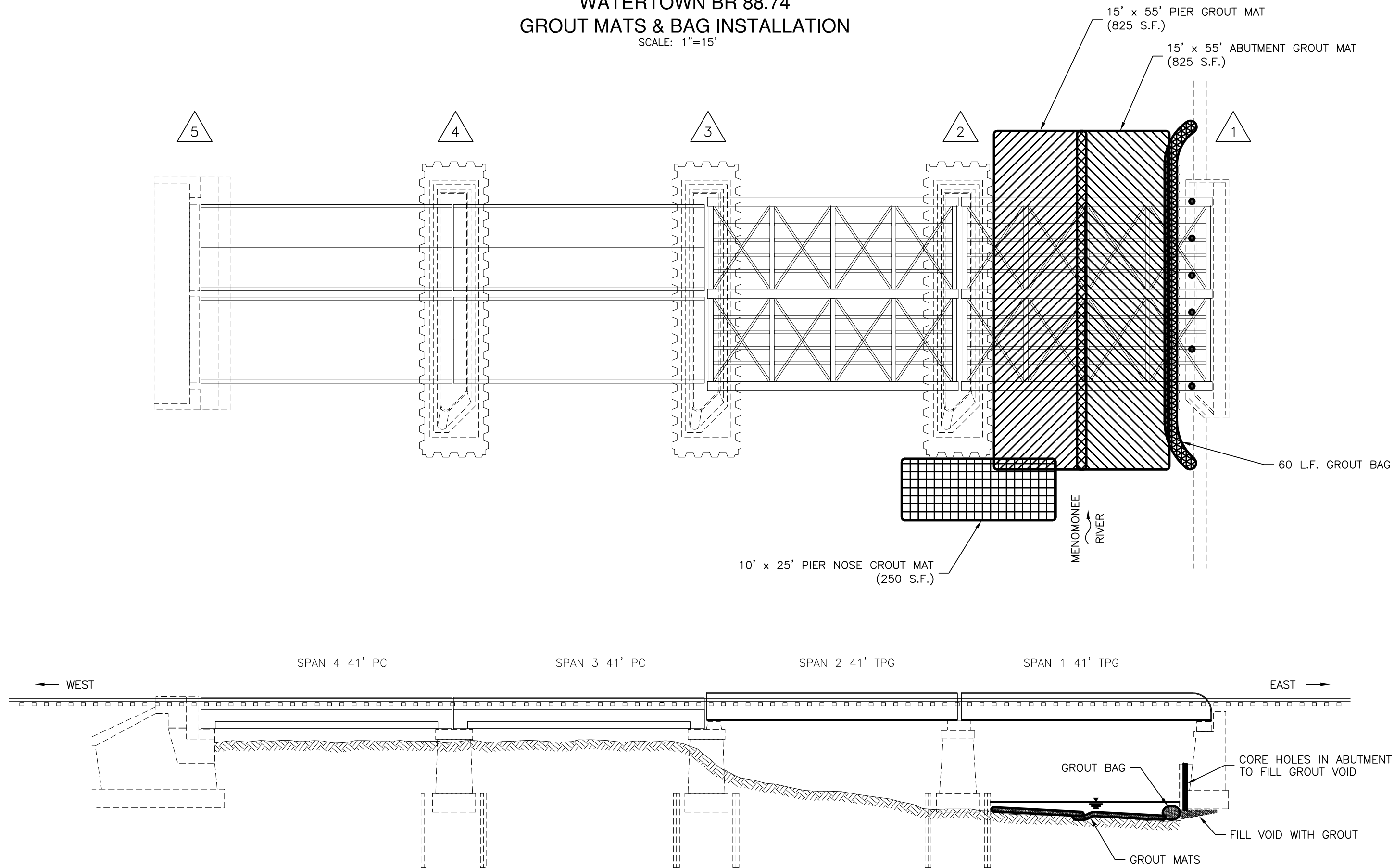
Karl Rittmeyer  
Senior Bridge Engineer – East Region

Cc: US Army Corps of Engineers, St. Paul District – Regulatory, 180 5<sup>th</sup> Street  
East, Suite 700, St. Paul, MN 55101  
Chris Rute, Floodplain Administrator – City of Milwaukee, 809 N Broadway,  
Milwaukee, WI 53202  
Wisconsin DNR Service Center, 141 NW Barstow, Room 180, Waukesha, WI  
53188

encl

# WATERTOWN BR 88.74 GROUT MATS & BAG INSTALLATION

SCALE: 1"=15'



## CPR Watertown BR 88.74 (B-18) – Photo Log



Photo 1 – Looking southeast at Abutment 1 of BR 88.74.



Photo 2 – Looking southeast at Abutment 1 of BR 88.74.



## CPR Watertown BR 88.74 (B-18) – Photo Log



Photo 3 – Tape measure extended 5' beneath footing of Abutment 1.



Photo 4 – Looking below the bottom of the sheet piling and into the void beneath the footing of Abutment 1.

**CPR Watertown BR 88.74 (B-18) – Photo Log**



Photo 5 – Full extension of 13’ long tape measure under the Abutment 1 footing.

**Exhibit 4**

**From:** Johnson, Elaine M - DNR <Elaine.Johnson@wisconsin.gov>  
**Sent:** Thursday, November 2, 2017 2:47 PM  
**To:** Keller, Michael  
**Cc:** Rute, Chris; Karl Rittmeyer; Helker, Craig D - DNR; Scott, Michelle M - DNR; Hase, Michelle M - DNR; Marcangeli, April N MVP (April.N.Marcangeli@usace.army.mil)  
**Subject:** RE: CP Watertown BR 88.74 - Emergency Scour Repair - Request for 401 Approval

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

---

Good afternoon Michael,

Thank you for contacting me regarding this activity.

I know the narrative indicates the coordinates of the repair project, but could you provide a location map for the project area?

In terms of approvals, the DNR regulates work activities and structures placed on navigable waterways under Chapter 30. As such, the work would require a Chapter 30 permit from the DNR (if the work does not meet any exemption standards).

Prior to conducting work activities, it is important to note that placement of grout mats is not a practice that would be approvable in this waterway for the reasons outlined below. If stabilization is needed, traditional rock should be used. Additionally, final elevation, bed elevation surveys up and downstream, and information on prep work that is needed should be provided.

Bed erosion may be occurring through this stretch, but an emergency fix on a localized area without bed elevation surveys up and downstream may:

- Result in fish passage impediments
- Alter flood elevations
- Increase downstream erosion

There have been several projects that have occurred and are occurring on the Menomonee River in order to restore it to a more naturalized state. A grout mat, if installed without taking into account fluvial processes, may present risk to infrastructure and fish passage. As such, it's recommended that the plan be revised to an alternative method. Please feel free to forward additional information to me for review prior to applying for a Chapter 30 permit.

Information on the DNR Waterways and Wetlands Program can be found online at: <http://dnr.wi.gov/topic/Waterways/>

Thank you,  
Elaine

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Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

**Elaine Johnson**

Water Management Specialist covering northern Milwaukee, Kenosha, and Walworth Counties – WT/WD  
Wisconsin Department of Natural Resources  
141 NW Barstow St., Room 180, Waukesha, WI 53188

Phone: 262-574-2136

[elaine.johnson@wi.gov](mailto:elaine.johnson@wi.gov)

[dnr.wi.gov](http://dnr.wi.gov)



For information on our program, visit: <http://dnr.wi.gov/topic/Waterways/>

---

**From:** Keller, Michael [mailto:Michael.Keller@hdrinc.com]

**Sent:** Monday, October 30, 2017 4:00 PM

**To:** Johnson, Elaine M - DNR <Elaine.Johnson@wisconsin.gov>

**Cc:** Rute, Chris <Chris.Rute@milwaukee.gov>; Karl Rittmeyer (Karl\_Rittmeyer@cpr.ca) <Karl\_Rittmeyer@cpr.ca>

**Subject:** CP Watertown BR 88.74 - Emergency Scour Repair - Request for 401 Approval

Elaine –

Attached is an advanced copy of a submittal to the WI DNR requesting 401 approval for an emergency scour repair project CP has planned for next week at Watertown BR 88.74. A hard copy of this submittal is in the mail, but I am emailing it to you today in order to give you as much time as possible for your review and response.

Please review and let me know if you have any comments or questions. Thanks in advance for your help.

**Michael Keller**, P.E.

**D** 406.532.2233 **M** 406.546.8712

[hdrinc.com/follow-us](http://hdrinc.com/follow-us)

**Rittmeyer V.S. Exhibit 4**

**Exhibit 5**

**From:** Johnson, Jeff K <Jeff.K.Johnson@hdrinc.com>  
**Sent:** Friday, November 3, 2017 3:30 PM  
**To:** Elaine.Johnson@wisconsin.gov  
**Cc:** Chris.Rute@milwaukee.gov; Craig.Helker@wisconsin.gov; Michelle.Scott@wisconsin.gov; Michelle.Hase@wisconsin.gov; April.N.Marcangeli@usace.army.mil; Karl Rittmeyer; Keller, Michael  
**Subject:** RE: CP Watertown BR 88.74 - Emergency Scour Repair - Request for 401 Approval  
**Attachments:** CP - Watertown BR 88.74 - Vicinity Map.pdf  
**Importance:** High

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

---

Elaine –

Mike asked me to contact you, as he was unavailable, and traveling yesterday and today. I've left you a second voice mail to discuss the following items as they relate to your previous email.

Thanks for your timely response. Please find attached a vicinity map for the project area.

As described in the application letter CP has chosen to forgo the State of Wisconsin permitting process (including a Chapter 30 permit) and is only requesting 401 Water Quality Certification approval at this time for compliance with General Condition 26 of the USACE Regional (non-reporting) General Permit GP-0020WI.

CP believes that the currently proposed work constitutes the minimal adverse impacts to the extent practicable for the following reasons:

- The existing channel has scoured out more than 10 feet of material at the abutment (slightly less at the pier) since its construction. The scour has reached the base of the existing substructure and is reducing the structure stability, therefore requiring immediate action.
- The existing substructure is a spread footing type foundation and is already significantly undermined; as such, excavation of any sort in front of the foundation or in the existing stream bed would further undermine the footing and cause further stability issues and is not feasible.
- The use of riprap was deemed not feasible for the following additional reasons:
  - The anticipated water velocities coupled with the existing scoured condition would require a relatively large diameter riprap (~D50 = 2.0 ft) to safely protect the bridge. The placement of this riprap in a stable configuration to protect the bridge from further scour would require a mat approximately 5.0 feet in depth. Because the stream has eroded to the base of the footing, excavation of the existing channel 5.0 feet for its placement is not feasible. Placing the riprap on top of the existing stream bed to partially restore the original ground conditions was also deemed to be too impactful in regards to obstruction of high flows, aquatic life moments, etc. (many of the concerns you noted below but to a much greater extent).
  - Correcting the loss of material under the existing substructure will require pressure grouting. The use of porous riprap will not contain the grout to within the abutment footprint, thereby reducing the pressure applied to the grout below the abutment, making it not as effective in restoring the structures stability.
  - The use of riprap would require the use of heavy machinery to transport and place the material within the existing channel.

After consideration of the above, CP chose to use a 8 inch thick articulated grout mat as the minimally invasive alternative. The mat will stabilize the existing stream bed without excavation allowing for the least impacts to high flows and aquatic life than other alternatives. The grout mat will abut the existing abutment allowing grout to be pressure injected at a reasonable pressure to increase the foundation's stability. The inherent nature of the mat allows for a shorter construction period with smaller, fewer pieces of equipment within the stream bed that can take place with such short notice minimizing the impacts.

The current conditions necessitate immediate remediation and CP plans to move forward with the work scheduled to start the week of November 6<sup>th</sup>, 2017. We appreciate your timely response and all comments/suggestions/modifications that will minimize impacts to the extent practicable.

Thanks for your help thus far,

Jeff Johnson, PE  
*Railroad Bridge Engineer*

HDR  
700 SW Higgins Avenue, Suite 200  
Missoula, MT 59803-1489  
D 406.532.2230  
jeff.k.johnson@hdrinc.com

hdrinc.com/follow-us

---

**From:** "Johnson, Elaine M - DNR" <[Elaine.Johnson@wisconsin.gov](mailto:Elaine.Johnson@wisconsin.gov)>  
**Date:** November 2, 2017 at 13:46:50 MDT  
**To:** "Keller, Michael" <[Michael.Keller@hdrinc.com](mailto:Michael.Keller@hdrinc.com)>  
**Cc:** "Rute, Chris" <[Chris.Rute@milwaukee.gov](mailto:Chris.Rute@milwaukee.gov)>, "Karl Rittmeyer ([Karl\\_Rittmeyer@cpr.ca](mailto:Karl_Rittmeyer@cpr.ca))" <[Karl\\_Rittmeyer@cpr.ca](mailto:Karl_Rittmeyer@cpr.ca)>, "Helker, Craig D - DNR" <[Craig.Helker@wisconsin.gov](mailto:Craig.Helker@wisconsin.gov)>, "Scott, Michelle M - DNR" <[Michelle.Scott@wisconsin.gov](mailto:Michelle.Scott@wisconsin.gov)>, "Hase, Michelle M - DNR" <[Michelle.Hase@wisconsin.gov](mailto:Michelle.Hase@wisconsin.gov)>, "Marcangeli, April N MVP ([April.N.Marcangeli@usace.army.mil](mailto:April.N.Marcangeli@usace.army.mil))" <[April.N.Marcangeli@usace.army.mil](mailto:April.N.Marcangeli@usace.army.mil)>  
**Subject:** RE: CP Watertown BR 88.74 - Emergency Scour Repair - Request for 401 Approval

Good afternoon Michael,

Thank you for contacting me regarding this activity.

I know the narrative indicates the coordinates of the repair project, but could you provide a location map for the project area?

In terms of approvals, the DNR regulates work activities and structures placed on navigable waterways under Chapter 30. As such, the work would require a Chapter 30 permit from the DNR (if the work does not meet any exemption standards).

Prior to conducting work activities, it is important to note that placement of grout mats is not a practice that would be approvable in this waterway for the reasons outlined below. If stabilization is needed, traditional rock should be used. Additionally, final elevation, bed elevation surveys up and downstream, and information on prep work that is needed should be provided.

Bed erosion may be occurring through this stretch, but an emergency fix on a localized area without bed elevation surveys up and downstream may:



- Result in fish passage impediments
- Alter flood elevations
- Increase downstream erosion

There have been several projects that have occurred and are occurring on the Menomonee River in order to restore it to a more naturalized state. A grout mat, if installed without taking into account fluvial processes, may present risk to infrastructure and fish passage. As such, it's recommended that the plan be revised to an alternative method. Please feel free to forward additional information to me for review prior to applying for a Chapter 30 permit.

Information on the DNR Waterways and Wetlands Program can be found online at: <http://dnr.wi.gov/topic/Waterways/>

Thank you,  
Elaine

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**Elaine Johnson**

Water Management Specialist covering northern Milwaukee, Kenosha, and Walworth Counties – WT/WD  
Wisconsin Department of Natural Resources  
141 NW Barstow St., Room 180, Waukesha, WI 53188  
Phone: 262-574-2136

[elaine.johnson@wi.gov](mailto:elaine.johnson@wi.gov)

[dnr.wi.gov](http://dnr.wi.gov)



For information on our program, visit: <http://dnr.wi.gov/topic/Waterways/>

---

**From:** Keller, Michael [<mailto:Michael.Keller@hdrinc.com>]

**Sent:** Monday, October 30, 2017 4:00 PM

**To:** Johnson, Elaine M - DNR <[Elaine.Johnson@wisconsin.gov](mailto:Elaine.Johnson@wisconsin.gov)>

**Cc:** Rute, Chris <[Chris.Rute@milwaukee.gov](mailto:Chris.Rute@milwaukee.gov)>; Karl Rittmeyer ([Karl\\_Rittmeyer@cpr.ca](mailto:Karl_Rittmeyer@cpr.ca)) <[Karl\\_Rittmeyer@cpr.ca](mailto:Karl_Rittmeyer@cpr.ca)>

**Subject:** CP Watertown BR 88.74 - Emergency Scour Repair - Request for 401 Approval

Elaine –

Attached is an advanced copy of a submittal to the WI DNR requesting 401 approval for an emergency scour repair project CP has planned for next week at Watertown BR 88.74. A hard copy of this submittal is in the mail, but I am emailing it to you today in order to give you as much time as possible for your review and response.

Please review and let me know if you have any comments or questions. Thanks in advance for your help.

Michael Keller, P.E.

D 406.532.2233 M 406.546.8712


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# Vicinity Map

Canadian Pacific  
Watertown Sub  
Bridge 88.74 (B-18)

## Legend

 CPR - Br. 88.74 (B-18) - Watertown (2016)

CPR - Br. 88.74 (B-18) - Watertown (2016)

Google earth

© 2017 Google



600 ft

Rittmeyer V.S. Exhibit 5

**Exhibit 6**

**From:** Keller, Michael <Michael.Keller@hdrinc.com>  
**Sent:** Friday, November 10, 2017 12:38 PM  
**To:** Johnson, Elaine M - DNR; Johnson, Jeff K  
**Cc:** Chris.Rute@milwaukee.gov; Helker, Craig D - DNR; Scott, Michelle M - DNR; Hase, Michelle M - DNR; April.N.Marcangeli@usace.army.mil; Karl Rittmeyer; Peterson, Cami L - DNR; Daniel Miller; Corey Rohrbeck; Jeff Owen  
**Subject:** RE: CP Watertown BR 88.74 - Emergency Scour Repair - Request for 401 Approval

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

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Elaine -

Thank you for the update and response. Responses to your bulleted items are as follows:

- As indicated in the prior submittal documents, the proposed repairs are all considered to be emergency work. The existing spread footing supporting Abutment 1 has been severely undermined by a shifting river channel, which has drastically lowered and shifted to flow primarily under Spans 1 and 2 (vs. Spans 2 and 3 when originally constructed). Grout will be pumped under the footing of Abutment 1, a grout bag placed and filled to armor the toe of the existing sheet piling, and an 8" thick grout mat will be placed on the bottom of the channel beneath Span 1 and upstream of Pier 2 to prevent further channel degradation. The bridge is not currently closed, but it is being closely monitored until the repairs are completed. It is imperative that these critical repairs are completed to ensure the bridge can continue to safely carry interstate train traffic.
- The proposed repairs will begin the week of November 13th with an anticipated completion date of November 24th. The Contractor will stage materials and equipment at an upland location adjacent the East abutment. Grout mats will be 8" thick and the grout bags will be up to 36" in diameter. Grout will be pumped via a concrete line pump into the fabric forms for the mats and bags. Once cured, the fabric grout bag will act as a watertight form/barrier to pump grout into the voided abutment footing. There will be no mechanical excavation in the riverbed, all mats and bags will be placed over the existing contours.

For the same reasons Jeff outlined to you last Friday, use of another river stabilization means, such as riprap, is not considered to be feasible based on the required excavation requirements to install a suitable size riprap blanket. For the reasons already explained, excavation in Span 1 is not feasible without risking failure to the bridge. It is also not feasible to place riprap without completing excavation, as a 5' thick riprap blanket laid on the existing river bed would block the low flow channel, thereby causing a greater concern for fish passage during low flows and likely causing changes to the water levels during a flood event. You mentioned previously that projects are underway to return the river to a more natural state; in this regard, CP would be interested in the DNR returning the river to flow between Spans 2 and 3, elevating the thalweg to its original elevation through the bridge when it was originally built, and armoring the channel and banks with riprap at that time.

We appreciate your ability to work with CP regarding the water quality certification and look forward to hearing back from you at your earliest convenience. Please let us know if you need further information in order to provide a 401 water quality certification for this work. Thank you for your help.

**Michael Keller**, P.E.  
D 406.532.2233 M 406.546.8712

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---

**From:** Johnson, Elaine M - DNR [mailto:Elaine.Johnson@wisconsin.gov]  
**Sent:** Wednesday, November 8, 2017 7:07 AM  
**To:** Johnson, Jeff K <Jeff.K.Johnson@hdrinc.com>; Keller, Michael <Michael.Keller@hdrinc.com>  
**Cc:** Chris.Rute@milwaukee.gov; Helker, Craig D - DNR <Craig.Helker@wisconsin.gov>; Scott, Michelle M - DNR <Michelle.Scott@wisconsin.gov>; Hase, Michelle M - DNR <Michelle.Hase@wisconsin.gov>; April.N.Marcangeli@usace.army.mil; Karl Rittmeyer <Karl\_Rittmeyer@cpr.ca>; Peterson, Cami L - DNR

<Cami.Peterson@wisconsin.gov>

**Subject:** RE: CP Watertown BR 88.74 - Emergency Scour Repair - Request for 401 Approval

Good morning Jeff & Michael:

As a follow-up to my email below, WDNR staff has met internally to discuss the request. The WDNR would have regulatory authority over the work under Chapter 30 of the Wisconsin Statutes. However, if this work does in fact meet the federal non-reporting general permit with the Corps, the state can work with CP to issue a water quality certification for only the immediate repairs that may be needed to the bridge pilings (the grout injection and bag footer at the toe of the piling). In order to evaluate the request, we would need a little more information on:

- Please let us know more about the emergency/safety aspects of the repair, whether the bridge is now closed, what repairs are immediately needed, etc.
- Construction means and methods, narrative indicating how the work will be done, staging areas, grout bag size, how the material will be pumped into the bridge pilings, what type of best management practices will be used to prevent any materials from entering the stream during work activities, etc.

However, approval of the installation of a grout mat would not be supported for the reasons outlined in my below email dated 11/2/2017. Installation of rock or other stabilization methods in the river would typically be regulated under Chapter 30 of the Wisconsin Statutes.

Please let me know if you would like to set-up a time for a call to discuss this further. It would be beneficial to have the local Army Corps project manager, April Marcangeli (copied on this email), present to discuss federal permitting of the project.

Thank you,  
Elaine

**We are committed to service excellence.**

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

### Elaine Johnson

Water Management Specialist covering northern Milwaukee, Kenosha, and Walworth Counties – WT/WD  
Wisconsin Department of Natural Resources  
141 NW Barstow St., Room 180, Waukesha, WI 53188  
Phone: 262-574-2136

[elaine.johnson@wi.gov](mailto:elaine.johnson@wi.gov)

[dnr.wi.gov](http://dnr.wi.gov)



For information on our program, visit: <http://dnr.wi.gov/topic/Waterways/>

---

**From:** Johnson, Elaine M - DNR

**Sent:** Friday, November 03, 2017 4:25 PM

**To:** Johnson, Jeff K <[Jeff.K.Johnson@hdrinc.com](mailto:Jeff.K.Johnson@hdrinc.com)>; Keller, Michael <[Michael.Keller@hdrinc.com](mailto:Michael.Keller@hdrinc.com)>

**Cc:** [Chris.Rute@milwaukee.gov](mailto:Chris.Rute@milwaukee.gov); Helker, Craig D - DNR <[Craig.Helker@wisconsin.gov](mailto:Craig.Helker@wisconsin.gov)>; Scott, Michelle M - DNR <[Michelle.Scott@wisconsin.gov](mailto:Michelle.Scott@wisconsin.gov)>; Hase, Michelle M - DNR <[Michelle.Hase@wisconsin.gov](mailto:Michelle.Hase@wisconsin.gov)>;

[April.N.Marcangeli@usace.army.mil](mailto:April.N.Marcangeli@usace.army.mil); Karl Rittmeyer <[Karl.Rittmeyer@cpr.ca](mailto:Karl.Rittmeyer@cpr.ca)>; Peterson, Cami L - DNR

<[Cami.Peterson@wisconsin.gov](mailto:Cami.Peterson@wisconsin.gov)>

**Subject:** RE: CP Watertown BR 88.74 - Emergency Scour Repair - Request for 401 Approval

Hi Jeff,

Thank you for providing the below information and taking time to speak with me this afternoon regarding this project.

As discussed, I have been in touch with our state attorneys, who have indicated this work would need to obtain Chapter 30 authorization from the WDNR. We have set-up an internal call on Monday to discuss this further and will be in touch with you Monday or Tuesday next week.

Based on our call, you indicated:

- The USACOE St. Paul District was sent the same correspondence WDNR received this week and has not provided comment yet. However, the railroad believes the work meets the Corps GP.
- The nature of the emergency repairs was not known to you (you said you were not the best contact for this). You believe the railroad bridge may still be operational, with staff monitoring it. If you are able to between here and early next week, please let us know more about the emergency/safety aspects of the repair, whether the bridge is now closed, what repairs are immediately needed, etc.

Staff will be in touch with you early next week, Monday or Tuesday.

Thank you,  
Elaine

**We are committed to service excellence.**

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

#### Elaine Johnson

Water Management Specialist covering northern Milwaukee, Kenosha, and Walworth Counties – WT/WD  
Wisconsin Department of Natural Resources  
141 NW Barstow St., Room 180, Waukesha, WI 53188  
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[dnr.wi.gov](http://dnr.wi.gov)



For information on our program, visit: <http://dnr.wi.gov/topic/Waterways/>

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**From:** Johnson, Jeff K [<mailto:Jeff.K.Johnson@hdrinc.com>]

**Sent:** Friday, November 03, 2017 3:30 PM

**To:** Johnson, Elaine M - DNR <[Elaine.Johnson@wisconsin.gov](mailto:Elaine.Johnson@wisconsin.gov)>

**Cc:** [Chris.Rute@milwaukee.gov](mailto:Chris.Rute@milwaukee.gov); Helker, Craig D - DNR <[Craig.Helker@wisconsin.gov](mailto:Craig.Helker@wisconsin.gov)>; Scott, Michelle M - DNR <[Michelle.Scott@wisconsin.gov](mailto:Michelle.Scott@wisconsin.gov)>; Hase, Michelle M - DNR <[Michelle.Hase@wisconsin.gov](mailto:Michelle.Hase@wisconsin.gov)>; [April.N.Marcangeli@usace.army.mil](mailto:April.N.Marcangeli@usace.army.mil); Karl Rittmeyer <[Karl\\_Rittmeyer@cpr.ca](mailto:Karl_Rittmeyer@cpr.ca)>; Keller, Michael <[Michael.Keller@hdrinc.com](mailto:Michael.Keller@hdrinc.com)>

**Subject:** RE: CP Watertown BR 88.74 - Emergency Scour Repair - Request for 401 Approval

**Importance:** High

Elaine –

Mike asked me to contact you, as he was unavailable, and traveling yesterday and today. I've left you a second voice mail to discuss the following items as they relate to your previous email.

Thanks for your timely response. Please find attached a vicinity map for the project area.

As described in the application letter CP has chosen to forgo the State of Wisconsin permitting process (including a Chapter 30 permit) and is only requesting 401 Water Quality Certification approval at this time for compliance with General Condition 26 of the USACE Regional (non-reporting) General Permit GP-0020WI.

CP believes that the currently proposed work constitutes the minimal adverse impacts to the extent practicable for the following reasons:

- The existing channel has scoured out more than 10 feet of material at the abutment (slightly less at the pier) since its construction. The scour has reached the base of the existing substructure and is reducing the structure stability, therefore requiring immediate action.
- The existing substructure is a spread footing type foundation and is already significantly undermined; as such, excavation of any sort in front of the foundation or in the existing stream bed would further undermine the footing and cause further stability issues and is not feasible.
- The use of riprap was deemed not feasible for the following additional reasons:
  - The anticipated water velocities coupled with the existing scoured condition would require a relatively large diameter riprap (~D50 = 2.0 ft) to safely protect the bridge. The placement of this riprap in a stable configuration to protect the bridge from further scour would require a mat approximately 5.0 feet in depth. Because the stream has eroded to the base of the footing, excavation of the existing channel 5.0 feet for its placement is not feasible. Placing the riprap on top of the existing stream bed to partially restore the original ground conditions was also deemed to be too impactful in regards to obstruction of high flows, aquatic life moments, etc. (many of the concerns you noted below but to a much greater extent).
  - Correcting the loss of material under the existing substructure will require pressure grouting. The use of porous riprap will not contain the grout to within the abutment footprint, thereby reducing the pressure applied to the grout below the abutment, making it not as effective in restoring the structures stability.
  - The use of riprap would require the use of heavy machinery to transport and place the material within the existing channel.

After consideration of the above, CP chose to use a 8 inch thick articulated grout mat as the minimally invasive alternative. The mat will stabilize the existing stream bed without excavation allowing for the least impacts to high flows and aquatic life than other alternatives. The grout mat will abut the existing abutment allowing grout to be pressure injected at a reasonable pressure to increase the foundation's stability. The inherent nature of the mat allows for a shorter construction period with smaller, fewer pieces of equipment within the stream bed that can take place with such short notice minimizing the impacts.

The current conditions necessitate immediate remediation and CP plans to move forward with the work scheduled to start the week of November 6<sup>th</sup>, 2017. We appreciate your timely response and all comments/suggestions/modifications that will minimize impacts to the extent practicable.

Thanks for your help thus far,

**Jeff Johnson**, PE  
*Railroad Bridge Engineer*

**HDR**  
700 SW Higgins Avenue, Suite 200  
Missoula, MT 59803-1489  
D 406.532.2230  
[jeff.k.johnson@hdrinc.com](mailto:jeff.k.johnson@hdrinc.com)

[hdrinc.com/follow-us](http://hdrinc.com/follow-us)

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**From:** "Johnson, Elaine M - DNR" <[Elaine.Johnson@wisconsin.gov](mailto:Elaine.Johnson@wisconsin.gov)>  
**Date:** November 2, 2017 at 13:46:50 MDT  
**To:** "Keller, Michael" <[Michael.Keller@hdrinc.com](mailto:Michael.Keller@hdrinc.com)>  
**Cc:** "Rute, Chris" <[Chris.Rute@milwaukee.gov](mailto:Chris.Rute@milwaukee.gov)>, "Karl Rittmeyer ([Karl\\_Rittmeyer@cpr.ca](mailto:Karl_Rittmeyer@cpr.ca))" <[Karl\\_Rittmeyer@cpr.ca](mailto:Karl_Rittmeyer@cpr.ca)>, "Helker, Craig D - DNR" <[Craig.Helker@wisconsin.gov](mailto:Craig.Helker@wisconsin.gov)>, "Scott, Michelle M - DNR" <[Michelle.Scott@wisconsin.gov](mailto:Michelle.Scott@wisconsin.gov)>, "Hase, Michelle M - DNR" <[Michelle.Hase@wisconsin.gov](mailto:Michelle.Hase@wisconsin.gov)>,



"Marcangeli, April N MVP ([April.N.Marcangeli@usace.army.mil](mailto:April.N.Marcangeli@usace.army.mil))" <[April.N.Marcangeli@usace.army.mil](mailto:April.N.Marcangeli@usace.army.mil)>  
**Subject: RE: CP Watertown BR 88.74 - Emergency Scour Repair - Request for 401 Approval**

Good afternoon Michael,

Thank you for contacting me regarding this activity.

I know the narrative indicates the coordinates of the repair project, but could you provide a location map for the project area?

In terms of approvals, the DNR regulates work activities and structures placed on navigable waterways under Chapter 30. As such, the work would require a Chapter 30 permit from the DNR (if the work does not meet any exemption standards).

Prior to conducting work activities, it is important to note that placement of grout mats is not a practice that would be approvable in this waterway for the reasons outlined below. If stabilization is needed, traditional rock should be used. Additionally, final elevation, bed elevation surveys up and downstream, and information on prep work that is needed should be provided.

Bed erosion may be occurring through this stretch, but an emergency fix on a localized area without bed elevation surveys up and downstream may:

- Result in fish passage impediments
- Alter flood elevations
- Increase downstream erosion

There have been several projects that have occurred and are occurring on the Menomonee River in order to restore it to a more naturalized state. A grout mat, if installed without taking into account fluvial processes, may present risk to infrastructure and fish passage. As such, it's recommended that the plan be revised to an alternative method. Please feel free to forward additional information to me for review prior to applying for a Chapter 30 permit.

Information on the DNR Waterways and Wetlands Program can be found online at:  
<http://dnr.wi.gov/topic/Waterways/>

Thank you,  
Elaine

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Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

**Elaine Johnson**

Water Management Specialist covering northern Milwaukee, Kenosha, and Walworth Counties – WT/WD  
Wisconsin Department of Natural Resources

141 NW Barstow St., Room 180, Waukesha, WI 53188

Phone: 262-574-2136

[elaine.johnson@wi.gov](mailto:elaine.johnson@wi.gov)

[dnr.wi.gov](http://dnr.wi.gov)



For information on our program, visit: <http://dnr.wi.gov/topic/Waterways/>

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**From:** Keller, Michael [<mailto:Michael.Keller@hdrinc.com>]  
**Sent:** Monday, October 30, 2017 4:00 PM  
**To:** Johnson, Elaine M - DNR <[Elaine.Johnson@wisconsin.gov](mailto:Elaine.Johnson@wisconsin.gov)>  
**Cc:** Rute, Chris <[Chris.Rute@milwaukee.gov](mailto:Chris.Rute@milwaukee.gov)>; Karl Rittmeyer ([Karl\\_Rittmeyer@cpr.ca](mailto:Karl_Rittmeyer@cpr.ca))  
<[Karl\\_Rittmeyer@cpr.ca](mailto:Karl_Rittmeyer@cpr.ca)>  
**Subject:** CP Watertown BR 88.74 - Emergency Scour Repair - Request for 401 Approval

Elaine –

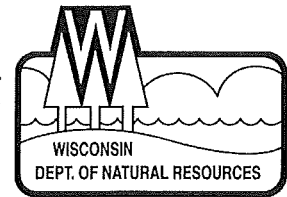
Attached is an advanced copy of a submittal to the WI DNR requesting 401 approval for an emergency scour repair project CP has planned for next week at Watertown BR 88.74. A hard copy of this submittal is in the mail, but I am emailing it to you today in order to give you as much time as possible for your review and response.

Please review and let me know if you have any comments or questions. Thanks in advance for your help.

**Michael Keller**, P.E.  
**D** 406.532.2233 **M** 406.546.8712

[hdrinc.com/follow-us](http://hdrinc.com/follow-us)

**Exhibit 7**



March 13, 2018

Certified Mail/Return Receipt Requested  
Milwaukee County

SOO Line Railroad Company  
C/O Real Estate  
501 Marquette Ave, STE 1525  
Minneapolis, MN 55402

Karl Rittmeyer  
11306 Franklin Ave.  
Franklin Park, IL 60131

Subject: **NOTICE OF VIOLATION AND ENFORCEMENT CONFERENCE REQUEST – April 5, 2018**

Dear Mr. Karl Rittmeyer,

The Department of Natural Resources (department) has reason to believe that SOO Line Railroad Company (SOO), a subsidiary of Canadian Pacific Railway, is in violation of state navigable waterway laws at Watertown BR 88.74 (B-18) bridge crossing, City of Milwaukee, Milwaukee County, Wisconsin (the site). These violations are based upon a site inspection and records review.

The department alleges the following violations:

1. **Section 30.12(1)a Wisconsin Statutes (Wis. Stats) states:** Permits required. Unless an individual or a general permit has been issued under this section or authorization has been granted by the legislature, no person may do any of the following: Deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established.
2. **Section 299.03(1) Wisconsin Administrative Code (Wis. Code):** No person may conduct any activity which may result in any discharge into the waters of the state unless the person has received a certification or waiver under this chapter.
  - On October 30, 2017, SOO contacted the department requesting a 401 Water Quality Certification for a non-reporting activity under their current RGP-002 (general permit) from the U.S. Army Corps of Engineers.
  - On November 2, 2017, the department informed SOO that a Chapter 30 permit would be required and recommended modification of the proposed project due to concerns the project may affect fish passage, alter flood elevations and cause downstream erosion.
  - On November 17, 2017, the department confirmed during a site visit that SOO installed a grout mat on the bed of the Menomonee River at Watertown BR 88.74 (B-18) bridge crossing without a Chapter 30 permit.
  - The general permit from the U.S. Army Corps of Engineers states that "All GP-002-WI authorizations are provisional, and require individual Section 401 Clean Water Act Water Quality Certification or waiver from the Wisconsin Department of Natural Resources" and "GP-002-WI authorizations are provisional and require that the WDNR provide confirmation that the activity complies with state water quality certification".

We have scheduled the following Enforcement Conference to discuss this matter in more detail:

Conference Date: Thursday, April 5, 2018  
Conference Time: 10:00am  
Location: DNR Service Center – Waukesha  
Conference Room 163  
141 NW Barstow St # 180, Waukesha, WI 53188

**Please come to the meeting prepared to discuss a restoration plan and permit requirements.**

We request you attend the Enforcement Conference as it is an important opportunity to discuss the circumstances surrounding the alleged violations and to learn your perspective on this matter. Please note that in an effort to encourage a candid and productive conversation, attendance is limited to you, your legal counsel and others with the technical expertise necessary to understand, evaluate and correct the violation.

The department's enforcement decision will be based upon available information if you do not attend the Enforcement Conference.

Please be advised, the department is authorized to seek injunctive or other appropriate relief for violations of navigable waterway laws, including forfeitures of up to \$5,000 per day. Each day of continued violation is a separate offense. In addition to the penalties, the court may order the defendant to perform or refrain from performing such acts as may be necessary to fully protect and effectuate the public interest in navigable waters. The court may order abatement of a nuisance, restoration of a natural resource or other appropriate action designed to eliminate or minimize any environmental damage caused by the defendant.

Pursuant to s. 30.292, Wis. Stats, Parties to a violation: Whoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

If you have questions or need to reschedule the conference, please contact me at 608-622-8247 or through email at [sadie.derouin@wi.gov](mailto:sadie.derouin@wi.gov).

Sincerely,



Sadie Derouin  
Environmental Enforcement Specialist

Encl: Environmental Enforcement Conference Information Sheet

cc: E. Johnson, DNR – Waukesha  
M. Scott, DNR – Waukesha  
M. Kowalkowski, DNR – LS/8  
April Marcangeli, U.S. Army Corps of Engineers  
Jeff Johnson, HDR Inc.  
Micheal Keller, HDR Inc.



## **Environmental Enforcement Conference**

An Enforcement Conference (EC) is a meeting between Department of Natural Resources staff and representatives of a person or business that the Department believes has violated an environmental law. The Department issues a Notice of Violation (NOV) when it has reason to believe that a violation of a permit condition, administrative rule or statutory requirement has occurred. The NOV either offers or schedules an EC.

### **Why Should I Attend?**

The EC is an important opportunity to discuss the Department's basis for the alleged violation(s) and learn more about what happened, why it may have happened, and any factors you believe the Department should consider, such as steps that have been or will be taken to stop the violation, correct any effects of the violation, and prevent violations from occurring in the future. It is also your opportunity to explain why you might disagree with the factual and legal conclusions underlying the NOV.

Historic data shows that most violations are resolved at the EC level, without the need for court ordered compliance and/or penalties. In situations where the significance of the violation warrants further enforcement action, your cooperative efforts to resolve the violation and prevent future violations will help minimize your legal and financial liability.

### **Who Should Attend the EC?**

Department staff involved in the EC typically consists of an Environmental Enforcement Specialist and regulatory staff that are familiar with the issues identified in the NOV.

While not required, you may seek representation by legal counsel or the assistance of an environmental consultant to prepare for and/or attend the EC. The EC is most productive when all involved are well-prepared to discuss the allegations and any corrective actions that may be necessary.

To ensure a productive candid discussion, participation in the EC is limited to the person or business involved and others with the legal or technical expertise necessary to understand, evaluate, mitigate and correct the violation. The EC is not an open meeting under state law and the Department will limit participation to those directly involved in the resolution of the matter.

### **What Happens if I don't Attend the EC?**

If a party is unable to attend the EC, they should immediately contact the Environmental Enforcement Specialist at the phone number in the NOV to reschedule. When a party refuses to attend the EC and provides no further information to the Department, the Department's enforcement decision will be based upon available information.

### **What Happens Following the EC?**

The EC is part of the Department's stepped enforcement process. At the EC, Department staff will explain the process and options available to address the alleged violation. Generally, the options range from closing the matter with no further action to referral to the Wisconsin Department of Justice (DOJ) or to U.S. EPA, for further enforcement action. In limited circumstances, the Department can issue citations, which are handled in local court similar to traffic offenses. If a case is referred to DOJ, the DOJ may initiate an action in court on behalf of the State. The State typically asks the Court to impose financial penalties and order completion of any necessary corrective actions. In most of the Department's cases, a cooperative return to compliance with any necessary restoration results in close out of the case. At close out, the Department will send a letter advising of no further enforcement action.

**Exhibit 8**

CP

**March 29, 2018**

**By U.S. Mail and E-mail**

Sadie Derouin  
Environmental Enforcement Specialist  
Department of Natural Resources  
State of Wisconsin  
3911 Fish Hatchery Rd.  
Fitchburg, WI 53711

**Re: Response to Notice of Violation and Enforcement Conference Request**

Dear Ms. Derouin:

Soo Line Railroad Company, d/b/a Canadian Pacific (“CP”), is in receipt of the Department of Natural Resources’ (“DNR”) Notice of Violation and Enforcement Conference Request letter (“NOV Letter”) dated March 13, 2018. The NOV Letter alleges violations of Wis. Stat. §§ 30.12(1)(a) and 299.03(1) relating to emergency scour repair work CP performed at Watertown BR 88.74(B-18). CP appreciates the opportunity to meet with the DNR to further discuss the NOV Letter.

Prior to a meeting, however, it is important that you understand why CP strongly believes its emergency repairs to BR 88.74 were appropriate and legally justified. As the DNR is aware, in October 2017 CP identified severe structural damage to BR 88.74 resulting from the scour of more than 10 feet of material at the base of the eastern bridge abutment, causing CP to have concerns about the structural integrity of the bridge. Because the bridge is located in a dense, urban area and is heavily used, carrying two passenger trains and up to sixteen freight trains daily, this was an emergency situation with a potential risk to public safety. The failure to take immediate action would have required CP to place the bridge out of service, significantly affecting interstate passenger and rail traffic.

CP therefore commenced repair work on the bridge as soon as possible. As CP has explained, given the extent of the scour in the river bed, the only feasible repair option involved the use of a grout mat to stabilize the bridge abutment. The use of riprap, which was suggested by the DNR, would have required additional excavation of the river bed in order to avoid significant impact to fish passage and the risk of flooding caused by placing riprap on the existing river bed. Such excavation was not possible without risking further damage to the bridge. Excavation also would have required using large equipment in and around the river. CP’s use of the grout mat therefore minimized environmental impacts compared to riprap or other alternatives.

CP understands that the request for riprap may have been motivated by ongoing re-naturalization efforts on the Menomonee River. CP would welcome the opportunity to discuss how the bridge can be part of the DNR’s ongoing re-naturalization efforts, but that issue is separate from the legality of CP’s conduct in making emergency repairs to the bridge.



In addition to being the only technically feasible option, CP's use of the grout mat was legally authorized. CP complied with the applicable USACE Regional General Permit GP-002-WI when conducting its repairs. The ICC Termination Act of 1995 ("ICCTA") preempts the DNR's attempts to require a permit and Section 401 certification for CP's repair work, as well as the DNR's current attempts to enforce the alleged violations cited in the NOV Letter. *See Soo Line R.R. Co. – Pet. for Declaratory Order*, FD 35850, 2014 WL 7330097, at \*4 (served Dec. 23, 2014) (ICCTA categorically preempts "state or local permitting or preclearance requirements, including building permits, zoning ordinances, and environmental and land use permitting requirements" for facilities that "are an integral part of rail transportation"). The *Soo Line* case involved the City of St. Paul's attempt to require CP to procure state permits, beyond its pending USACE permits, prior to performing work adjacent to the Mississippi River. Here, CP also believes that its USACE permit was sufficient for the work performed. Requiring CP to obtain state or local permits also would have placed an unreasonable burden on CP's ability to make these emergency repairs, particularly where CP selected the least intrusive alternative available to it.

Finally, CP is not aware of any statute or rule that authorizes the DNR to seek a penalty of \$5,000 per day for these alleged violations, or to seek injunctive relief without court involvement. Wisconsin statutes provide that a violation of Wis. Stat. §§ 30.12 to 30.21 may result in a one-time fine of no more than \$10,000, but only if "a penalty is not provided under the applicable section." Wis. Stat. § 30.298(1). The NOV Letter alleges that CP violated Wis. Stat. § 30.12(1)(a), which specifically provides for a one-time fine of "not more than \$1,000." Wis. Stat. § 30.12(5). Further, Wis. Stat. § 30.298(5) only authorizes a court to issue the injunctive relief referenced in the NOV Letter. In advance of our meeting, it would be helpful if you provide the applicable statutes or rules that specifically authorize the DNR to seek a \$5,000 daily penalty and injunctive relief, particularly without court involvement.

Finally, the CP personnel and consultant most familiar with the bridge repair (Karl Rittmeyer of CP and Michael Keller of HDR, Inc.) are not available on April 5. They are available on April 9 and on other dates later in April. Please let me know if April 9 will work for a meeting, or contact me so we can arrange a mutually agreeable time.

Thank you for your consideration of these matters. We look forward to our upcoming meeting.

Sincerely,



William M. Tuttle  
General Counsel U.S.  
Canadian Pacific Railway

cc: Karl Rittmeyer  
Scott Paradise  
E. Johnson, DNR – Waukesha  
M. Koalkowski, DNR – LS/8  
April Marcangeli, U.S. Army Corps of Engineers  
Jeff Johnson, HDR Inc.  
Michael Keller, HDR Inc.

**Exhibit 9**



4/27/2018

Certified Mail/Return Receipt Requested  
Milwaukee County

SOO Line Railroad Company  
C/O Real Estate  
501 Marquette Ave, STE 1525  
Minneapolis, MN 55402

Karl Rittmeyer  
11306 Franklin Ave.  
Franklin Park, IL 60131

**SUBJECT: Enforcement Conference Summary Letter 4/12/2018**

Dear Mr. Rittmeyer:

Thank you for attending the meeting with the Wisconsin Department of Natural Resources (department) to discuss the alleged violations of state navigable waterway laws at Watertown BR 88.74 (B-18) bridge crossing, City of Milwaukee, Milwaukee County, Wisconsin (the site).

Conference Date: Thursday, April 12, 2018  
Conference Time: 1:00pm  
Location: DNR Service Center- Fitchburg  
Bluff/Drumlin Room  
3911 Fish Hatchery Rd, Fitchburg, WI 53711

Attendance list is attached

**Discussion**

Representatives of the Canadian Pacific Railway (CP) explained to department staff that the railway at the site is used as a freight and commuter rail. This railway is required by the Federal Railroad Administration (FRA) to have annual inspections to ensure safe load capacity. During an October 2017 inspection by CP staff showed a significant void under the bridge, which was not recorded under previous inspections. Addressing structural concerns at the site was deemed to be an urgent priority by CP, due to concerns that settling could cause potholing on the tracks and potential train derailment.

CP indicated several alternatives to correct the issue were reviewed; 1) installation of rock riprap, 2) installation of a grout mat with grout injection, and 3) installation of new bridge piers. Options 1 and 3 were rejected by CP due to costs, timing, and belief that installation of riprap could be impactful to water flow and the floodplain. Option 2 was chosen by CP.

CP indicated the work was conducted by J.F. Brennan Company, Inc. Approximately 8 cubic yards of concrete was pumped into the bridge pier abutment. CP and HDR staff explained that these types of grout mats are designed to be unstable, break apart, and are not typically "keyed-in" to the substrate. CP stated they did not believe the 50-60 foot long grout mat would be an impediment to fish passage. They explained the mats span the entire width of the channel so as not to increase flow velocity and to protect the other bridge piers. CP provided a 1937 aerial photo showing the river in relation to the bridge piers.

Department staff explained that a Chapter 30 individual permit is required for the placement of a structure such as a grout mat on the bed of a navigable waterway. The U.S. Army Corps of Engineers GP-002 approval is not valid unless water quality certification is received from the department. This water quality certification is typically issued in the form of the Chapter 30 permit.

As part of the Chapter 30 application process, the department is instructed to review the project to determine that the structure or deposit will not materially obstruct navigation, will not reduce the flood flow capacity of the stream, and will not be detrimental to the public interest (i.e. navigation, fish and wildlife habitat, natural scenic beauty, water quality/quantity, recreation). Department staff explained the public trust concerns with the structure as installed at the site (see attached Department Project Comments list).

#### Agreements

CP maintains that state authorization is not required on this project, but is willing to work in good faith with the department to address concerns. CP informed the department that the Milwaukee Metropolitan Sewerage District (MMSD) has plans to perform stream habitat activities in the location of the bridge and want to be sure all parties are coordinating on these efforts. The department has agreed to provide CP with a list of concerns by 4/27/2018 and provide CP with 30 days to investigate options to mitigate those concerns (5/27/2018). It is understood by the department that some of these options may require additional time to investigate and requests that CP and/or their consultants check back with the department by the close of the 30 days with an update. The department requests that the final project be authorized under a Chapter 30 individual permit application.

Please note, as outlined in the Notice of Violation, the department may pursue escalated enforcement actions for the alleged violations. The department may seek forfeitures or other appropriate relief, such as a restoration order, through a referral to the Department of Justice.

If you have any technical questions, please call me at (262) 574-2136 or email [Elaine.Johnson@wisconsin.gov](mailto:Elaine.Johnson@wisconsin.gov).

Sincerely,



Elaine Johnson  
Water Management Specialist

**Exhibit 10**



May 25, 2018

**By E-mail Only**

Elaine Johnson  
Water Management Specialist  
Department of Natural Resources  
State of Wisconsin  
141 NW Barstow, Room 180  
Waukesha, WI 53188

**Re: Enforcement Conference Summary**

Dear Ms. Johnson:

Soo Line Railroad Company, d/b/a Canadian Pacific (“CP”), is in receipt of the Department of Natural Resources’ (“DNR”) 4/27/18 Summary Letter documenting the 4/12/2018 meeting between CP and the DNR regarding the emergency repair work CP completed last November at Watertown BR 88.74 over the Menomonee River. We appreciate you taking the time to summarize the discussion that occurred, but offer the following clarifications to the “Discussion” section of the summary that was provided:

- Approximately 8 CY of concrete was pumped “under” (not “into”) the east bridge abutment.
- The grout mat is designed to be able to flex and adjust with a changing river bed elevation and that this mat in particular was keyed in on the upstream end of the mat. The mat is not designed to break apart or be unstable.
- The mats span the entire width of the channel to prevent the streambed from lowering any further beneath Span 1 (east span) to mitigate potential future undermining of Abutment 1 or Pier 2. Our intent in installing the mat across the channel under Span 1 was not to “not increase flow velocity.” Maintaining channel velocity was a result of the scour mitigation.

Your letter of 4/27/2018 also included a complete list of DNR’s concerns about the project, most of which were discussed in the meeting. CP is still working towards developing one of the items you requested on the attachment titled “Department Project Comments,” but wanted to provide you with the information we have at this time. The following responses correlate numerically with the DNR’s comments provided in the attachment:

1. CP understands the WI DNR will issue a 401 water quality certification for the project. CP also understands that the DNR “typically” prefers to provide this certification in the form of a Section 30 permit issued under Wisconsin state law. As I indicated in my previous letter, CP strongly believes that any purported requirement that a railroad apply for and receive such a permit, in this context, is preempted by the Interstate Commerce Commission Termination Act of 1995. That said, CP will consider the Section 30 application process and I will address the issue further with your attorney, Mr. Kowalkowski, if necessary. As discussed, CP performs annual bridge inspections at all bridges on their system, this project location included, and will address future maintenance related issues of the grout mat in connection with those inspections.

2. CP is prepared to provide the following narrative signed/stamped by a licensed Wisconsin Professional Engineer stating “what work was performed and why:”

During the 2017 annual bridge inspection of Watertown BR 88.74 over the Menomonee River, CP discovered that the low flow channel of the river had migrated further east and was flowing directly in front of, and below, the east abutment. Due to low flow at the time of the inspection, the bottom of the sheet piling that exists in front of the abutment was exposed and the opportunity was taken to probe behind the sheet pile to confirm if any scour existed below the abutment spread footing. Extensive undermining of the footing was found and it was determined that a majority of the existing footing had been undermined, which could potentially cause the abutment to become unstable. This condition required emergency repair work to ensure the continued safe operation of passenger and freight railroad service at the location.

In addition to pumping grout under the Abutment 1 footing to restore the bearing capacity of the abutment, CP evaluated three options to stop the channel from scouring further, thereby protecting the stability of both Abutment 1 and Pier 2. The options considered and the reasons why it was or was not selected is as follows:

- a. **Rock Riprap:** Riprap is commonly used by CP to restore a river bank or protect a bridge pier or abutment, but it derives its protective ability from the interlock of large sized rocks of varying size installed in a large thickness “blanket;” drag and uplift forces that result from flowing water are therefore resisted by the mass of the individual rocks and frictional resistance of interlocked rocks. For velocities that this particular bridge experiences, rock riprap was estimated to require a  $D_{50}$  diameter of 1.80 ft. and require a thickness of up to 5 ft. Usually, riprap is buried and keyed in to the stream bank, but in this case further excavation of the channel was not feasible given the current undermined situation at Abutment 1 and Pier 2. Therefore, to install riprap to the depth and size required for the velocities at the site, the riprap would have been laid on the channel bottom and would have therefore obstructed flow, causing impacts to fish passage, floodplain, and other concerns. Riprap was determined not to be feasible given the inability to excavate in the channel to place the riprap and the need to maintain flows through the bridge opening.
- b. **Articulating Grout Bag Mat:** Articulating mats provide the same scour protection as riprap, but resist the river’s drag and uplift forces by physically tying each grout bag together by a connecting element (wire and interwoven fiberglass mesh in this case) to act as a unit. The upstream, leading edge of grout mats are typically keyed in to help prevent scour from undermining the mat and lifting the leading row of bags or blocks. The connected, but flexible nature of the mat then allows the mat to flex with the river bed should any scour occur along the edges of the mat. Articulating grout mats are more expensive than installing riprap, but their low profile (8” thick in this case) and scour protection qualities lent them to have the minimal adverse effect of any feasible option in this situation. This was the selected alternative.

Upon selecting the articulated grout bag mat as the proposed scour mitigation measure, it was deemed most effective to place the grout mat continuously between the west face of Abutment 1 and the east face of Pier 2 for several reasons. First, the mat loses strength the

smaller it is, as it uses the total weight of the mat to resist drag and uplift forces on the individual bags. Second, the industry standard recommended extension of a mat from the face of a pier is equal to 2 times the pier width. Pier 2 is approximately 10 ft. wide at the base, which necessitates that the mat extend 20 ft. from the face of Pier 2; while Abutment 1 is not fully exposed to stream flow, applying this same distance from the face of Abutment 1 causes the full channel width of the 42' long Span 1 to be protected by a grout mat. Third, if the center of the grout mat were removed leaving a small width of exposed natural channel bottom, it is likely the river bed would continue to erode and the stability of Abutment 1 and Pier 2 would remain in question.

- c. **Pier/Abutment Replacement:** While replacement of Abutment 1 and Pier 2 was a feasible alternative, the high construction cost, long lead time to construct, and impact to train operations during construction did not make this a suitable alternative. Replacement of either or both Abutment 1 and Pier 2 would have likely necessitated the replacement of Spans 1 and 2 as well, given the inability to replace the Piers exactly where they are now and limitations on superstructure depth. Pier/Abutment Replacement was immediately ruled out as an alternative.
3. CP will provide a figure within 60 days of this letter showing the channel elevations taken prior to the installation of the grout mat and will superimpose the grout mat on top of them, thereby documenting the as-built condition.
  4. As discussed at the meeting, CP does not believe the grout mat installation was the cause of the low flow channel shifting to the east, just in front of Abutment 1, nor is it causing water velocities to speed up appreciably.
    - a. As Photo 1 of the permit package CP sent to the WI DNR on 10/30/2017 (attached as Exhibit 1 hereto) shows, the channel was already isolated to flow just in front of the east abutment; in this photo, flows are very low and the channel depth is extremely shallow. Comparing this photo to an as-built, post-grout mat installation photo taken by CP (attached as Exhibit 2), the low flow channel has been moved away from the abutment wall to the west, and remains similarly concentrated at low flow conditions. CP believes that any impediment to fish passage remains materially unchanged from conditions existing prior to the bridge repairs.
    - b. From a HEC-RAS water modeling perspective, the channel roughness prior to the grout mat installation would likely have been assumed to have a Manning's n coefficient of 0.03 to 0.035. Based on the size and installation method of the grout mat used in this project, it is estimated that the Manning's n coefficient would not substantially change and would be of a similar order of magnitude as the original channel bottom, at approximately 0.035 to 0.045. CP has inquired with the manufacturer to determine if it has actual data in this regard. As information, the higher the number, the rougher the substrate is considered to be, with water velocities generally reducing as the roughness increases. From an engineering perspective, CP believes the channel roughness is materially unchanged, or perhaps nominally rougher, than conditions existing prior to the bridge repairs.



- c. In CP's experience, riprap installations look very similar to grout mats in their uniformity, and small resting pools for fish to do not occur within a riprapped bank/slope. The pre- and post-construction photos at Watertown BR 88.74 show that the deeper pool downstream of the bridge remains and has not been disturbed. Additionally, the addition of an 8" mat on top of the existing channel bottom seemingly helped to create an 8" minimum deep pool on the upstream side of the mat.
5. The pre- and post-construction photos show the flow characteristics are materially unchanged at similar low flow rates. In both photos, it is apparent that navigation at flow rates such as these would be very difficult, if not impossible. Similarly, after comparing both photos, it appears that the pre-repair channel bottom (with larger rocks sporadically situated across/within the channel) presented as much or more of an obstruction to navigation as the post-repair channel with grout mats.
6. We agree that the grout mat does not look as natural as riprap might have looked had it been feasible. However, given the situational context of the grout mat and where it was placed, in an urban river that is already highly channelized with concrete lining up and downstream of this structure, CP does not believe that use of the grout mats resulted in any significant aesthetic impairment.
7. As stated previously, CP performs annual bridge inspections at this project location and is prepared to address maintenance related issues of the grout mat, and bridge as a whole, in order to ensure the safe passage of freight and passenger trains over the structure. Any frayed wires identified during annual bridge inspection scour assessments will be removed. CP believes that premature cutting of the wire loops would likely increase the risk for a frayed wire and could affect the stability of the grout mat installation.

Thank you for your consideration of these matters. We will provide you with a figure showing the as-built contours. Please let us know if there is any other information that you need in the meantime. We look forward to working towards a resolution that is satisfactory to both your agency and CP.

Sincerely,



William M. Tuttle  
General Counsel U.S.

cc: Karl Rittmeyer  
Scott Paradise  
M. Kowalkowski, DNR  
Michelle Scott, DNR  
Michelle Hace, DNR  
Craig Helker, DNR  
Sadie Derouin, DNR  
April Marcangeli, U.S. Army Corps of Engineers  
Jeff Johnson, HDR Inc.  
Michael Keller, HDR Inc.

**Exhibit 1:** The photo is looking southeast at Abutment 1 and Span 1 of Watertown BR 88.74 and shows the project site prior to placement of the grout bag mat. This photo was originally provided to the WIDNR as Photo 1 in the October 30, 2017 letter requesting a Section 401 Water Quality Certification.



**Exhibit 2:** The photo is looking southeast at Abutment 1 and Span 1 of Watertown BR 88.74 and shows the project site after placement of the grout bag mat.



**Exhibit 11**



July 31, 2018

**By E-mail Only**

Elaine Johnson  
Water Management Specialist  
Department of Natural Resources  
State of Wisconsin  
141 NW Barstow, Room 180  
Waukesha, WI 53188

**Re: Enforcement Conference Summary**

Dear Ms. Johnson:

I am writing to follow up on my letter of May 25, 2018. Attached please find two exhibits, depicting the stream bed contour of the Menomonee River at Watertown BR 88.74. The first shows the contour in 2015, prior to CP's bridge work. The second shows the contour as of July 19, 2018. CP believes these exhibits further demonstrate that stream topography was not significantly altered as a result of CP's work.

Sincerely,

A handwritten signature in cursive script that reads "William M. Tuttle".

William M. Tuttle  
General Counsel U.S.

cc: Karl Rittmeyer  
Scott Paradise  
M. Kowalkowski, DNR  
Michelle Scott, DNR  
Michelle Hace, DNR  
Craig Helker, DNR  
Sadie Derouin, DNR  
April Marcangeli, U.S. Army Corps of Engineers  
Jeff Johnson, HDR Inc.  
Michael Keller, HDR Inc.

Exhibit I

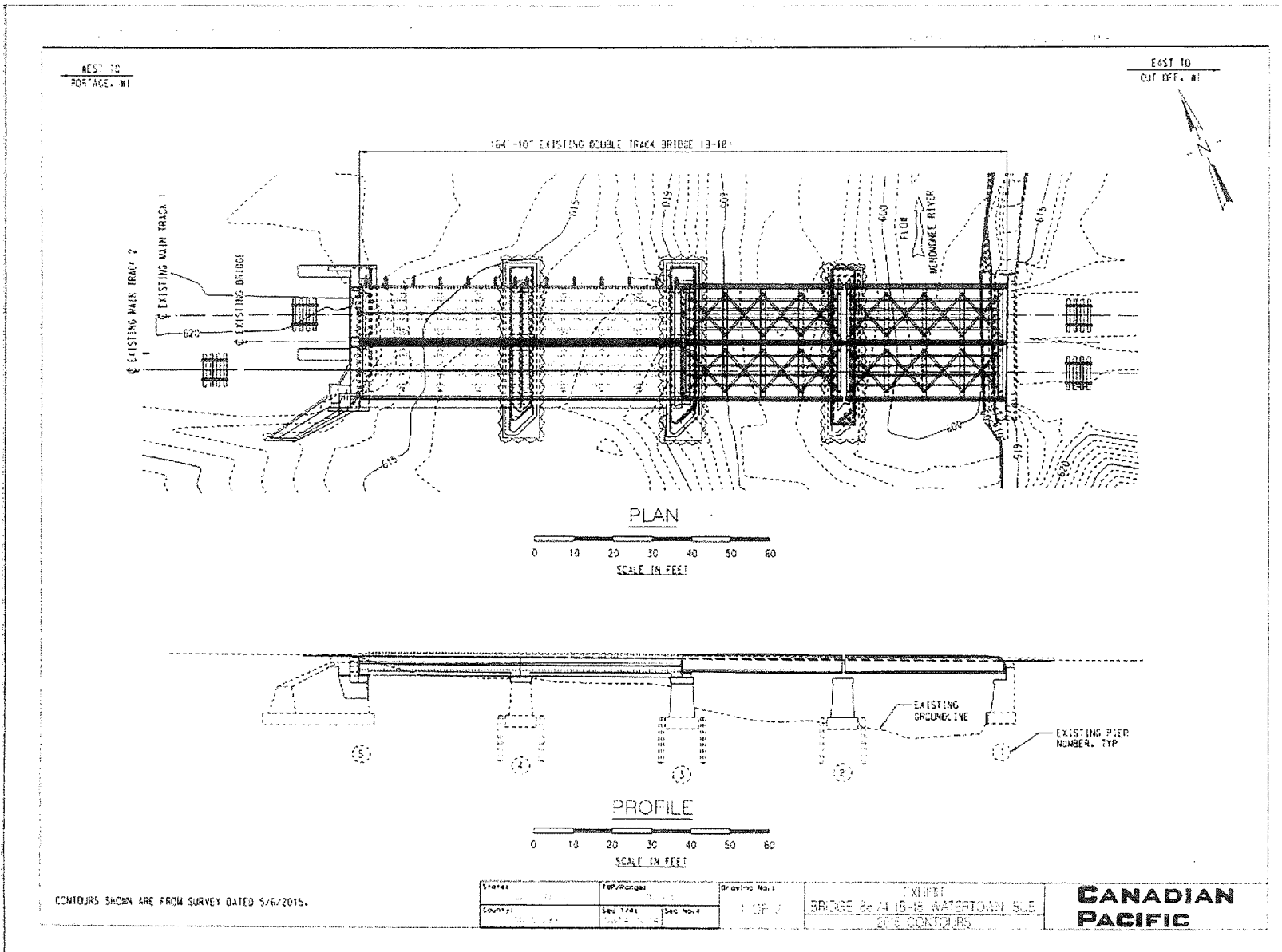
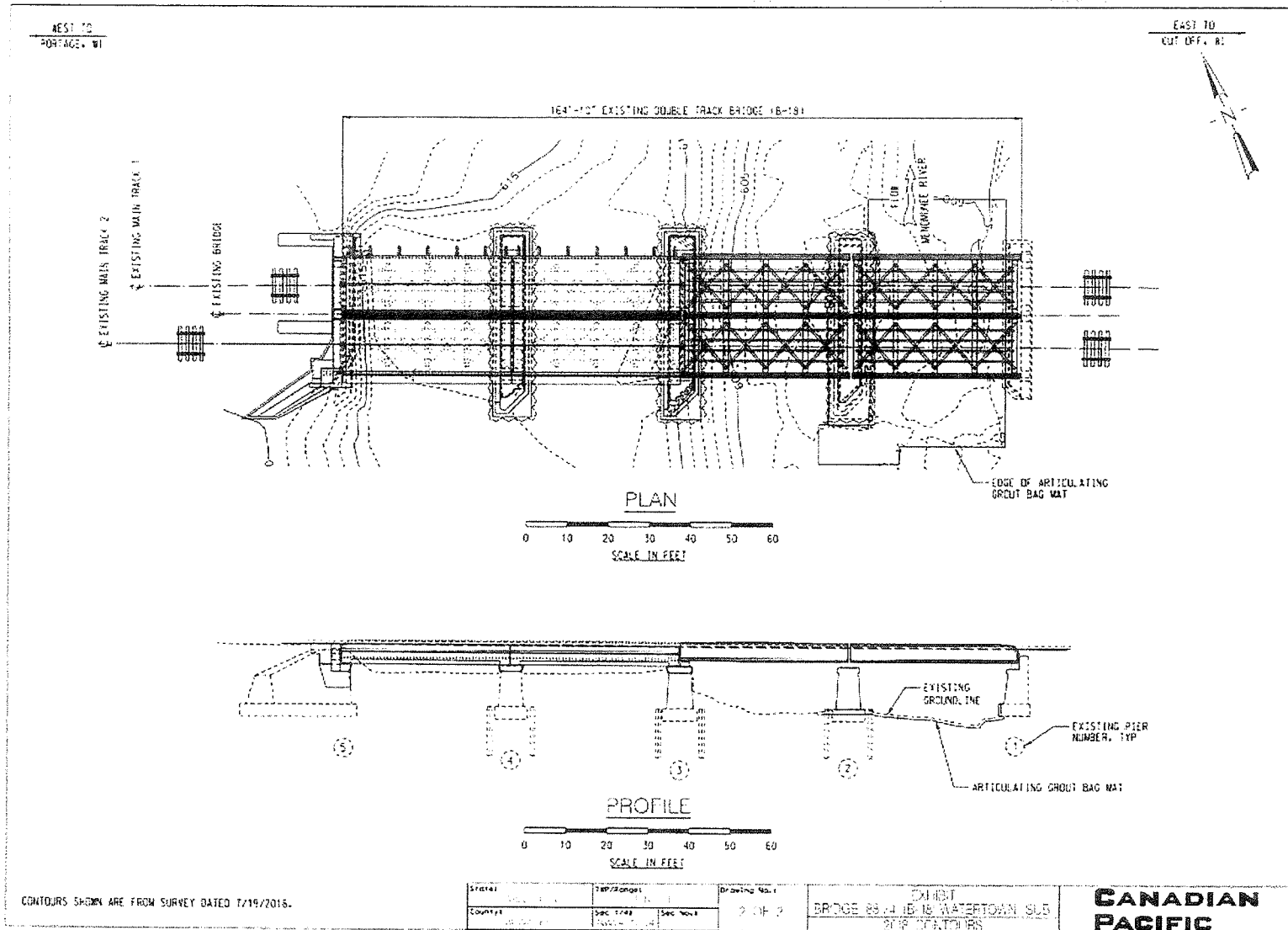


Exhibit 2:



**Exhibit 12**



## Bill Tuttle

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**From:** Bill Tuttle  
**Sent:** Wednesday, July 24, 2019 3:39 PM  
**To:** Michael.Kowalkowski@wisconsin.gov  
**Subject:** WisDOT

Hi Mike,

Thanks for getting back to me this afternoon. Below is a link to WisDOT's Design & Construction Special Provisions. Within that document are numerous Word file, including three that address the use of grout, grout filled bags and grout filled mats for scour protection.

Thanks

Bill

<https://wisconsin.gov/Pages/doing-bus/eng-consultants/cnslt-rsrcs/strct/special-provisions.aspx>



State of Wisconsin  
Department of Transportation

# Special Provisions

Bureau of Structures

Design & Construction

Maintenance &  
Inspection

Fabrication & Quality  
Assurance










Manuals & HSI Quick  
Links

Research & Outreach









## Design & Construction

[Policy Memos](#) | [Bridge Manual](#) | [Special Provisions](#) | [Survey Reports & Checklists](#) | [Structure Costs](#) | [Plan Submittal](#) | [Bridge Technical Committee](#) | [Construction Resources](#) | [Contacts](#)

| File                                 | Description   | Updated |
|--------------------------------------|---|---------|
| <a href="#">Adjusting Diaphragms</a> | This special provision describes adjusting diaphragms and cross frames where girders are vertically realigned. Perform the work in accordance with section 506 of the standard specifications, as shown on the plans, and as hereinafter provided.          | 04/18   |
| <a href="#">Asphalt Panels</a>       | This special provision describes furnishing and placing asphalt protection in accordance with Chapter 29, Part 2 of the American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual, as shown on the plans, and as hereinafter provided. | 04/18   |

|  |  |       |
|--|--|-------|
| <u> Bearing Maintenance</u>                             | This special provision describes removing the expansion bearings at the abutments and piers, blast cleaning and painting them, and reinstalling the bearings, in accordance with the plans and as hereinafter provided.  | 04/18 |
| <u> Bearing Repair</u>                                  | This special provision describes removing the bearings at the piers, blast cleaning and priming the bearings, furnishing and placing shims, resetting the bearings, and furnishing and placing new anchor bolts. All work shall be in accordance with the pertinent provisions of the standard specifications, the plans, and as hereinafter provided.               | 04/18 |
| <u> Boulder Retards</u>                                 | This special provision describes furnishing and placing boulder retards in a given waterway.   | 04/18 |
| <u> Cleaning and Painting Bearings</u>                  | This special provision describes cleaning and painting the existing steel bearings on structures as shown on the plans, as directed by the engineer, and in accordance with section 517 of the standard specifications. Use this special provision when only the bearings are to be cleaned and painted (not structural steel, etc.).                                | 04/18 |
| <u> Clearance Gauge</u>                                 | This special provision describes cleaning the end of a pier and painting a clearance gauge on it. This work shall be in accordance with the plans, as directed by the engineer, and as hereinafter provided.   | 04/18 |
| <u> Concrete Masonry Bridges Lightweight</u>          | This special provision describes furnishing and placing lightweight concrete masonry for the open grid bridge deck in accordance with section 502 of the standard specifications, as shown on the plans, and as hereinafter provided.  | 04/18 |
| <u> Concrete Masonry Overlay Silica Fume Modified</u> | This special provision describes furnishing and placing a silica fume modified concrete masonry overlay in accordance with the plans, the applicable parts of sections 501, 502 and 509 of the standard specifications, as directed by the engineer, and as hereinafter provided.  | 04/18 |
| <u> Concrete Masonry Soldier Pile Footings</u>        | This special provision describes furnishing and placing concrete into predrilled holes for soldier piles and installing soldier piles.   | 04/18 |
| <u> Deck Drainage System</u>                          | This special provision describes furnishing, coating, and installing deck drains, in accordance with the plans, the pertinent requirements of sections 514 and 612 of the standard specifications, and as hereinafter provided. Included in this work are the deck drain downspouts at the abutments and all other components required for draining the bridge deck. | 04/18 |

|   |   |       |
|---|---|-------|
| <u><a href="#">Diamond Grinding</a></u>                         | This special provision describes diamond grinding the surface of the existing concrete deck in a longitudinal direction, as directed by the engineer, and as hereinafter provided.  | 04/18 |
| <u><a href="#">Drilled Shaft Foundation</a></u>                 | This special provision describes installing drilled shafts for bridge foundations, as shown on the plans, as directed by the engineer, and as hereinafter provided.   | 04/18 |
| <u><a href="#">Drilled Shaft Quality Management Program</a></u> | Perform this work in accordance to the requirements of standard specifications section 501, section 502, section 701, section 710 and section 715 (conform to QMP Concrete Structures) except as deleted or additionally stipulated herein. This specification applies to all drilled shaft concrete placed under the following bid item:<br><br>SPV.0090.xx Drilled Shaft Foundation xx-Inch | 04/18 |
| <u><a href="#">Embedded Galvanic Anodes</a></u>                 | This special provision describes furnishing all labor, materials, and equipment necessary to properly install embedded galvanic anodes in concrete.   | 04/18 |
| <u><a href="#">Fabricated Expansion Bearing Assemblies</a></u>  | This special provision describes furnishing, fabricating, storing, and transporting to the project site the fixed bearing assemblies in accordance with the details shown on the plans, section 506 of the standard specifications, and as hereinafter provided.  | 04/18 |
| <u><a href="#">Fabricated Fixed Bearing Assemblies</a></u>      | This special provision describes furnishing, fabricating, storing, and transporting to the project site the fixed bearing assemblies in accordance with the details shown on the plans, section 506 of the standard specifications, and as hereinafter provided.  | 04/18 |
| <u><a href="#">Fence Chain Link Polymer Coated</a></u>          | This special provision describes furnishing and installing a new polymer-coated fence system on structures in accordance with the pertinent plan details, as directed by the Engineer and as hereinafter provided. The color of all components in this fence system shall be the same and shall be as specified on the plans.   | 09/18 |
| <u><a href="#">Fiber Wrap Non-Structural</a></u>                | This special provision describes providing non-structural protection using externally bonded, high-strength, fiber reinforced polymer (FRP) composite/epoxy resin systems field-applied per the details shown in the plans.   | 07/18 |
| <u><a href="#">Fiber Wrap Structural</a></u>                    | This special provision describes providing structural protection using externally bonded, high-strength, fiber reinforced polymer (FRP) composite/epoxy resin systems field-applied per the details shown in the plans.   | 04/18 |
| <u><a href="#">Flashing Stainless Steel</a></u>                 | This special provision describes furnishing and installing a flashing system on structures.   | 04/18 |

|   |   |       |
|---|---|-------|
|  <u>Geosynthetic Reinforced Soil Abutment</u>      | This special provision describes designing, furnishing materials and erecting a permanent earth retention system in accordance to the lines, dimension, elevations and details as shown on the plans and provided in the contract. The design life of the abutment and all abutment components shall be 75 years.   | 04/18 |
|  <u>Grouted Bar Couplers</u>                       | This special provision describes furnishing and installing grouted bar couplers for precast columns and caps.   | 07/19 |
|  <u>Heat Straightening of Damaged Girders</u>      | This special provision describes heat straightening portions of bent or damaged girders which are left in place, back to their original shape.  | 04/18 |
|  <u>High-Load Multi-Rotational Bridge Bearings</u> | This special provision describes designing, manufacturing, furnishing, fabricating, and installing high-load multi-rotational bearing assemblies in accordance with the details shown on the plans, section 506 of the standard specifications, as directed by the engineer, and as hereinafter provided. Define high-load multi-rotational bearings as pot or disc style bearings where called for on the plans.                             | 09/18 |
|  <u>High Performance Concrete (HPC) Structures</u> | This special provision describes specialized material and construction requirements for high-performance concrete used in bridge structures.  | 04/18 |
| Longitudinal Grooving Bridge Deck   | Contact BOS Design before using and to obtain the most recent version.  | 04/18 |
|  <u>Membrane Waterproofing Railroad</u>          | This special provision describes furnishing and installing a rubber-based bonding adhesive and a layer of butyl rubber sheeting continuously along the horizontal surface of the deck plates, the vertically inclined surface of the ballast stop plates, and the back face of the abutment backwalls of the railroad structure, in accordance with the details shown on the plans, as directed by the engineer, and as hereinafter provided. | 04/18 |
|  <u>Non-Shrink Grout</u>                         | This special provision describes furnishing and placing non-shrink grout.   | 04/18 |
|  <u>Parapet Concrete Type 'TX'</u>               | This special provision describes construction of a decorative concrete parapet in accordance with section 501, 502 and 505 of the Standard Specifications, as shown on the plans, and as hereinafter provided. The concrete mix used for this parapet shall include polypropylene fibers.   | 04/18 |

|  |  |              |
|--|--|--------------|
| <p><u><a href="#">Pile Dynamic Analyzer (PDA) Testing Restrikes CAPWAP</a></u></p>                 | <p>The items consist of providing Pile Dynamic Analyzer (PDA) load testing and analyses/evaluation, as outlined in the contract plans and this special provision. This is the preferred option for supplying PDA evaluation.</p>                                     | <p>04/18</p> |
| <p><u><a href="#">Pile Dynamic Analyzer (PDA) Testing: PDA Restrikes</a></u></p>                   | <p>These items consist of providing means to perform Pile Dynamic Analyzer (PDA) load testing by the engineer, as outlined in the contract plans and this special provision. Please contact Central Office Geotechnical Unit before using the special provision.</p> | <p>04/18</p> |
| <p><u><a href="#">Pile Dynamic Analyzer - Standard Specification 550.3.6 Modifications</a></u></p> | <p>This special provision describes the modifications to Standard Specification 550.3.6 regarding pile driving using the Pile Dynamic Analyzer (PDA).</p>  | <p>01/19</p> |
| <p><u><a href="#">Piling Sleeves</a></u></p>   | <p>This special provision describes furnishing and installing a corrugated steel piling sleeve or pile wrap in the reinforced earth zone of mechanically stabilized earth (MSE) retaining walls and other locations shown on the plans.</p>                          | <p>04/18</p> |
| <p><u><a href="#">Polyester Polymer Concrete Overlay</a></u></p>                                   | <p>This special provision describes furnishing and applying a polyester polymer concrete overlay with a high molecular weight methacrylate (HMWM) resin prime coat, to the limits shown on the plans.</p>  | <p>08/19</p> |
| <p><u><a href="#">Precast Panels for Soldier Pile Walls</a></u></p>                                | <p>This special provision describes fabricating, furnishing, transporting and erecting precast concrete panels for soldier pile walls.</p>   | <p>04/18</p> |
| <p><u><a href="#">Precast Pier Columns and Caps</a></u></p>  | <p>This special provision describes the manufacture, transportation, storage, installation and bracing as required for precast pier columns and precast pier caps.</p>   | <p>10/18</p> |
| <p>Prestressed Girders Box (Enter Type Name)</p>   | <p>Contact BOS Design before using and to obtain the most recent version.</p>  | <p>06/19</p> |
| <p><u><a href="#">Prestressed Precast Concrete Wall Panel</a></u></p>                              | <p>This special provision describes constructing precast prestressed concrete wall panels with heights and patterns as shown on the plans and provided in the contract. The design life of the wall panel and all wall panel components shall be 75 years.</p>       | <p>12/18</p> |

|   |  |       |
|---|--|-------|
| QMP Bridge Ride;<br>Incentive IRI Ride Bridge               | Contact BOS Design before using and to obtain the most recent version.   | 04/18 |
| <u>W</u> <u>Rapid Set Deck Repair</u>                       | This special provision describes furnishing, placing and curing a rapid setting non-shrink patch material on the sawed deck preparation areas of the concrete bridge deck.   | 11/18 |
| <u>W</u> <u>Scour Repair Grout</u>                          | This special provision describes furnishing and installing grout for scour protection.   | 04/18 |
| <u>W</u> <u>Scour Repair Grout Bags</u>                     | This special provision describes furnishing and installing grout filled bags for scour protection.   | 04/18 |
| <u>W</u> <u>Scour Repair Grout Mats</u>                     | This special provision describes furnishing and installing grout filled mats for scour protection.   | 04/18 |
| <u>W</u> <u>Select Crushed Material for Travel Corridor</u> | This special provision describes placing select crushed material to fill voids in riprap to create a wildlife travel corridor.   | 04/18 |
| <u>W</u> <u>Sloped Paving Crushed Aggregate Special</u>     | This special provision describes furnishing, crushing, and placing aggregate for slope paving; and application of an epoxy resin binder with the aggregate.  | 04/18 |
| <u>W</u> <u>SPMT Bridge Construction</u>                    | This work consists of furnishing all labor, equipment, material and other services necessary to prepare the Bridge Staging Area and Travel Path, construct temporary supports to allow for the construction of the bridge superstructure of Enter Structure Number in the Bridge Staging Area, transport the bridge superstructure to its final location and place it on the substructure units using Self Propelled Modular Transporters (SPMTs). | 04/18 |
| <u>W</u> <u>Strapping</u>                                   | This special provision describes securing a wing wall to a culvert or abutment body with a structural channel.   | 04/18 |
| <u>W</u> <u>Temporary Shoring Railroad</u>                  | This special provision describes furnishing and installing temporary shoring at locations alongside railroad tracks as shown in the plan and in accordance with the shoring design requirements.   | 04/18 |
| <u>W</u> <u>Temporary Structure</u>                         | This special provision modifies Standard Spec 526.3.   | 09/19 |

|  |  |       |
|--|--|-------|
| <u>Temporary Wall Wire Faced Mechanically Stabilized Earth</u> | This special provision describes designing, furnishing materials and erecting a temporary earth retention system in accordance to the lines, dimension, elevations and details as shown on the plans and provided in the contract.   | 09/19 |
| <u>Three-Sided Precast Concrete Structure</u>                  | This special provision describes furnishing and installing a three-sided precast concrete structure (precast arch units, headwalls and wingwalls), in conformity with the lines, grades, dimensions, locations, and sections shown on the approved drawings and in accordance with the contract documents and the requirements set forth herein. | 04/18 |
| <u>Tieback Anchors and Tieback Anchor Performance Tests</u>    | This special provision describes permanent, pressure-grouted or post-grouted, ground anchors designed, furnished, installed, tested, and stressed.   | 04/18 |
| Underwater Substructure Inspection                             | See Standardized Special Provision 502-090.  |       |
| Underwater Substructure Backfill or Riprap Inspection          | See Standardized Special Provision 606-050.  |       |
| <u>Wall Concrete Panel Mechanically Stabilized Earth</u>       | This special provision describes designing, furnishing materials and erecting a permanent earth retention system in accordance to the lines, dimension, elevations and details as shown on the plans and provided in the contract. The design life of the wall and all wall components shall be 75 years.  | 09/19 |
| <u>Wall Modular Block Gravity</u>                              | This special provision describes designing, furnishing materials and erecting a permanent earth retention system in accordance to the lines, dimension, elevations and details as shown on the plans and provided in the contract. The design life of the wall and all wall components shall be 75 years.  | 09/19 |



|  |  |       |
|--|--|-------|
| <a href="#">Wall Modular Block Gravity Landscape</a>             | <p>This special provision describes designing, furnishing materials and erecting a permanent earth retention system in accordance to the lines, dimension, elevations and details as shown on the plans and provided in the contract. The design life of the wall and all wall components shall be 75 years. To be used as a roadway bid item. Use "Wall Modular Block Gravity" for all structures assigned a structure number R-XX-XXX.</p> | 09/19 |
| <a href="#">Wall Modular Block Mechanically Stabilized Earth</a> | <p>This special provision describes designing, furnishing materials and erecting a permanent earth retention system in accordance to the lines, dimension, elevations and details as shown on the plans and provided in the contract. The design life of the wall and all wall components shall be 75 years.</p>   | 10/19 |
| <a href="#">Wall Wire Faced Mechanically Stabilized Earth</a>    | <p>This special provision describes designing, furnishing materials and erecting a permanent earth retention system in accordance to the lines, dimension, elevations and details as shown on the plans and provided in the contract. The design life of the wall and all wall components shall be 75 years.</p>   | 09/19 |

[Return to top](#)

Contact [Aaron Bonk](#) or [Laura Shadewald](#) for questions about this page.

## Scour Repair Grout Bags, Item SPV.0035.xx.

### A Description

This special provision describes furnishing and installing grout filled bags for scour protection.

### B Materials

The grout shall consist of a mixture of portland cement, 6±1 percent air entrainment by volume, mortar sand aggregate, additives, and water proportioned to provide a pumpable mixture. The 28 day compressive strength shall be as specified on the plans or 3,000 psi minimum whichever is greater. Compressive strength test shall be made using grout cubes or 3"x6" cylinders. Submit the mix design and laboratory test results to the Engineer for approval prior to proceeding with the work.

Grout bags shall be made of high strength water permeable fabric of nylon and/or polyester. Each bag shall be provided with a self closing inlet valve to accommodate insertion of the grout pumping hose. Seams shall be folded and double stitched. Grout bags shall have length, width, and thickness as defined on the plans. Alternate sizes require approval of the Engineer. Grout bag fabric shall meet or exceed the following properties:

| Property                          | Test Method | Units  | Specified Minimum |
|-----------------------------------|-------------|--------|-------------------|
| Wide-Width Strip Tensile Strength |             |        |                   |
| - Machine Direction (MD)          | ASTM D 4595 | lbf/in | 190               |
| - Cross Machine Direction (CD)    | ASTM D 4595 | lbf/in | 140               |
| Trapezoidal Tear Strength         |             |        |                   |
| - Machine Direction (MD)          | ASTM D 4533 | lbf    | 100               |
| - Cross Machine Direction (CD)    | ASTM D 4533 | lbf    | 115               |

Fabric porosity and limited cement lost through fabric is essential to the successful execution of this work. Suitability of fabric and grout design shall be demonstrated by injecting the proposed grout mix into three 24-inch long by approximately 6-inch diameter fabric sleeves under a pressure of not more than 15 psi which shall be maintained for not more than 10 minutes. A 12-inch long test cylinder shall be cut from the middle of each cured test specimen and tested per ASTM C39. The average seven day compressive strength of the grout within the fabric shall be at least equal to that of standard companion test cylinders made per ASTM C31. In lieu of the above testing requirements the Contractor may submit test results from past successful projects and manufacturers test results to the Engineer for approval prior to proceeding with the work.

### C Construction

Install grout bags as shown on the plans, given in these special provisions and as directed by the Engineer.

Before placement, thoroughly clean the area to be covered with grout bags of loose material. Position and fill the bags so that they abut tightly to each other and to the substructure units.

Make appropriate allowance for contraction of bags resulting from grout injection. Stagger joints between bags in successive rows and tiers. Contractor may use temporary or permanent rods or other devices to hold the mats in place and to maintain the desired final shape. Remove temporary materials after grout has reached self supporting strength.

**D Measurement**

The department will measure Scour Repair Grout Bags by the cubic yard acceptably completed.

**E Payment**

The department will pay for measured quantities at the contract unit price under the following bid item:

| ITEM NUMBER | DESCRIPTION             | UNIT |
|-------------|-------------------------|------|
| SPV.0035.xx | Scour Repair Grout Bags | CY   |

Payment for Scour Repair Grout Bags is full compensation for cleaning the area to be covered, furnishing, placing, and filling the grout bags.

## Scour Repair Grout Mats   -Inch, Item SPV.0035.xx.

### A Description

This special provision describes furnishing and installing grout filled mats for scour protection.

### B Materials

The grout shall consist of a mixture of portland cement, 6±1 percent air entrainment by volume, mortar sand aggregate, additives, and water proportioned to provide a pumpable mixture. The 28 day compressive strength shall be as specified on the plans or 3,000 psi minimum whichever is greater. Compressive strength test shall be made using grout cubes or 3"x6" cylinders. Submit the mix design and laboratory test results to the Engineer for approval prior to proceeding with the work.

Grout mats shall be made of high strength water permeable fabric of nylon and/or polyester sewn into a series of compartments that are connected intermittently by ducts. Mats shall have a nominal thickness when filled with grout of the size specified. Each mat shall be provided with a self closing inlet valve to accommodate insertion of the grout pumping hose. Grout mat fabric shall meet or exceed the following properties:

| Property                          | Test Method | Units  | Specified Minimum |
|-----------------------------------|-------------|--------|-------------------|
| Wide-Width Strip Tensile Strength |             |        |                   |
| - Machine Direction (MD)          | ASTM D 4595 | lbf/in | 140               |
| - Cross Machine Direction (CD)    | ASTM D 4595 | lbf/in | 110               |
| Trapezoidal Tear Strength         |             |        |                   |
| - Machine Direction (MD)          | ASTM D 4533 | lbf    | 125               |
| - Cross Machine Direction (CD)    | ASTM D 4533 | lbf    | 100               |

Grout mat shall have cables laced through the grout ducts of each mat pillow in each direction creating an interlocking grid. Cables shall be installed prior to filling with grout. Where necessary, cables shall be joined by means of copper connectors providing a minimum of 80% of the breaking strength of the cable. Aluminum connectors in direct contact with grout will not be permitted. Cables shall be low elongation continuous filament polyester fiber, with a core contained within an outer jacket. The core should be between 65 and 75 % of the total weight of the cable. The cables shall meet or exceed the following properties for the mat thickness specified:

| Property                        | Units  | Mat Thickness |       |      |
|---------------------------------|--------|---------------|-------|------|
|                                 |        | 4"            | 6"    | 8"   |
| Cable Nominal Diameter          | Inches | 1/4           | 11/32 | 5/16 |
| Cable Average Breaking Strength | lbf    | 3700          | 4500  | 5200 |

Fabric porosity and limited cement lost through fabric is essential to the successful execution of this work. Suitability of fabric and grout design shall be demonstrated by injecting the proposed grout mix into three 24 inch long by approximately 6 inch diameter fabric sleeves under a pressure of not more than 15 psi which shall be maintained for not more than 10 minutes. A 12 inch long test cylinder shall be cut from the middle of each cured test specimen and tested per ASTM C39. The average seven day compressive strength of the grout within the fabric shall be at least equal to that of standard companion test cylinders made per ASTM C31. In lieu of the above testing requirements the Contractor may submit test results from past successful projects and manufacturers test results to the Engineer for approval prior to proceeding with the work.

**C Construction**

Install grout mats as shown on the plan, given in these special provisions and as directed by the Engineer.

Before placement, thoroughly clean the area to be covered with grout mats of loose material. Place interconnected mats and cables underwater. Make appropriate allowance for contraction of fabric mat resulting from grout injection. Start grout placement at toe of the slope or at the lowest elevation. Contractor may use temporary or permanent rods or other devices to hold the mats in place and to maintain the desired final shape. Remove temporary materials after grout has reached self supporting strength.

**D Measurement**

The department will measure Scour Repair Grout Mats the cubic yard acceptably completed.

**E Payment**

The department will pay for measured quantities at the contract unit price under the following bid item:

| ITEM NUMBER | DESCRIPTION                    | UNIT |
|-------------|--------------------------------|------|
| SPV.0035.xx | Scour Repair Grout Mats 4-Inch | CY   |
| SPV.0035.xx | Scour Repair Grout Mats 6-Inch | CY   |
| SPV.0035.xx | Scour Repair Grout Mats 8-Inch | CY   |

Payment for Scour Repair Grout Mats X-Inch is full compensation for cleaning the area to be covered, furnishing, placing, and filling the grout mats.

## Scour Repair Grout, Item SPV.0035.xx.

### A Description

This special provision describes furnishing and installing grout for scour repair.

### B Materials

The grout shall consist of a mixture of portland cement, 6±1 percent air entrainment by volume, mortar sand aggregate, additives, and water proportioned to provide a pumpable mixture. The 28 day compressive strength shall be as specified on the plans or 3,000 psi minimum whichever is greater. Compressive strength test shall be made using grout cubes or 3"x6" cylinders. Submit the mix design and laboratory test results for approval by the Engineer prior to proceeding with the work.

### C Construction

Install grout as shown on the plan, given in these special provisions and as directed by the Engineer.

Before placement, thoroughly clean the area to be filled with grout of loose material. Install a 4-inch minimum diameter vent pipe at 4-foot maximum spacing when grout bags are used to seal off a void. Insert the concrete/grout tube delivering the mix to the void so the mix does not free fall. Fill the void by the tremie or pump method. Remove the pipe or cut off flush with the bags when complete.

### D Measurement

The department will measure Scour Repair Grout by the cubic yard acceptably completed.

### E Payment

The department will pay for measured quantities at the contract unit price under the following bid item:

| ITEM NUMBER | DESCRIPTION        | UNIT |
|-------------|--------------------|------|
| SPV.0035.xx | Scour Repair Grout | CY   |

Payment for Scour Repair Grout is full compensation for furnishing and placing the grout.

**Scour Repair Grout Mats \_-Inch, Item SPV.0035.xx.**

**A Description**

This special provision describes furnishing and installing grout filled mats for scour protection.

**B Materials**

The grout shall consist of a mixture of portland cement, 6±1 percent air entrainment by volume, mortar sand aggregate, additives, and water proportioned to provide a pumpable mixture. The 28 day compressive strength shall be as specified on the plans or 3,000 psi minimum whichever is greater. Compressive strength test shall be made using grout cubes or 3"x6" cylinders. Submit the mix design and laboratory test results to the Engineer for approval prior to proceeding with the work.

Grout mats shall be made of high strength water permeable fabric of nylon and/or polyester sewn into a series of compartments that are connected intermittently by ducts. Mats shall have a nominal thickness when filled with grout of the size specified. Each mat shall be provided with a self closing inlet valve to accommodate insertion of the grout pumping hose. Grout mat fabric shall meet or exceed the following properties:

| Property                          | Test Method | Units  | Specified Minimum |
|-----------------------------------|-------------|--------|-------------------|
| Wide-Width Strip Tensile Strength |             |        |                   |
| - Machine Direction (MD)          | ASTM D 4595 | lbf/in | 140               |
| - Cross Machine Direction (CD)    | ASTM D 4595 | lbf/in | 110               |
| Trapezoidal Tear Strength         |             |        |                   |
| - Machine Direction (MD)          | ASTM D 4533 | lbf    | 125               |
| - Cross Machine Direction (CD)    | ASTM D 4533 | lbf    | 100               |

Grout mat shall have cables laced through the grout ducts of each mat pillow in each direction creating an interlocking grid. Cables shall be installed prior to filling with grout. Where necessary, cables shall be joined by means of copper connectors providing a minimum of 80% of the breaking strength of the cable. Aluminum connectors in direct contact with grout will not be permitted. Cables shall be low elongation continuous filament polyester fiber, with a core contained within an outer jacket. The core should be between 65 and 75 % of the total weight of the cable. The cables shall meet or exceed the following properties for the mat thickness specified:

| Property                        | Units  | Mat Thickness |       |      |
|---------------------------------|--------|---------------|-------|------|
|                                 |        | 4"            | 6"    | 8"   |
| Cable Nominal Diameter          | Inches | 1/4           | 11/32 | 5/16 |
| Cable Average Breaking Strength | lbf    | 3700          | 4500  | 5200 |

Fabric porosity and limited cement lost through fabric is essential to the successful execution of this work. Suitability of fabric and grout design shall be demonstrated by injecting the proposed grout mix into three 24 inch long by approximately 6 inch diameter fabric sleeves under a pressure of not more than 15 psi which shall be maintained for not more than 10 minutes. A 12 inch long test cylinder shall be cut from the middle of each cured test specimen and tested per ASTM C39. The average seven day compressive strength of the grout within the fabric shall be at least equal to that of standard companion test cylinders made per ASTM C31. In lieu of the above testing requirements the Contractor may submit test results from past successful projects and manufacturers test results to the Engineer for approval prior to proceeding with the work.

**C Construction**

Install grout mats as shown on the plan, given in these special provisions and as directed by the Engineer.

Before placement, thoroughly clean the area to be covered with grout mats of loose material. Place interconnected mats and cables underwater. Make appropriate allowance for contraction of fabric mat resulting from grout injection. Start grout placement at toe of the slope or at the lowest elevation. Contractor may use temporary or permanent rods or other devices to hold the mats in place and to maintain the desired final shape. Remove temporary materials after grout has reached self supporting strength.

**D Measurement**

The department will measure Scour Repair Grout Mats the cubic yard acceptably completed.

**E Payment**

The department will pay for measured quantities at the contract unit price under the following bid item:

| ITEM NUMBER | DESCRIPTION                    | UNIT |
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| SPV.0035.xx | Scour Repair Grout Mats 4-Inch | CY   |
| SPV.0035.xx | Scour Repair Grout Mats 6-Inch | CY   |
| SPV.0035.xx | Scour Repair Grout Mats 8-Inch | CY   |

Payment for Scour Repair Grout Mats X-Inch is full compensation for cleaning the area to be covered, furnishing, placing, and filling the grout mats.



**Exhibit 13**

## Bill Tuttle

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**From:** Bill Tuttle  
**Sent:** Friday, October 19, 2018 10:25 AM  
**To:** Kowalkowski, Michael J - DNR  
**Subject:** Watertown BR 88.74

Mike,

Thanks for talking to me today. Below are links to the two documents we discussed.

Bill

- USACE Transportation RGP:  
[http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RGP/Transportation\\_RGP.pdf?ver=2018-02-22-093530-183](http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RGP/Transportation_RGP.pdf?ver=2018-02-22-093530-183)
- WI DNR WQC:  
[http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RGP/RGP\\_WisconsinDNR\\_401Decision.pdf?ver=2018-02-22-110951-117](http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RGP/RGP_WisconsinDNR_401Decision.pdf?ver=2018-02-22-110951-117)



US Army Corps  
of Engineers  
St. Paul District

## DEPARTMENT OF THE ARMY

# TRANSPORTATION REGIONAL GENERAL PERMIT

PERMIT: Transportation Regional General Permit

ISSUING OFFICE: St. Paul District U.S. Army Corps of Engineers

EFFECTIVE DATE: February 21, 2018

EXPIRATION DATE: February 20, 2023

### A. AUTHORIZATION

Regulated activities conducted in accordance with the terms and conditions of the Transportation Regional General Permit (RGP or permit) are authorized in the States of Wisconsin and Minnesota and on Indian Reservations in Wisconsin and Minnesota. Certain regulated activities require an applicant to submit pre-construction notification (PCN) and receive written St. Paul District Corps of Engineers Regulatory Branch (Corps) verification prior to commencing work. Refer to the appropriate sections of this permit for a description of RGP procedures, eligible activities, conditions, exclusions and application instructions.

Unless otherwise specified in the Corps letter verifying a project complies with the terms and conditions of this RGP, the time limit for completing work authorized by the permit ends upon the expiration date of the RGP. Activities authorized under this RGP that have commenced construction or are under contract to commence construction in reliance upon this RGP, will remain authorized provided the activity is completed within 12 months of the date of the RGP expiration, suspension, or revocation; whichever is sooner.

Some Transportation RGP authorizations are not valid until a project proponent obtains a Clean Water Act Section 401 water quality certification (401 certification) or waiver from the appropriate water quality certifying agency; see general condition 27 in Section H below. Section 404, Clean Water Act regulated activities excluded from 401 certification in general condition 27 require a project-specific 401 certification or waiver from the appropriate agency. In addition, some RGP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This RGP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

### B. TRANSPORTATION REGIONAL GENERAL PERMIT APPLICABILITY

The Transportation RGP applies to certain transportation associated activities in waters of the United States (US), including wetlands, as described in this permit, in the States of Wisconsin and Minnesota, including within the exterior boundaries of Indian Reservations.

**Regulatory Authorities:** The Transportation RGP may be used to authorize transportation related activities pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344, Section 404) for discharges of dredged and fill material into waters of the US, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, Section 10) for work and structures that are located in, under, or over any navigable water of the US. Activities subject to Section 404 and Section 10 regulatory requirements are hereafter referred to as regulated activities.

### CATEGORY 1: MINOR MAINTENANCE - LINEAR TRANSPORTATION

**Eligible Activities:** Regulated activities required for crossings of waters of the US associated with minor repairs, rehabilitation, or replacement of a previously authorized<sup>1</sup> currently serviceable linear transportation project provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated in the original permit or the most recently authorized modification.

<sup>1</sup> Previously authorized under 33 CFR 330.3 or by a Corps permit

Regulated activities associated with new stormwater ponds; tributary channelization; slope widening; road widening; and new lanes, trails, railways and runways are NOT authorized by this category. Activities authorized by this category are limited to:

- a. *Minor* deviations in a culvert or bridge configuration or filled area due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes, site conditions, or safety standards, including and limited to: the repair of a culvert aprons or bridge piles; lining or cleaning of pipes, culverts or bridges; extension of culverts without slope or shoulder widening; upsizing of culverts or flumes; maintenance of existing stream bank protection (not to expand original footprint); resetting or re-tying of aprons and culverts; and apron placements<sup>2</sup>; including the use of temporary discharges necessary to conduct those activities;
- b. Removal of previously authorized structures or fills, including temporary discharges necessary to conduct those activities;
- c. Repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage, including temporary discharges necessary to conduct those activities; and
- d. Removal of accumulated sediment and debris within the vicinity of bridges and culverted crossings, including temporary discharges necessary to conduct those activities<sup>2</sup>.

**Activity restrictions:**

- a. Removal of accumulated sediment and debris is limited to the minimum necessary to reestablish the approximate dimensions of a waterway in the vicinity of a structure to what existed when the structure was built and does not extend farther than 200 feet in any direction from the structure.
- b. All tributary channel modifications are limited to the minimum necessary for the repair, rehabilitation, or replacement of a structure or fill. Modifications to a tributary, including the removal of material from the tributary necessary to complete eligible activities, must be immediately adjacent to the structure or fill being maintained.
- c. All dredged or excavated material must be deposited and retained in an area that is not a water of the US.

A PCN is not required unless triggered by the terms and condition of this permit (See Section E. Pre-Construction Notification).

## **CATEGORY 2: MODIFICATION - LINEAR TRANSPORTATION**

**Eligible Activities:** Regulated activities required for crossings of waters of the US associated with the expansion, modification, improvement or minor realignments of an existing linear transportation project (e.g., roads, highways, attached frontage roads, railways, trails, airport runways, and taxiways), including the temporary structures, fills, and work, including the use of temporary mats, necessary for those activities.

**Activity restrictions:**

- a. Regulated activities cannot cause the loss of greater than 1.0 acre of waters of the US for each single and complete project, including the area of tributary loss (see definition of single and complete linear project).

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<sup>2</sup> The undertaking of these activities does not always result in a discharge or require a Corps permit. This RGP category authorizes the repair, rehabilitation, or replacement of previously authorized structures or fills that do not qualify for the Clean Water Act (CWA) Section 404(f) exemptions such as the maintenance exemption or the maintenance (but not construction) of drainage ditch exemption.

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- b. If the overall project (including all single and complete projects) would result in the loss of 3.0 acres or less of waters of the US, including the area of tributary loss, the 1.0 acre limit at each single and complete crossing does not apply.
- c. All tributary channel losses, including bank stabilization, are limited to the minimum necessary to construct or protect the linear transportation project and cannot exceed 500 linear feet<sup>3</sup> for each single and complete project, unless the Corps waives the 500 linear foot loss limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. An applicant may request, in writing, a waiver from the Corps.

**An applicant must submit a PCN:**

- a. If a single and complete linear project exceeds 0.1 acre of loss of waters of the US;
- b. If the single and complete linear project exceeds 0.5 acre of temporary impact to waters of the US;
- c. If a waiver from General Condition 15 for the duration of temporary impacts in waters of the US is requested by the applicant (allowing temporary fill to remain in place longer than 90 days between May 15 and November 15);
- d. If a waiver from the 500 linear foot tributary limit is requested by an applicant; or
- e. If triggered by the project's location or potential impacts as described in Section E. Pre-Construction Notification.

**Reporting requirements for Category 2 activities:** For overall projects (defined in Section I) that do not require a PCN, but would result in the cumulative loss of 10,000 square feet or more of waters of the US, project proponents are required to report the overall project to the Corps. See Section E below for additional information.

**CATEGORY 3: NEW CONSTRUCTION - LINEAR TRANSPORTATION**

**Eligible Activities:** Regulated activities required for crossings of waters of the US associated with the construction of a linear transportation project (e.g., roads, highways, railways, trails, airport runways, and taxiways). Examples of eligible regulated activities include those necessary for the construction of: (1) new roads or major realignments of existing roadways; (2) new railroad spurs or tracks; (3) new or detached frontage roads; (4) new airport runways; (5) new or detached trails; (6) associated linear infrastructure for those new construction projects, and (7) temporary structures, fills, and work, including the use of temporary mats, necessary for activities 1-6.

**Activity restrictions:**

- a. Regulated activities cannot cause the loss of greater than 0.5 acre of waters of the US for each single and complete project, including the area of tributary loss (see definition of single and complete linear project).
- b. All tributary channel losses, including bank stabilization, are limited to the minimum necessary to construct or protect the linear transportation project and cannot exceed 500 linear feet for each single and complete project, unless the Corps waives the 500 linear foot loss limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. An applicant may request, in writing, a waiver from the Corps.

**An applicant must submit a PCN:**

- a. If a single and complete linear project exceeds 400 square feet of loss of waters of the US;
- b. If a single and complete linear project exceeds 0.5 acre of temporary impact to waters of the US;

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<sup>3</sup> When calculating loss of a tributary for a culvert replacement, the linear foot length of the existing culvert does not count toward the 500 linear foot limit. Rip-rap and other tributary impacts count towards the tributary loss limit. See Section D. Calculating Impacts to Waters of the United States for more information.

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- c. If a waiver from General Condition 15 for the duration of temporary impacts in waters of the US is requested by an applicant (allowing temporary fill to remain in place longer than 90 days between May 15 and November 15);
- d. If a waiver from the 500 linear foot tributary limit is requested by an applicant; or
- e. If triggered by the project's location or potential impacts as described in Section E. Pre-Construction Notification.

**CATEGORY 4: NON-LINEAR TRANSPORTATION PROJECTS**

**Eligible Activities:** Regulated activities required for the construction, expansion, or maintenance of non-linear features associated with transportation projects, including the use of temporary discharges necessary to conduct those activities. Such projects may include: stormwater management facilities, vehicle maintenance or storage buildings, weigh stations, rest-stops, parking lots, train stations, aircraft hangars, and associated infrastructure.

**Activity restrictions:**

- a. Regulated activities cannot cause the loss of greater than 0.5 acre of waters of the US, including the area of tributary loss (see definition of single and complete non-linear project).
- b. The discharge must not cause the loss of greater than 300 linear feet of a tributary, unless the Corps waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects (see definition of single and complete non-linear project). An applicant may request, in writing, a waiver from the Corps.

**An applicant must submit a PCN:**

- a. If the single and complete project exceeds 0.1 acre of loss of waters of the US;
- b. If the single and complete project exceeds 0.5 acre of temporary impact to waters of the US;
- c. If a waiver from General Condition 15 for the duration of temporary impacts in waters of the US is requested by an applicant (allowing temporary fill to remain in place longer than 90 days between May 15 and November 15);
- d. If a waiver from the 300 linear foot tributary limit is requested by an applicant; or
- e. If triggered by the project's location or potential impacts as described in Section E. Pre-Construction Notification.

**CATEGORY 5: TRANSPORTATION SURVEYING**

**Eligible Activities:** Regulated temporary activities required for surveying activities necessary for transportation projects, such as core sampling, exploratory-type bore holes, exploratory trenching, soil surveys, sediment sampling, sample plots or transects for wetland delineations, historic resources surveys, and temporary access roads necessary to perform those activities.

**Activity restrictions:**

- a. Regulated activities for the recovery of historic resources are not authorized.
- b. Losses of waters of the US are not authorized.
- c. Bore holes must be properly sealed following completion of survey activities.

**An applicant must submit a PCN:**

- a. If the single and complete project exceeds 0.5 acre of temporary impact to waters of the US; or
- b. If triggered by the project's location or potential impacts as described in Section E. Pre-Construction Notification.

### C. TRANSPORTATION REGIONAL GENERAL PERMIT EXCLUSIONS

The following activities are INELIGIBLE for Transportation RGP authorization:

1. Regulated activities that would divert more than 10,000 gallons per day of surface or ground water into or out of the Great Lakes Basin.
2. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
3. Regulated activities eligible for authorization under a valid Corps Special Area Management Plan (SAMP) general permit, see <http://www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures/> for more information on SAMPs.
4. Regulated activities that would occur in a calcareous fen, unless the Wisconsin Department of Natural Resources (WI DNR) has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources (MN DNR) has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: [http://files.dnr.state.mn.us/eco/wetlands/calcareous\\_fen\\_list.pdf](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf).
5. Activities that would occur in or affect designated portions of a National Wild and Scenic River System, including parts of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin, or a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.
6. Regulated activities which are likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No regulated activity is authorized which "*may affect*" a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed.
7. Regulated activities which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, unless the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
8. Regulated activities which may result in disturbance or removal of human remains unless disposition of the remains has been determined by the appropriate authority under applicable laws, and the work is authorized by the Corps. See Section H, Condition 10 for more information.
9. Regulated activities which require permission from the Corps pursuant to 33 U.S.C. 408 (Section 408) because they will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues the Section 408 permission to alter, occupy, or use the Corps federally authorized civil works project.
10. Regulated activities where applicants are unable to demonstrate that the structures comply with applicable state dam safety criteria or have been designed by qualified persons.
11. Regulated activities which would adversely affect public water supplies.

### D. CALCULATING IMPACTS TO WATERS OF THE UNITED STATES

1. **Waters of the US** may include waterbodies such as streams, rivers, lakes, ponds, and wetlands (see Definitions, Section I).
2. **Loss of waters of the US** is the sum of all permanently adversely affected jurisdictional waterbodies for a single and complete project. Temporary impacts to waters of the US, discussed below, are calculated separately from losses of waters of the US and do not contribute to loss thresholds. Permanent adverse effects include filling, flooding, excavation, or drainage in waters of the US as a result of the regulated activity. Permanent adverse effects to

waters of the US include regulated activities that change a waterbody to dry land, increase the bottom elevation of a waterbody, decrease the bottom elevation of a waterbody (e.g. excavation of a sedge meadow wetland to shallow marsh), or change the use of a waterbody.

- a. Losses of wetlands must be reported in either acres or square feet, as appropriate.
  - b. Losses of tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed at multiple locations, they are added together to determine the overall amount of linear loss to waters of the US.
  - c. Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B or in Pre-Construction Notification Information, Section E.
3. **Temporary impacts to waters of the US** include the sum of all regulated impacts to waters of the US for a single and complete project which are restored to preconstruction conditions after construction. Examples of temporary impacts to waters of the US may include the placement of timber matting, installation of coffer dams, trenching and backfilling, and in many cases, mechanized land-clearing.
- a. Temporary impacts to wetlands must be reported in either acres or square feet, as appropriate.
  - b. Temporary impacts to tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed at multiple locations, temporary impacts must be added together to determine the overall amount of temporary linear impact.
  - c. Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B or in Pre-Construction Notification Information, Section E.
4. **Losses and temporary impacts to waters of the US do not include:**
- a. Activities that do not require Department of the Army authorization, such as activities eligible for exemptions under Section 404(f) of the Clean Water Act.
  - b. Impacts to linear ditches, as defined in Section I, provided the ditch does not abut a wetland. Sections of linear ditches in or abutting wetlands do contribute to loss and temporary impact thresholds.
5. The measurements of loss and temporary impact to waters of the US are for determining whether a project may qualify for the RGP, and are not reduced by compensatory mitigation.

## **E. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION**

Projects that meet the terms and conditions of the Transportation RGP and do not require submittal of a PCN, as outlined below, may commence work after project proponents have carefully confirmed that the activity will be conducted in compliance with all applicable terms and conditions of the RGP.

**For all activities which require PCN, project proponents must obtain written Corps verification of Transportation RGP coverage before starting regulated work.** For Transportation RGP activities that require PCN, the PCN must include all other nationwide permits, programmatic general permits, RGPs, or individual permits used or intended to be used to authorize any part of the overall linear and non-linear project (including all single and complete projects), including regulated activities that require Corps authorization but do not require PCN.

**Reporting requirements for Category 2 activities:** For overall projects (defined in Section I) that do not require a PCN, but would result in the cumulative loss of 10,000 square feet or more of waters of the US, project proponents are required to report the overall project to the Corps. The project proponent must minimally provide items 1 through 6 below (Form and Content of PCN) to the Corps at least 30 days prior to starting work. Project proponents do not have to wait for written verification of coverage unless notified by the Corps.



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**When PCN is required:** In addition to the table below, please refer to Section B above. A PCN is required for the locations, impact thresholds, and activities listed below.

|  |  |  |
|--|--|--|
| <p><b>With the exception of all category 1 activities, a PCN is required for regulated activities proposed in these aquatic resources<sup>4</sup>:</b></p> | <p><b>WISCONSIN:</b></p> <ol style="list-style-type: none"> <li>1. The Apostle Islands National Lakeshore;</li> <li>2. Madeline Island;</li> <li>3. State-designated wild rice waters (<a href="https://data.glifwc.org/manoomin.harvest.info">https://data.glifwc.org/manoomin.harvest.info</a>);</li> <li>4. Coastal plain marshes;</li> <li>5. Bog wetland plant communities;</li> <li>6. Interdunal wetlands;</li> <li>7. Great Lakes ridge and swale complexes;</li> <li>8. Fens; and</li> <li>9. Wetland sites designated by the Ramsar Convention (as of the date of publication, these include: the Horicon Marsh, Upper Mississippi River Floodplain wetlands, Kakagon and Bad River Sloughs, Door County Peninsula Coastal wetlands, and the Chiwaukee Illinois Beach Lake Plain), see <a href="https://rsis Ramsar.org/">https://rsis Ramsar.org/</a>.</li> </ol>   | <p><b>MINNESOTA:</b></p> <ol style="list-style-type: none"> <li>1. Wild rice waters identified in Minn. R. 7050.0470, subpart 1 (or as amended by the Minnesota Pollution Control Agency);</li> <li>2. Bog wetland plant communities; and</li> <li>3. Fens.</li> </ol> |
| <p><b>PCN is required for the following activities to comply with other federal laws:</b></p>  | <ol style="list-style-type: none"> <li>1. Regulated activities which might affect Federally-listed threatened, endangered, or proposed threatened and endangered species, designated critical habitat, or proposed critical habitat <u>unless</u> ESA Section 7 consultation addressing the effects of the proposed activity has been completed by a federal applicant or lead federal agency.</li> <li>2. Regulated activities which might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties <u>unless</u> the requirements of Section 106 of the NHPA have been satisfied by a federal applicant or lead federal agency.</li> <li>3. Regulated activities which might result in disturbance or removal of human remains.</li> <li>4. Regulated activities which require Section 408 permission from the Corps because it will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project.</li> <li>5. Regulated activities in the National Wild and Scenic River System, including the designated portions of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status.</li> </ol> |  |
| <p><b>Other activities which require PCN include:</b></p>  | <ol style="list-style-type: none"> <li>1. Areas of suspected sediment or soil contamination, including but not limited to Superfund sites. Superfund sites in Minnesota or Wisconsin can be located by searching the EPA's website: <a href="https://www.epa.gov/superfund/search-superfund-sites-where-you-live">https://www.epa.gov/superfund/search-superfund-sites-where-you-live</a>.</li> <li>2. Bridges, structures, and sunken vessels more than 50 years old, unless already determined ineligible for listing on National Register of Historic Places. Culverts that are constructed using pre-cast concrete or corrugated metal are not subject to this PCN requirement.</li> <li>3. All regulated activities which require a waiver to be eligible for authorization by the RGP, including and limited to: a waiver to exceed the listed 500 linear foot tributary limit (Categories 2 and 3); a waiver to exceed the listed 300 linear foot tributary limit (Category 4); or a waiver from general condition 15, Duration of Temporary Impacts (Categories 2, 3, and 4).</li> </ol>   |  |

<sup>4</sup> Additional information for identifying listed plant communities can be found at: [www.mvp.usace.army.mil/Missions/Regulatory.aspx](http://www.mvp.usace.army.mil/Missions/Regulatory.aspx), the Wisconsin Department of Natural Resources' (WI DNR) website: [www.dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland](http://www.dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland), or at the Minnesota Department of Natural Resources' Native Plant Community Classification's website: [www.dnr.state.mn.us/npc/classification.html](http://www.dnr.state.mn.us/npc/classification.html).

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**Timing of PCN:** Where required by the terms of this RGP, the prospective permittee must notify the Corps by submitting a PCN as early as possible. The Corps will determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. As a general rule, the Corps will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the Corps will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the Corps.

The prospective permittee shall not begin the activity until they are notified in writing by the Corps that the activity may proceed under the RGP with any special conditions imposed by the Corps.

**Form and Content of PCN:** The PCN must be in writing and should utilize the Minnesota Joint Waters Wetlands Application, WI DNR application or the Corps Application for Department of the Army Permit Form ENG 4345. A letter containing the required information may also be used. A complete PCN must include:

1. Contact information including the name, mailing address, email address, and telephone numbers of the prospective permittee and any third party agents.
2. Location of the proposed activity (i.e. section-township-range and latitude and longitude in decimal degrees).
3. A description of the proposed activity and its purpose; a description of any avoidance and minimization mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any and all other general or individual permits used or intended to be used to authorize any part of the overall proposed project including activities that require Corps authorization but do not require PCN.
4. A tabulation of all impacts to waters of the US, including the anticipated amount of loss of waters and temporary impacts expected to result from the proposed activity. Impacts to all waters of the US must be reported in acres or square feet. In addition, tributary, pond, and lake impacts must also be reported in linear feet. A table may be used to clearly and succinctly disclose this information (see Calculating Impacts to Waters of the United States, Section D).
5. Sketches, maps, drawings and plans must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale included, and depict all identified aquatic resources and aquatic resource impact areas, including plan-view drawings on a recent aerial photograph, and cross-section and profile drawings where appropriate.
6. Identification of all aquatic resources on the project site and the acreage of each aquatic resource present. Aquatic resources must be identified by type (e.g. wetland, tributary, lake, man-made ditch, pond, etc.) and impacts must be identified by type (e.g. fill, excavation, etc.) and permanence (permanent or temporary). A wetland delineation may be required.
7. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section F for more information.
8. If the proposed project would impact a calcareous fen, the PCN must include a copy of the WI DNR authorization for the proposed regulated activity, or a copy of the approved MN DNR calcareous fen management plan specific to the project.
9. If any federally-listed proposed, threatened or endangered species or proposed or designated critical habitat might be affected by the regulated activity, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with ESA Section 7.

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10. If the activity might have the potential to cause effects to a historic property listed on, eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity and include a vicinity map indicating the location of the historic property. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with Section 106 of the NHPA.
11. If an activity is proposed in a component of the National Wild and Scenic River System (including the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin) or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river.”
12. The PCN must specify how long temporary impacts and structures will remain in place and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
13. If a waiver for a specific category or condition of the permit is proposed (e.g. from a linear tributary impact limit or duration of temporary impact), the PCN must include an explanation of the need for a waiver and why the applicant believes the impacts would result in minimal individual and cumulative adverse environmental effects.
14. For an activity that requires permission from the Corps pursuant to Section 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the PCN must include a statement confirming if the project proponent has submitted a written request for Section 408 permission from the Corps office having jurisdiction over the Corps civil works project.

## F. MITIGATION

In accordance with the Federal Mitigation Rule (33 CFR part 332), the Section 404(b)(1) guidelines (40 CFR part 230), and current Corps policies and guidelines for compensatory mitigation, regulated activities must be designed and constructed to avoid and minimize (mitigate) adverse effects, both temporary and permanent, to waters of the US to the maximum extent practicable at the project site (i.e., on site). Mitigation includes actions which may avoid, minimize, rectify, reduce, or compensate for adverse environmental effects or activities which may otherwise be contrary to the public interest. Regulated activities which the Corps believes do not mitigate adverse environmental effects or are contrary to the public interest are ineligible for authorization by the Transportation RGP, and will be evaluated by the Corps using individual permit procedures.

After all practicable steps to avoid and minimize adverse effects to waters of the US have been considered, the Corps may require compensatory mitigation to ensure that the regulated activity results in no more than minimal adverse environmental effects, or will not be contrary to the public interest. In reviewing the complete PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps will issue the RGP verification for that activity if it meets the terms and conditions of the RGP, unless the Corps determines, after considering compensatory mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest. When this occurs, the Corps will exercise discretionary authority to require an individual permit evaluation for the proposed regulated activity.

Regulated activities eligible for this RGP which require submittal of a PCN must include a statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required for proposed impacts to waters of the US. Project proponents may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the project proponent must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of the current Corps policies, guidelines, and 33 CFR 332 (the Mitigation Rule).

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Information regarding current Corps policies and guidelines about compensatory mitigation in Minnesota and Wisconsin may be viewed online at [www.mvp.usace.army.mil/Missions/Regulatory/Mitigation](http://www.mvp.usace.army.mil/Missions/Regulatory/Mitigation). Information regarding existing banks and in-lieu fee programs is available online at [www.ribits.usace.army.mil](http://www.ribits.usace.army.mil). Nationally applicable information, including the Mitigation Rule, may be read online at [http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig\\_info/](http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/).

## G. USE OF MULTIPLE RGP CATEGORIES

Single and complete non-linear projects may not be “piecemealed” to avoid the limits in a general permit (nationwide, programmatic, or regional general permit). For example, multiple category 4 non-linear activities may be authorized by the Transportation RGP for an overall project, provided the cumulative loss of waters of the US does not exceed 0.5 acre. To illustrate this, consider two category 4 activities proposed as part of a new overall light-rail project, a proposed 0.25 acre loss for a stormwater pond and a 0.25 acre loss for a train station. Both are eligible for category 4 authorization, because the cumulative loss of waters of the US does not exceed 0.5 acre.

Categories 4 and 5 (non-linear single and complete projects) can be used in conjunction with other categories of this general permit.

Multiple linear categories (categories 1, 2, and 3) of this RGP may be utilized for the same single and complete linear project, provided the cumulative loss of waters of the US does not exceed the loss limit of the general permit category with the *highest* specified limit.

When general permit limits are exceeded, projects may be eligible for review and authorization by an individual permit.

## H. GENERAL CONDITIONS

To qualify for regional general permit (RGP) authorization, the prospective permittee must comply with the following conditions, as applicable, in addition to any category-specific requirements and project-specific conditions imposed by the Corps.

1. **Compliance:** The permittee is responsible for ensuring that whomever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP and any special (permit-specific) conditions included in any written verification letter from the Corps. The activity must also comply with any special conditions added by a state, tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the RGP. Any authorized structure or fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the Corps to an RGP authorization.
2. **Compliance Certification:** Each permittee who receives an RGP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The Corps will provide the permittee the certification document with the RGP verification letter. The completed certification document must be submitted to the Corps within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.
3. **Site Inspection:** The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the RGP authorization.
4. **Migratory Birds and Bald and Golden Eagles:** The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service (FWS) to determine applicable measures to

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reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

5. **Endangered Species:**
  - a. No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a federally threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), 50 CFR 402, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under the RGP which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the RGP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the RGP activity and are later in time, but still are reasonably certain to occur.
  - b. As a result of formal or informal consultation with the FWS, the Corps may add species-specific permit conditions to the RGP verification.
  - c. Information on the location of federally threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS on their web page at [www.fws.gov/ipac](http://www.fws.gov/ipac).
6. **Calcareous Fens:** The permittee may not complete regulated activities in a calcareous fen, unless the Wisconsin Department of Natural Resources has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: [http://files.dnr.state.mn.us/eco/wetlands/calcareous\\_fen\\_list.pdf](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf).
7. **Wild and Scenic Rivers:** The permittee may not complete regulated activities which may affect or are located in a designated portions of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.
8. **Historic Properties, Cultural Resources:**
  - a. No activity which may affect historic properties listed or potentially eligible for listing on the National Register of Historic Places is authorized until the requirements of Section 106 of the National Historic Preservation Act (Section 106) have been satisfied. If PCN is required for the proposed activity, the federal project proponent should follow their own procedures for complying with the requirements of Section 106 and provide documentation of compliance with those requirements.
  - b. Information on the location and existence of historic and cultural resources can be obtained from the State Historic Preservation Office, Tribal Historic Preservation Offices, and the National Register of Historic Places.
  - c. Rock or fill material used for activities authorized by this permit must either be obtained from existing quarries or, if a new borrow site is excavated to obtain fill material, the Corps must be notified prior to the use of the new site to determine whether a cultural resources survey of the site is necessary.
9. **Discovery of Previously Unknown Remains and Artifacts:** If any previously unknown historic, cultural or archeological remains and artifacts are discovered while accomplishing the activity authorized by this permit, the Corps must immediately be notified of the findings. To the maximum extent practicable, construction activities must avoided that may affect the remains and artifacts until the required coordination has been completed. The Corps 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.
10. **Burial Sites:** Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70 and Minnesota Statutes 306 and 307.08). Native American burial sites on federal or tribal land are subject to the provisions of Native American Graves Protection and Repatriation Act (NAGPRA). Regulated activities may not result in disturbance or removal of human remains until disposition of the remains has been determined by the appropriate authority under these laws, and the work is authorized by the Corps. Regulated activities which result in an inadvertent discovery of human remains must stop immediately, and the Corps, as well as the

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appropriate state and tribal authority, must be notified. Regulated work at inadvertent discovery sites requires compliance with state law and NAGPRA, as appropriate, prior to re-starting work.

11. **Federally Authorized Corps Civil Works projects:** A permittee is not authorized to begin any regulated activities described in this RGP if activities will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues a Section 408 permission to alter, occupy, or use the Corps civil works project (pursuant to 33 U.S.C. 408) and the Corps issues written RGP verification. Examples of federal projects include, but are not limited to, works that were built by the Corps and are locally maintained (such as local flood control projects) or operated and maintained by the Corps (such as locks and dams).
12. **Dam Safety:** Permittees are not authorized to begin regulated activities unless they are able to demonstrate that the structures, when appropriate, comply with applicable state dam safety criteria or have been designed by qualified persons. The Corps may require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications are made to ensure safety.
13. **Suitable Material:** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
14. **Restoration of Temporary Impacts:** All temporary impacts in waters of the US, including discharges resulting from side casting material excavated from trenching, that occur as a result of the regulated activity must be fully contained with appropriate erosion control or containment methods, be restored to preconstruction contours and elevations, and as appropriate, revegetated with native, non-invasive vegetation. In temporarily excavated wetlands, the top 6 to 12 inches of the excavation should normally be backfilled with topsoil originating from the wetland. No temporary excavation area, including, but not limited to trenches, may be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect).
15. **Duration of Temporary Impacts:** Temporary impacts in waters of the U.S., including wetlands, must be avoided and limited to the smallest area and the shortest duration required to accomplish the project purpose.
  - a. Unless otherwise conditioned in a Corps RGP verification, temporary impacts may not remain in place longer than 90 days between May 15 and November 15. Before those 90 days have elapsed, all temporary discharges must be removed in their entirety.
  - b. If the temporary impacts would remain in place for longer than 90 days between May 15 and November 15, the PCN must include a request for a waiver from this condition and specify how long temporary impacts will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. The permittee must remove the temporary impacts in their entirety in accordance with the activity authorized their permit verification.
16. **Best Management Practices (BMPs):** To minimize adverse effects from soil loss and sediment transport that may occur as a result of the authorized work, appropriate BMPs must be implemented and maintained. For authorized work above an OHWM the BMPs must remain in place until the affected area is stabilized with vegetation or ground cover. For all authorized work below an OHWM, BMPs are required and must prevent or minimize adverse effects (e.g., total suspended solids or sedimentation) to the water column outside of the authorized work area. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. All BMPs must be inspected and properly maintained following storm events to ensure they are operational. All exposed slopes and stream banks must be stabilized within 24 hours after completion of all tributary crossings.
17. **Culverts and Crossings:** Unless an RGP verification authorizes otherwise, replacement and installation of culverts or crossings authorized by an RGP are to follow (or be restored to) the natural alignment and profile of the tributary. The culverts or bridges must adequately pass low flow and bankfull events, bedload, sediment load, and provide site-appropriate fish and wildlife passage. Example design elements include recessing single culverts to

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accommodate natural bankfull width and adjusting additional culvert inverts at an elevation higher than the bankfull elevation.

18. **Aquatic Life Movements:** No regulated activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water.
19. **Spawning Areas:** Activities in spawning areas, during spawning seasons, must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial sedimentation) of a designated or known spawning area are not authorized.
20. **Riprap:** For RGP categories that allow for the use of riprap material for bank stabilization, only rock must be used and it must be of a size sufficient to prevent its movement from the authorized alignment by natural forces under normal or high flows.
21. **Pollutant or Hazardous Waste Spills:** The permittee is responsible for removing pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with state and federal laws. In accordance with applicable state, tribal and federal laws and regulations, if a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or [www.nrc.uscg.mil](http://www.nrc.uscg.mil) AND  
IN WISCONSIN: the WI DNR Spills Team at 1-800-943-0003, or  
IN MINNESOTA: the Minnesota State Duty Officer at 1-800-422-0798.
22. **Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
23. **Navigation:** No activity may cause more than a minimal adverse effect on navigation. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the US. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
24. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
25. **Access Roads:** Access roads must be sized appropriately and must be constructed in such a way to minimize adverse effects on waters of the US and elevations must be as near as practicable to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). All access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows.
26. **Tributary Modifications.** When stream channelization is performed with the construction of a road crossing, both activities should be considered as a single and complete project, which may be authorized by another form of authorization. The Corps does not consider installation of a culvert in a stream bed as stream channelization as long as those activities are conducted in accordance with the terms of the categories described in this permit. Unless the general permit verification authorizes otherwise, replacement and installation of culverts or crossings authorized are to follow (or be restored to) the natural alignment and profile of the tributary, see General Condition 17. Culverts and Crossings.
27. **Section 401 Clean Water Act, Water Quality Certification:** All regulated activities authorized by the Transportation RGP pursuant to Section 404 of the Clean Water Act require Section 401 Clean Water Act certification or waiver to be considered valid.
28. **Transfer of Regional General Permit Verifications:** If the permittee sells the property associated with a regional general permit verification, the permittee may transfer the regional general permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the regional general

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permit verification must be attached to the letter, and the letter must contain the following statement and signature "When the structures or work authorized by this regional general permit are still in existence at the time the property is transferred, the terms and conditions of this regional general permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional general permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

## I. DEFINITIONS

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: 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.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term discharge of dredged material is defined at 33 CFR 323.2(d) and the term discharge of fill material is defined at 33 CFR 323.2(f).

Exploratory trenching: temporary excavation of the upper soil profile to expose bedrock or substrate for the purpose of mapping or sampling the exposed material.

Historic property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete **non-linear** project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Linear ditch: A defined channel constructed adjacent to a linear transportation facility (e.g., roads, highways, railways, trails, airport runways, and taxiways, etc.) to convey runoff from the linear facilities and from areas which drain toward the linear facilities. The term linear ditch does not include natural tributaries, relocated natural tributaries, or modified natural tributaries.

Navigable waters: Waters subject to Section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Ordinary high water mark (OHWM): An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.



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Overall project: The aggregate of all single and complete projects related to the same purpose, including both linear and non-linear activities with regulated losses and temporary impacts to waters of the US.

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

Pre-construction notification (PCN): A request submitted by the project proponent to the Corps for confirmation that a particular activity is verified by a general permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. PCN may be required by the terms and conditions of this regional general permit. A PCN may be voluntarily submitted in cases where PCN is not required and the project proponent wants verification that the activity is authorized by the general permit.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

Single and complete linear project (categories 1-3 and temporary access roads fills): A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the overall linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the US (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of this general permit authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately. The definition of "single and complete linear project" does not include the term "independent utility" because each crossing of waters of the US is needed for the single and complete linear project to fulfill its purpose of transporting people, goods, and services from the point of origin to the terminal point.

Single and complete non-linear project (categories 4 and 5): For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the overall project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility. Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an RGP authorization. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Stormwater management facilities: Stormwater management facilities are those facilities including, but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tribal lands: Any lands which are either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Tributary: For the purposes of this permit, a water that contributes flow, either directly or through another water to a traditionally navigable water or interstate water (including wetlands) and that is characterized by the presence of the

St. Paul District Corps of Engineers, Regulatory Branch  
Transportation Regional General Permit

physical indicators of bed and banks and ordinary high water mark. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches.

Waiver: An approval from the Corps which allows an applicant to exceed the activity restrictions or conditions described in an RGP. Waivers may only be considered when expressly indicated as available in an RGP and will only be granted once the Corps has made a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects. When a waiver is required, an applicant cannot start work until they have received an RGP verification letter with waiver approval.

Waterbody: For purposes of this RGP, a waterbody is a jurisdictional water of the US. Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

## J. FURTHER INFORMATION

1. Congressional authorities: The permittee has been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by an RGP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this authorization:
  - a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
  - b. This RGP does not grant any property rights or exclusive privileges;
  - c. This RGP does not authorize any injury to the property or rights of others; and
  - d. This RGP does not authorize interference with any existing or proposed federal project.
4. 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; or
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
5. Reliance on permittee's data: The determination of this office that an activity is not contrary to the public interest will be made in reliance on the information provided by the project proponent.
6. Re-evaluation of decision: This office may reevaluate its decision for an individual verification under this general permit 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 terms and conditions of this permit;
  - b. The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate (See 5 above); or
  - c. Significant new information surfaces which this office did not consider in reaching the original 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 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of their permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and if the permittee fails to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.

St. Paul District Corps of Engineers, Regulatory Branch  
Transportation Regional General Permit

7. This office may also reevaluate its decision to issue this RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, 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.

#### **K. CORPS DECISION**

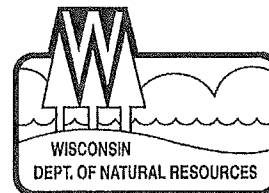
In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific RGP, the Corps should issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the US to determine whether they individually satisfy the terms and conditions of the RGPs, as well as the cumulative effects caused by all of the crossings authorized by RGP. If an applicant requests a waiver for any limit where waivers are indicated as available, the Corps will only grant the waiver upon a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects.

When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the RGP activity. The Corps will also consider the cumulative adverse environmental effects caused by activities authorized by the RGP and whether those cumulative adverse environmental effects are no more than minimal. The Corps will consider site specific factors, such as the environmental setting in the vicinity of the RGP activity, the type of resource that will be affected by the RGP activity, the functions provided by the aquatic resources that will be affected by the RGP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the RGP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the Corps. The Corps may add case-specific special conditions to the RGP authorization to address site-specific environmental concerns.

The Corps will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal to inform decisions regarding whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the Corps determines that the activity complies with the terms and conditions of the RGP and that the adverse environmental effects are no more than minimal, after considering mitigation, the Corps will notify the permittee and include any activity specific conditions in the RGP verification the Corps deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). When compensatory mitigation is required, the Corps must approve the final mitigation plan before the permittee commences work in waters of the US, unless the Corps determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant of next steps as described in 33 CFR 325.2.

State of Wisconsin  
DEPARTMENT OF NATURAL RESOURCES  
101 S. Webster Street  
Box 7921  
Madison WI 53707-7921

Scott Walker, Governor  
Daniel L. Meyer, Secretary  
Telephone 608-266-2621  
Toll Free 1-888-936-7463  
TTY Access via relay - 711



February 15, 2018

Chad Konickson  
U.S. Army Corps of Engineers  
St. Paul District - Regulatory  
180 5th St. East  
Suite 700  
St. Paul MN 55101

Subject: Water Quality Certification for the Regional General Permits in WI

Dear Mr. Konickson:

The Wisconsin Department of Natural Resources submits the attached water quality certification for U.S. Army Corps of Engineers' Regional General Permits for Beach Creation & Nourishment, Beach Raking, Minor Discharges, Piers and Docks, Wildlife Ponds, Transportation, and Utilities for projects in Wisconsin.

Please feel free to contact Cami Peterson or me with any questions.

Sincerely,

Benjamin Callan  
Chief, Integration Services Section

cc: Wendy Melgin, USEPA  
Jill Bathke, USACE  
Rebecca Graser, USACE

Attachment

## BEFORE THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Application of the United States Department of the Army,)
Corps of Engineers, for Water Quality Certification for the)
Final Regulations Pertaining to the Issuance
of Regional General Permits for Beach Creation & Nourishment, Beach Raking, Minor
Discharges, Piers and Docks, Transportation, Utilities, Wildlife Ponds)

On December 20, 2017, the United States Department of the Army, Corps of Engineers (COE), published its final notice regarding the Issuance of seven Regional General Permits (RGPs) in the Federal Register. The publication includes new RGPs. Publication of these RGPs serves as the Corps' application to the State for water quality certification (WQC) under Section 401 of the Federal Clean Water Act (CWA).

The Wisconsin Department of Natural Resources (WDNR) has examined the final regulations pursuant to Section 401, CWA, and Chapter NR 299, Wisconsin Administrative Code (Wis. Adm. Code).

The WDNR has determined the following conditions for the RGPs are required to ensure compliance with state water quality standards enumerated in s. 299.04, Wis. Adm. Code. The certification contained herein shall expire on February 16, 2023.

Section 401 Certification does not release the permittee from obtaining all other necessary federal, state, and local permits, licenses, certificates, approvals, registrations, charters, or similar forms of permission required by law. It does not limit any other state permit, license, certificate, approval, registration, charter, or similar form of permission required by law that imposes more restrictive requirements. It does not eliminate, waive, or vary the permittee's obligation to comply with all other laws and state statutes and rules throughout the construction, installation, and operation of the project. This Certification does not release the permittee from any liability, penalty, or duty imposed by Wisconsin or federal statutes, regulations, rules, or local ordinances, and it does not convey a property right or an exclusive privilege.

This Certification does not replace or satisfy any environmental review requirements, including those under the Wisconsin Environmental Policy Act (WEPA) or the National Environmental Policy Act (NEPA).

**Note:** The specific language in the RGPs is not included in this document. Copies of complete regional general permits published in the Federal Register on December 20, 2017, may be obtained from your local COE field office.

### STATE CONDITIONS AND LIMITATIONS OF CERTIFICATION

#### GENERAL CONDITIONS:

1. The permittee shall allow the WDNR reasonable entry and access to the discharge site to inspect the discharge for compliance with the certification and applicable laws.

2. If any of these §401 water quality certification conditions are found invalid or unenforceable, the water quality certification is denied for all activities to which that condition applies.

3. No discharges of dredged or fill material below the ordinary high water mark of a navigable stream as defined by s. 310.03(5), Wis. Adm. Code, may take place during fish spawning periods or times when nursery areas would be adversely impacted. These periods are:

- September 15<sup>th</sup> through May 15<sup>th</sup> for all trout streams and upstream to the first dam or barrier on the Root River (Racine County), the Kewaunee River (Kewaunee County), and Strawberry Creek (Door County). To determine if a waterway is a trout stream, you may use the WDNR website trout maps at <http://dnr.wi.gov/topic/fishing/trout/streammaps.html>.
- March 1<sup>st</sup> through June 15<sup>th</sup> for ALL OTHER waters.

4. Unless specifically exempt from state statute and federal Pre-Construction Notification (PCN) requirements, Applicants seeking authorization under these RGPs shall complete the Joint State/Federal Permit Application on the department e-permitting site at <http://dnr.wi.gov/Permits/Water/>.

Regional General Permits Granted Water Quality Certification:

- Beach Raking
- Minor Discharges
- Piers and Docks

Regional General Permits for which Water Quality Certification is Partially Denied

The specified activities authorized by the following RGP categories are denied WQC without prejudice and must apply to the WDNR for an individual 401 WQC. Activities that do not include the activities for which certification has been denied are certified subject to all applicable RGP general conditions.

- Utilities
  - WQC denied: Temporary access fill without PCN that is placed for 60 or more consecutive days between May 15 and November 15.
  - WQC certified: All other RGP activities.
- Transportation
  - WQC denied: Temporary access fill without PCN that is placed for 60 or more consecutive days between May 15 and November 15.
  - WQC certified: All other RGP activities.
- Beach Creation & Nourishment
  - WQC denied: Placement of sand for beach creation.
  - WQC certified: All other RGP activities.
- Wildlife Ponds
  - WQC denied: The project is located in a navigable water with stream history. (The Wisconsin Department of Natural Resources (WDNR) is responsible for interpretation of a navigable water with stream history. The point of contact for

questions relating to a navigable water with stream history is the local WDNR Water Management Specialist. Contact information can be found at <http://dnr.wi.gov/topic/Waterways/contacts.html> )

- WQC denied: If the project is located in existing wetland not in agricultural crops, not dominated by invasive species, or dominated by other than early successional hydrophyte species. (The WDNR is responsible for interpretation of these categories that are denied WQC. The point of contact for questions is the local WDNR Water Management Specialist. Contact information can be found at <http://dnr.wi.gov/topic/Waterways/contacts.html> )
- WQC certified: All other RGP activities.

#### NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to section 227.42, Wisconsin Statutes, you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources.

This determination becomes final in accordance with the provisions of s. NR 299.05(7), Wisconsin Administrative Code, and is judicially reviewable when final. For judicial review of a decision pursuant to Sections 227.52 and 227.53, Wisconsin Statutes, you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

Dated at Madison, Wisconsin

February 15, 2018

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By Ed Eble  
for Daniel Meyer, Secretary

**Exhibit 14**



## Bill Tuttle

---

**From:** Bill Tuttle  
**Sent:** Tuesday, October 30, 2018 1:05 PM  
**To:** Derouin, Sadie L - DNR; Scott Paradise; 'jeff.k.johnson@hdrinc.com'; 'Keller, Michael'; Karl Rittmeyer  
**Cc:** Johnson, Elaine M - DNR; Kowalkowski, Michael J - DNR; Scott, Michelle M - DNR; 'Marcangeli, April N MVP (April.N.Marcangeli@usace.army.mil)'  
**Subject:** Chapter 30 permit application  
**Attachments:** 2018.10.30 - Ch. 30 Permit Application Cover Letter.pdf; H2 CPR Watertown BR 88.74 - Survey Figures.pdf

Dear Ms. Derouin,  
Attached please find CP's correspondence, as well as the cross section figures you requested. The actual application, with various attachments, is being submitted on line.  
Thanks,  
Bill Tuttle

**From:** Derouin, Sadie L - DNR <Sadie.Derouin@wisconsin.gov>  
**Sent:** Thursday, September 27, 2018 10:51 AM  
**To:** Bill Tuttle <Bill\_Tuttle@cpr.ca>; Scott Paradise <Scott\_Paradise@cpr.ca>; 'jeff.k.johnson@hdrinc.com' <jeff.k.johnson@hdrinc.com>; 'Keller, Michael' <Michael.Keller@hdrinc.com>; Karl Rittmeyer <Karl\_Rittmeyer@cpr.ca>  
**Cc:** Johnson, Elaine M - DNR <Elaine.Johnson@wisconsin.gov>; Kowalkowski, Michael J - DNR <Michael.Kowalkowski@wisconsin.gov>; Scott, Michelle M - DNR <Michelle.Scott@wisconsin.gov>; 'Marcangeli, April N MVP (April.N.Marcangeli@usace.army.mil)' <April.N.Marcangeli@usace.army.mil>  
**Subject:** RE: CP correspondence - Enforcement Conference  
**Importance:** High

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

Good morning Bill,

Attached is a follow-up letter from the department regarding CP's submittal. A hard copy of the letter was placed in the mail as well. Please let me know if you have any questions.

Thank you,

**We are committed to service excellence.**

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Sadie Derouin  
Phone: (608) 622-8247  
[Sadie.Derouin@wisconsin.gov](mailto:Sadie.Derouin@wisconsin.gov)

**From:** Bill Tuttle <Bill\_Tuttle@cpr.ca>  
**Sent:** Tuesday, July 31, 2018 3:23 PM  
**To:** Johnson, Elaine M - DNR <Elaine.Johnson@wisconsin.gov>; Derouin, Sadie L - DNR <Sadie.Derouin@wisconsin.gov>; Scott, Michelle M - DNR <Michelle.Scott@wisconsin.gov>; Hase, Michelle M - DNR <Michelle.Hase@wisconsin.gov>; Helker, Craig D - DNR <Craig.Helker@wisconsin.gov>; Kowalkowski, Michael J - DNR

<Michael.Kowalkowski@wisconsin.gov>; 'Marcangeli, April N MVP (April.N.Marcangeli@usace.army.mil)'  
<April.N.Marcangeli@usace.army.mil>; Scott Paradise <Scott\_Paradise@cpr.ca>; 'jeff.k.johnson@hdrinc.com'  
<jeff.k.johnson@hdrinc.com>; 'Keller, Michael' <Michael.Keller@hdrinc.com>; Karl Rittmeyer <Karl\_Rittmeyer@cpr.ca>  
**Subject:** [WARNING: ATTACHMENT(S) MAY CONTAIN MALWARE]CP correspondence - Enforcement Conference

Attached please find my letter, with exhibits, regarding the above-referenced matter.

Thanks,  
Bill Tuttle

----- IMPORTANT NOTICE - AVIS IMPORTANT ----- Computer viruses can be transmitted via email. Recipient should check this email and any attachments for the presence of viruses. Sender and sender company accept no liability for any damage caused by any virus transmitted by this email. This email transmission and any accompanying attachments contain confidential information intended only for the use of the individual or entity named above. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above email address. Le courrier electronique peut etre porteur de virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expéditeur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expéditeur a l' adresse ci-dessus. ----- IMPORTANT NOTICE - AVIS IMPORTANT -----

CP

October 30, 2018

Ms. Sadie Derouin  
State of Wisconsin – DNR  
3911 Fish Hatchery Road  
Fitchburg, WI 53711

*(Via E-Mail Only)*

**Re: Chapter 30 Permit Application**

Dear Ms. Derouin:

As requested in your letter of September 27, 2018, Soo Line Railroad Company, d/b/a Canadian Pacific ("CP") is today submitting the Water Resources Application for Project Permit for bridge repair work performed on CP's bridge (Watertown B.R. 88.74) located on the Menominee River. The actual application is being made today online. Attached to this letter are the additional cross sections requested in your letter, which are also included with the online permit application. Additional contours and bridge profiles were previously supplied on July 31, 2018.

As previously discussed, CP's use of a grout mat to complete emergency structural repairs on the Watertown bridge was legally authorized under the USACE Regional General Permit (GP-002-W1). Additionally, the Interstate Commerce Commission Termination Act ("ICCTA") preempts the state's attempt to regulate CP's emergency bridge repair work by imposing additional state law permitting conditions beyond those set forth in the Regional General Permit. See, e.g., *Soo Line R.R. Co. – Pet. for Declaratory Order*, FD 35850, 2014 WL 7330097, at \*4 (served Dec. 23, 2014) (ICCTA categorically preempts "state or local permitting or preclearance requirements, including building permits, zoning ordinances, and environmental and land use permitting requirements" for facilities that "are an integral part of rail transportation").

Finally, as I discussed with DNR Attorney Michael Kowalkowski, CP believes that its repair work, if undertaken today, would be authorized as "Minor Maintenance – Linear Transportation" activity under the USACE Transportation Regional General Permit, which became effective February 21, 2018. CP's repair work qualifies as a "minor deviation in a culvert or bridge configuration," which includes, among other repair activity, "the repair of a culvert aprons or bridge piles" and the "lining or cleaning of pipes, culverts or bridges." I provided Mr. Kowalkowski with links to the USACE Transportation Regional General Permit, and the DNR's related Water Quality Certification, dated February 15, 2018.

Notwithstanding that CP's bridge repair activity was legally authorized, CP has submitted its permit application for your review and approval. In doing so, CP reserves all rights under applicable law, including specifically the right to challenge the DNR permitting procedure as preempted by ICCTA in this context, in either Federal District Court or at the Surface Transportation Board. Please do not hesitate to contact me if you have any questions regarding the application.

Sincerely,

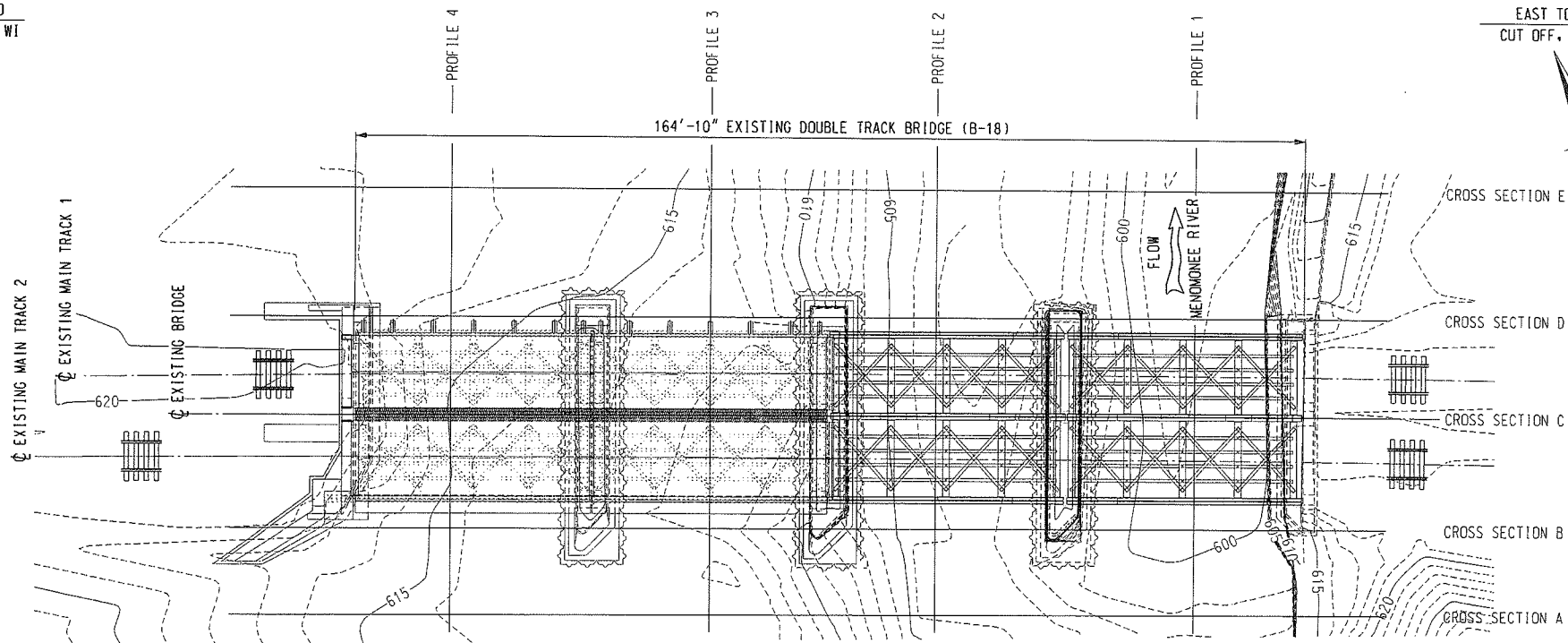
William M. Tuttle  
General Counsel – U.S.

Enc. 

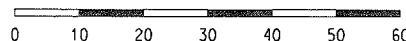
cc: Karl Rittmeyer  
Scott Paradise  
M. Kowalkowski, DNR  
Elaine Johnson, DNR  
Michelle Scott, DNR  
April Marcangeli, U.S. Army Corps of Engineers  
Jeff Johnson, HDR Inc.  
Michael Keller, HDR Inc.

WEST TO  
PORTAGE, WI

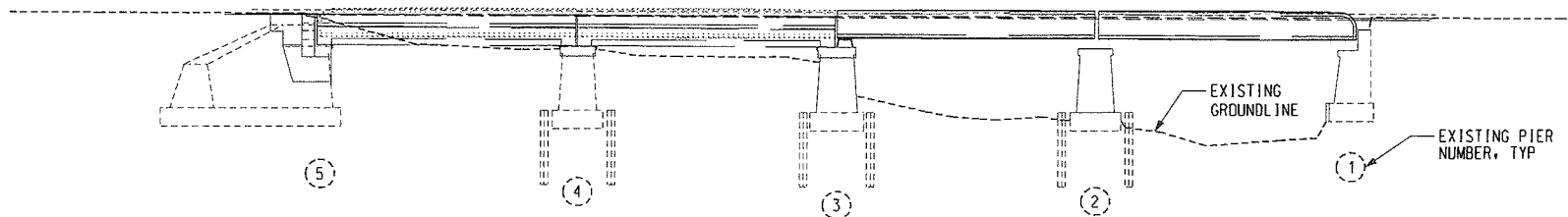
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CUT OFF, WI



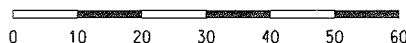
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PROFILE



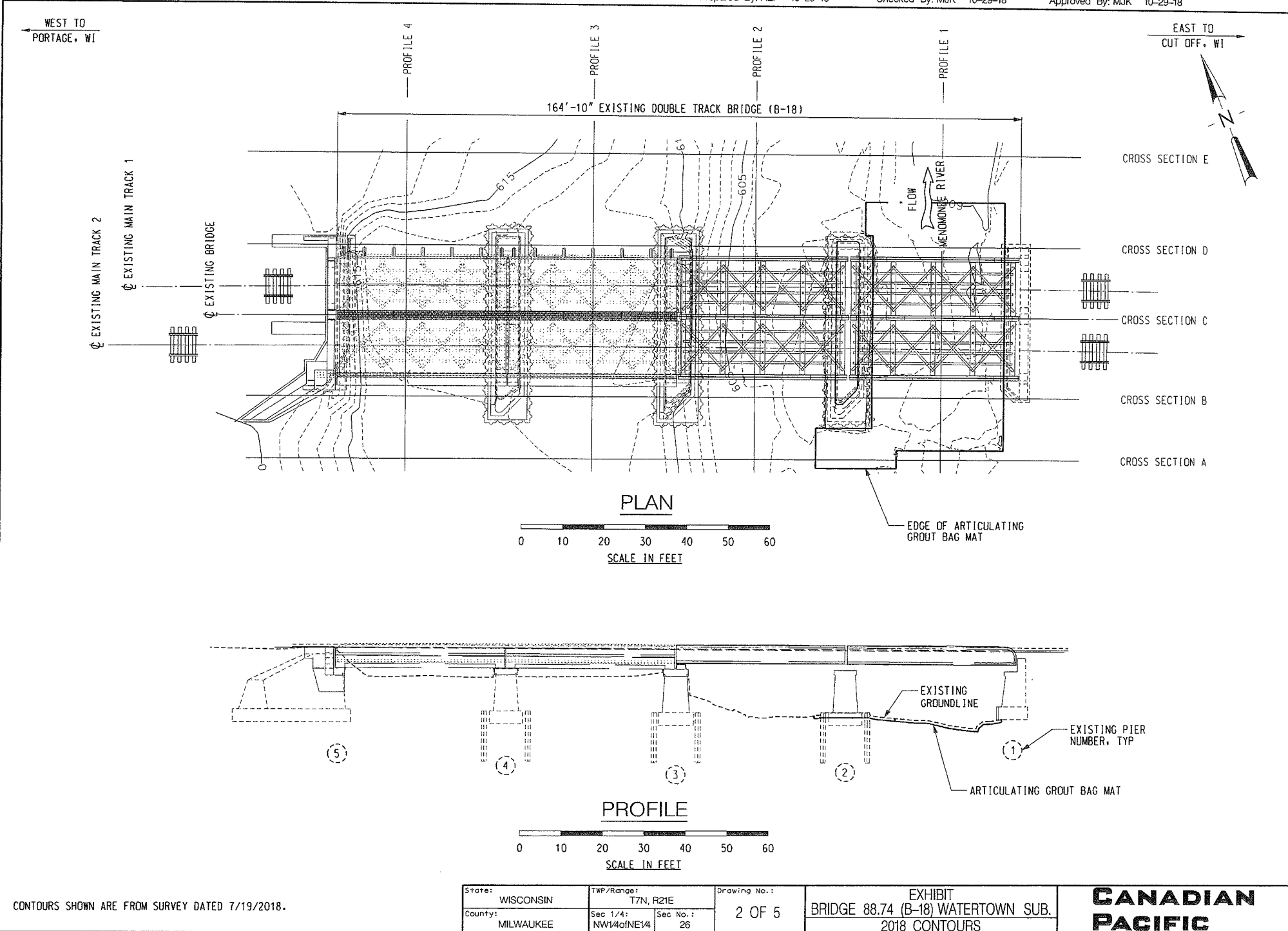
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CONTOURS SHOWN ARE FROM SURVEY DATED 5/6/2015.

|                      |                          |              |
|----------------------|--------------------------|--------------|
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| County:<br>MILWAUKEE | Sec 1/4:<br>NW1/4ofNE1/4 | Sec No.:     |
|                      |                          | 1 OF 5       |

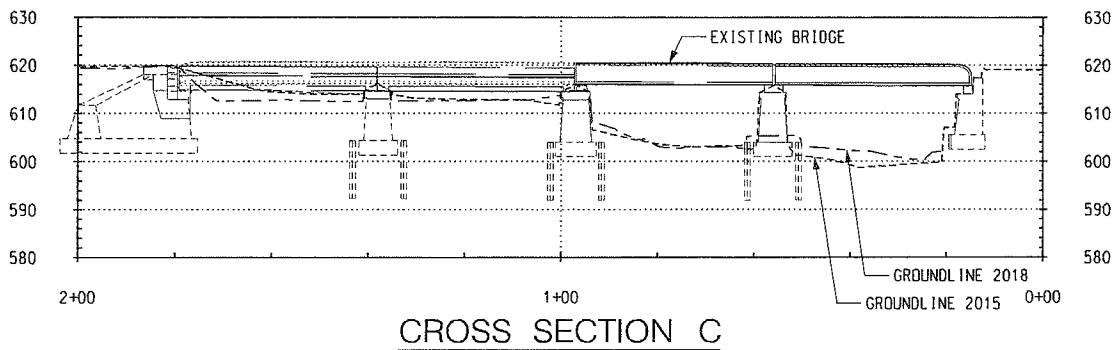
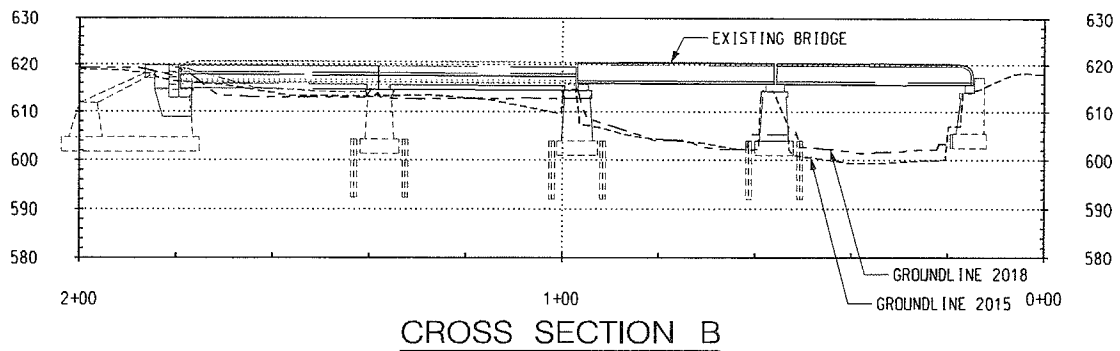
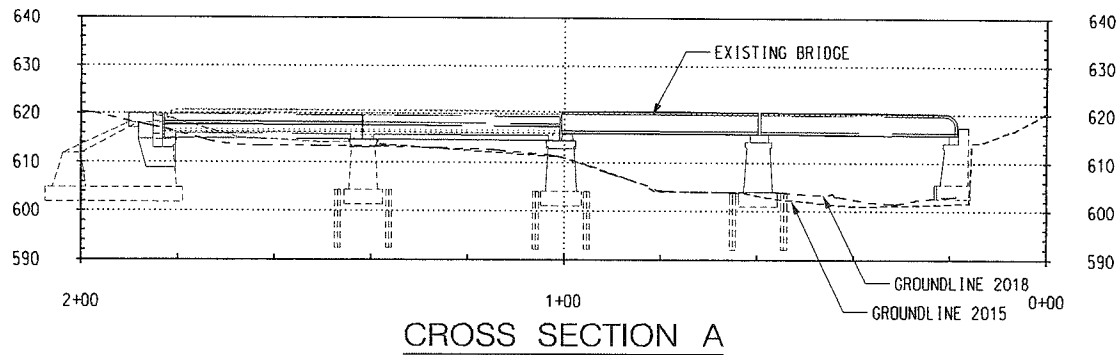
EXHIBIT  
BRIDGE 88.74 (B-18) WATERTOWN SUB.  
2015 CONTOURS

**CANADIAN  
PACIFIC**



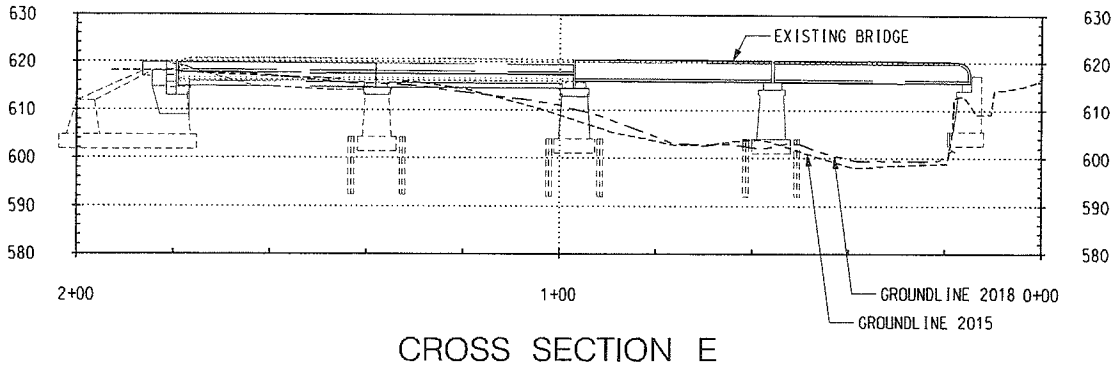
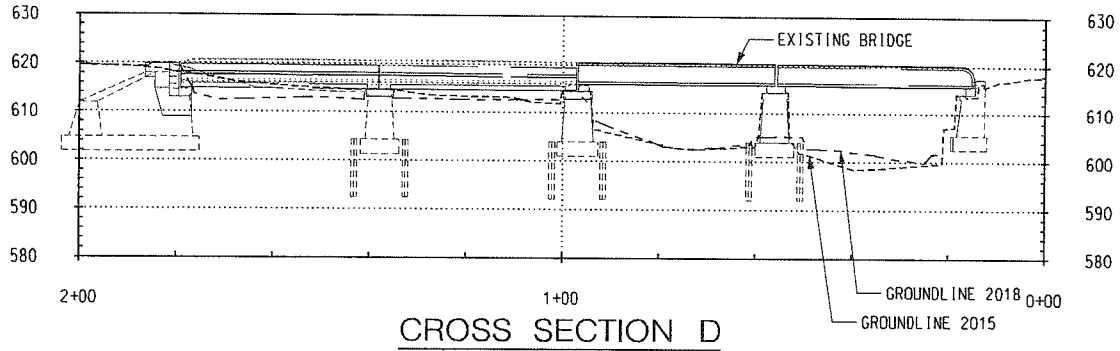
CONTOURS SHOWN ARE FROM SURVEY DATED 7/19/2018.

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| County: MILWAUKEE | Sec 1/4: NW1/4 of NE1/4 | Sec No.: 26         |  |                             |



|                   |                       |                     |   |
|-------------------|-----------------------|---------------------|---|
| State: WISCONSIN  | TWP/Range: T7N, R21E  | Drawing No.: 3 OF 5 | EXHIBIT<br>BRIDGE 88.74 (B-18) WATERTOWN SUB.<br>CROSS SECTIONS |
| County: MILWAUKEE | Sec 1/4: NW1/4ofNE1/4 | Sec No.: 26         |   |

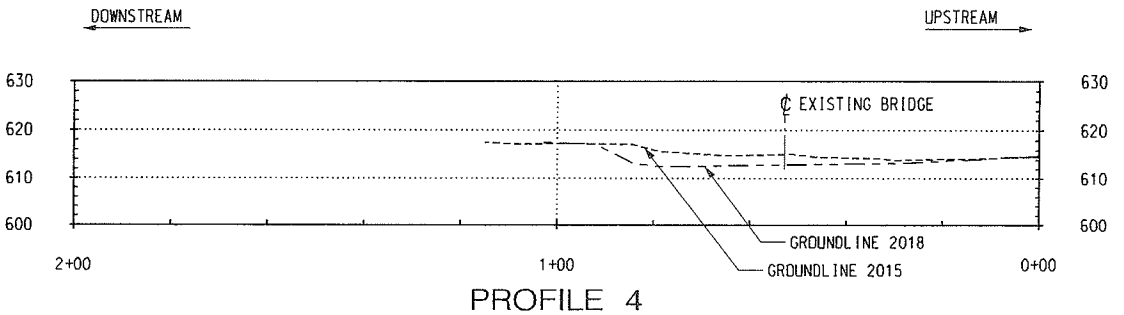
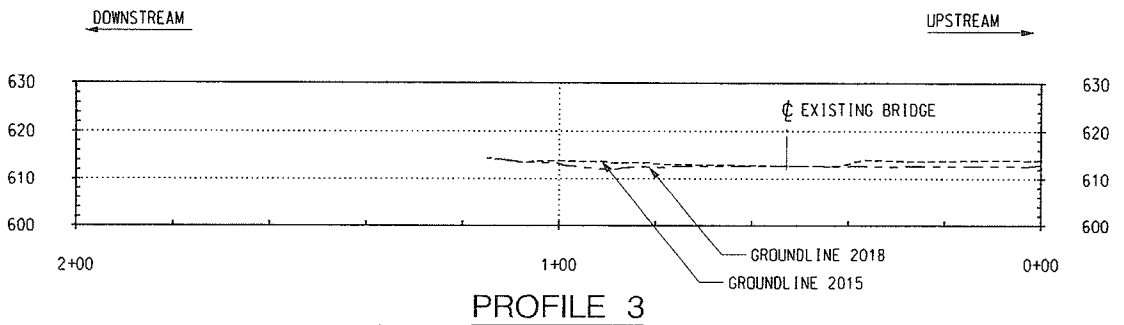
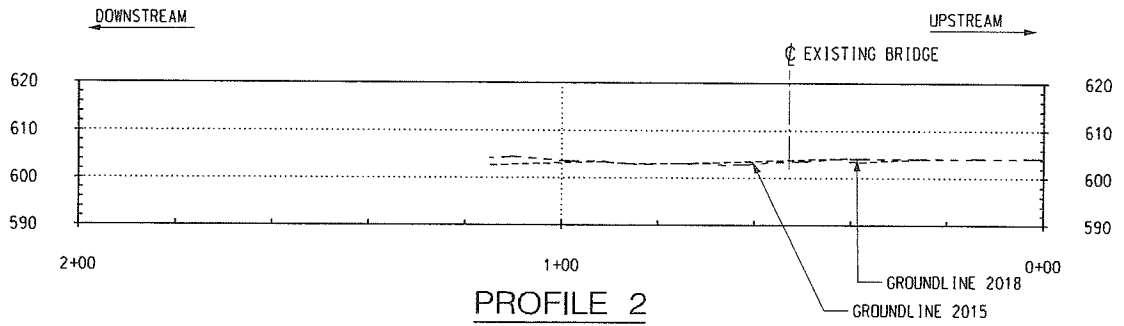
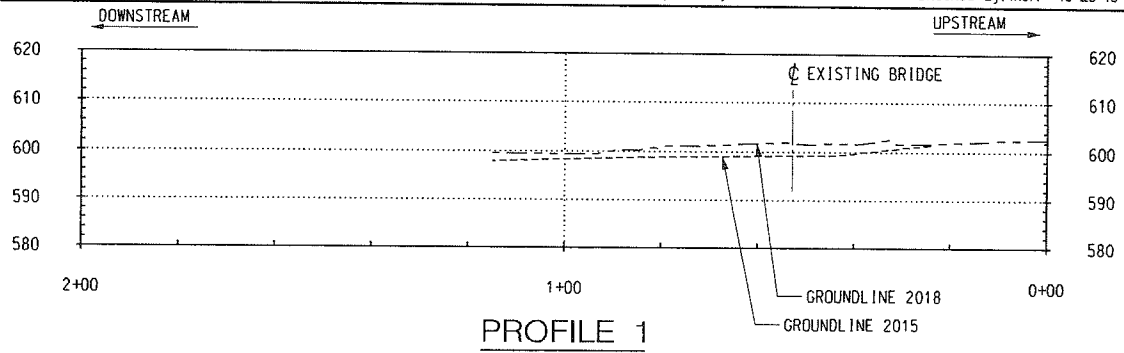
CANADIAN  
PACIFIC



Ritmeyer V.S. Exhibit 14

|                   |                         |                     |   |
|-------------------|-------------------------|---------------------|---|
| State: WISCONSIN  | TWP/Range: T7N, R21E    | Drawing No.: 4 OF 5 | EXHIBIT<br>BRIDGE 88.74 (B-18) WATERTOWN SUB.<br>CROSS SECTIONS |
| County: MILWAUKEE | Sec 1/4: NW1/4 of NE1/4 | Sec No.: 26         | <b>CANADIAN<br/>PACIFIC</b>                                     |





|                   |                         |                     |   |                             |
|-------------------|-------------------------|---------------------|---|-----------------------------|
| State: WISCONSIN  | TWP/Range: T7N, R21E    | Drawing No.: 5 OF 5 | EXHIBIT<br>BRIDGE 88.74 (B-18) WATERTOWN SUB.<br>RIVER PROFILES | <b>CANADIAN<br/>PACIFIC</b> |
| County: MILWAUKEE | Sec 1/4: NW1/4 of NE1/4 | Sec No.: 26         |   |                             |

**Exhibit 15**

**State of Wisconsin**  
DEPARTMENT OF NATURAL RESOURCES  
3911 Fish Hatchery Road  
Fitchburg, WI 53711

**Tony Evers, Governor**  
**Preston D. Cole, Secretary**  
Telephone 608-266-2621  
FAX 608-267-3579  
TTY Access via relay - 711



February 14, 2020

Milwaukee County

Canadian Pacific  
William M Tuttle  
120 South 6<sup>th</sup> Street, Suite 800  
Minneapolis, MN 55402

**Subject: Response Requested**

Dear Mr. Bill Tuttle,

The department met with you and representatives from CP on July 30, 2019 to review and discuss the grout mat placement project that occurred in the fall of 2017. The department shared concerns regarding environmental impacts including impacts to fish passage, recreational use, floodplain elevations, and erosion. Further review with the City of Milwaukee indicates ongoing floodplain concerns related to CP's project.

CP's submitted survey shows an increase to the elevation of the bed of the waterway from the grout mat placement. The City of Milwaukee's floodplain ordinance requires that projects within the mapped floodplain do not obstruct flows or cause increases to the floodplain elevation, unless easements and a Conditional Letter of Map Revision (CLOMR) are obtained. The department provides technical assistance to local communities to ensure compliance with their floodplain ordinance.

Due to the ongoing concerns, the Chapter 30 application submitted by CP remains on hold. Please note, pursuant to Wis. Adm. Code s. NR 301.40, the department shall not process after-the-fact permit applications prior to completing enforcement actions if the project is causing or is likely to cause environmental damage. Additionally, please note that the Chapter 30 permit issued by the department serves as the Water Quality Certification for Army Corps of Engineers permitting.

Please provide an update regarding CP's status in correcting the deficiencies outlined in the March 13, 2018 Notice of Violation, April 27, 2018 summary letter, and July 30, 2019 on site meeting. Please provide this update via email to Sadie Derouin at [sadie.derouin@wi.gov](mailto:sadie.derouin@wi.gov) no later than March 1, 2020.

If you have questions regarding this letter, please contact me at 608-622-8247.

Sincerely,

Sadie Derouin  
Environmental Enforcement Specialist

cc: Erin Cox, DNR – Milwaukee  
Michelle Hase, DNR – Waukesha

**Exhibit 16**

March 16, 2020

**VIA E-MAIL AND U.S. MAIL**

Ms. Sadie Derouin  
Wisconsin Department of Natural Resources  
3911 Fish Hatchery Road  
Fitchberg, WI 53711

Mr. Michael Kowalkowski  
Wisconsin Department of Natural Resources  
3911 Fish Hatchery Road  
Fitchberg, WI 53711

**Re: Watertown B.R. 88.74 – Response to February 14, 2020 Letter**

Dear Ms. Derouin and Mr. Kowalkowski:

We represent Soo Line Railroad Company, d/b/a Canadian Pacific (“CP”), in connection with this matter. We are writing in response to the Wisconsin Department of Natural Resources’ (“DNR”) letter dated February 14, 2020, regarding CP’s installation of a grout mat in the Menomonee River as part of its emergency repair to a railroad bridge (Watertown B.R. 88.74) in November 2017.<sup>1</sup>

Your letter states that due to “ongoing concerns,” CP’s Chapter 30 permit application remains “on hold,” and that “the department shall not process after-the-fact permit applications prior to completing enforcement actions if the project is causing or is likely to cause environmental damage.” Your letter also seeks an “update regarding CP’s status in correcting the deficiencies outlined in the March 13, 2018 Notice of Violation, April 27, 2018 summary letter, and July 30, 2019 on site meeting.”

CP is surprised by DNR’s letter, especially because it contains no ideas or suggestions as to how DNR believes CP should “correct[] the deficiencies.” Representatives of CP and DNR first met in Madison, Wisconsin almost two years ago (in April 2018) to discuss CP’s emergency repairs to B.R. 88.74 and to address DNR’s concerns with the grout mat. Following that meeting and additional exchanges of information, DNR requested, and CP provided in good faith, following commitments made at the meeting, a Chapter 30 permit application. CP understood its Chapter 30 permit application would be processed based on the commitments made at April 2018 meeting. CP also understood that DNR had received sufficient information regarding why the installation of a grout mat was the only feasible alternative to prevent further structural damage to B.R. 88.74 and avoid other environmental impacts. CP submitted the permit application notwithstanding its objections to DNR’s enforcement actions, namely, (i) that DNR’s Chapter 30

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<sup>1</sup> DNR initially requested a written response from CP by March 1, 2020. DNR agreed to extend the response deadline until March 16, 2020.

permit requirement was preempted by the Interstate Commerce Commission Termination Act of 1995 (“ICCTA”), and, even if not preempted, (ii) that CP’s use of a grout mat was legally authorized and consistent with USACE Regional General Permit GP-002-WI and Wisconsin Department of Transportation regulations regarding grout mats.

CP now reiterates these objections to DNR’s Chapter 30 permit requirement, as discussed further below. CP remains hopeful that this matter can be resolved in good faith and without litigation. Should DNR’s threats of enforcement action continue, however, CP will have no choice but to file a petition for declaratory order with the federal Surface Transportation Board (“STB”) in Washington, D.C.

### **I. Relevant Factual Background**

Because more than two years has passed since CP first contacted DNR regarding B.R. 88.74, CP provides this brief chronology of events to put DNR’s February 14, 2020 letter in context.

As you are aware, during a routine inspection in the fall of 2017, CP discovered emergent scour damage to an abutment supporting B.R. 88.74, a CP bridge that carries daily passenger and freight traffic across an urban stretch of the Menomonee River in Milwaukee (Miller Valley), Wisconsin. Given the severity of the scour, the bridge’s location in a dense, urban area, and the high volume of passenger and freight traffic (including hazardous materials) on B.R. 88.74, CP had no choice but to immediately commence emergency repairs on the bridge. A failure to take action to address the damage could have had catastrophic consequences. During this time, CP sought water quality certification from the DNR under Section 401 of the Clean Water Act, as required under CP’s USACE General Permit GP-002-WI, for installation of the grout mat.<sup>2</sup>

Almost five months later – long after the grout mat had been installed and the bridge repaired – CP received a “Notice of Violation and Enforcement Conference Request” from the DNR (the “NOV”).<sup>3</sup> The NOV alleged that CP’s installation of the grout mat violated Wis. Stat. § 30.12(1)(a) and Wis. Code § 299.03(1). The NOV threatened CP with “forfeitures of up to \$5,000 per day,” and demanded an Enforcement Conference with CP representatives in Waukesha, Wisconsin in April 2018.

CP responded to the NOV in a written letter dated March 29, 2018.<sup>4</sup> CP’s letter explained why emergency repairs to B.R. 88.74 were necessary and why the grout mat was the only feasible option to stabilize the bridge abutment. In particular, CP noted that use of rip rap in the river bed would have required significant excavation, likely impacted fish habitat, and likely increased risk

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<sup>2</sup> CP requested water quality certification in a written letter to WDNR dated October 30, 2017. A copy of that letter is included at Attachment A (Letter from Karl Rittmeyer to Elaine Johnson dated October 30, 2017).

<sup>3</sup> See Attachment B (Letter from Sadie Derouin to Karl Rittmeyer dated March 13, 2018).

<sup>4</sup> See Attachment C (Letter from William Tuttle to Sadie Derouin dated March 29, 2018).

of upstream flooding risk. Further, such excavation risked additional structural damage to the bridge and would have required the use of large equipment in and along the river causing environmental impacts. CP also stated that the use of the grout mat was legally justified under its USACE Regional General Permit GP-002-WI, and that DNR's attempt to require CP to apply for a Section 30 permit under Wisconsin law is preempted by ICCTA.

On April 12, 2018, representatives of DNR and CP met in Madison, Wisconsin to discuss this matter. During the meeting, DNR agreed to provide CP with a written list of its concerns related to the grout mat, and CP agreed to provide a written response addressing those concerns. Following the meeting, CP understood that it would work in good faith to submit a Chapter 30 permit application to DNR, subject to CP's objections, and that DNR would approve the permit with any necessary conditions.

DNR provided a written list of seven "comments" in a letter to CP dated April 27, 2018.<sup>5</sup> DNR's first comment provided a website link to the permit application page on DNR's website, and noted that "[t]he department intends to include conditions in the permit for site maintenance should any of the grout mats become dislodged, moved, or cantilevered, etc." DNR's third comment requested "[a]s-built channel survey elevations up, under, and downstream of the bridge." CP responded in a letter dated May 25, 2018.<sup>6</sup> Responding to comment 1, CP noted its understanding that "DNR will issue a 401 water quality certification for the project." Per DNR's request, CP's letter also provided a detailed narrative signed and stamped by a Wisconsin professional engineer regarding why the grout mat was installed at B.R. 88.74. In response to comment 3, CP followed up with additional detailed drawings of B.R. 88.74, demonstrating that stream topography was not significantly altered as a result of CP's work.<sup>7</sup>

From the spring to early fall of 2019, CP's general counsel, William Tuttle, communicated directly with Michael Kowalkowski, legal counsel for DNR, regarding regulatory issues related to the installation and use of grout mats. This followed comments DNR had made during a February 25, 2019 conference call, in which DNR seemingly took the position that the use of grout mats were not allowed in Wisconsin. CP subsequently informed DNR that Wisconsin Department of Transportation "Special Provisions" expressly address and authorize the use of grout, grout filled bags, and grout mats for scour protection.<sup>8</sup> In addition, CP informed DNR that the USACE Transportation Regional General Permit, under which CP operates, was amended effective February 21, 2018, to expressly allow "minor deviations in a culvert or bridge configuration," including "the repair of a culvert aprons or bridge piles" and "lining or cleaning of

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<sup>5</sup> See Attachment D (Letter from Elaine Johnson to Karl Rittmeyer dated April 27, 2018).

<sup>6</sup> See Attachment E (Letter from William Tuttle to Elaine Johnson dated May 25, 2018).

<sup>7</sup> See Attachment F (Letter from William Tuttle to Elaine Johnson dated July 31, 2018).

<sup>8</sup> See Attachment G (E-mail from William Tuttle to Michael Kowalkowski dated July 24, 2019).

pipes, culverts or bridges.”<sup>9</sup> In other words, the bridge repair work undertaken by CP was expressly authorized under the amended Regional General Permit. CP received no response to these communications from DNR’s counsel.

On September 27, 2018, DNR requested that CP submit a Chapter 30 permit application.<sup>10</sup> CP did so on October 30, 2018, subject to its objections to the DNR’s NOV.<sup>11</sup>

CP did not receive a response to its permit application. On July 30, 2019, representatives of CP and DNR met at the site of B.R. 88.74 to view the grout mat in situ. DNR raised two primary concerns at this meeting. First, DNR requested that metal tie-in wires between sections of grout mat be cut to eliminate potential waterway hazards and allow for settling of the grout mat with natural sediment movement. CP agreed to do so. Second, DNR requested the tactical placement of rip rap in order to slow river flow and provide fish resting areas. CP expressed concerns that adding rip rap would increase the risk of flooding during severe rain events. Following the July 2019 meeting, CP understood that DNR would provide a written summary of any additional information or requirements, and then issue CP the Chapter 30 permit. Instead, CP heard nothing for the next seven months.

## **II. DNR’s February 14, 2020 Letter**

On February 14, 2020 - more than two years after CP had requested water quality certification from DNR, and more than a year after DNR invited CP to submit its Chapter 30 permit application – DNR sent CP another letter. DNR’s letter threatens ongoing enforcement action and states that CP’s submitted survey “shows an increase to the elevation of the bed of the waterway from the grout mat placement.”<sup>12</sup> This concern had been raised by DNR in comment 3 of its April 27, 2018 letter, which requested channel survey elevations near and under the bridge. CP responded to comment 3 in its letter dated July 31, 2018, which included two detailed depictions of river bed topography both before and after the bridge was repaired. As CP noted in its July 31 letter, “these exhibits further demonstrate that stream topography was not significantly altered as a result of CP’s work.”<sup>13</sup>

Consistent with its July 31, 2018 letter and exhibits, CP continues to believe that installation of the grout mat has not significantly altered the stream topography or flood plain elevation in the area of B.R. 88.74. Further, CP believes that installation of any substantial amount of rip rap in this area of the Menomonee River would significantly increase elevation of the river bed and increase the risk of flooding in this area. Thus, while the grout mat is not “causing or . . . likely to

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<sup>9</sup> See Attachment H (E-mail from William Tuttle to Michael Kowalkowski dated October 19, 2018).

<sup>10</sup> See Attachment I (Letter from Sadie Derouin to William Tuttle dated September 27, 2018).

<sup>11</sup> See Attachment J (E-mail and Letter from William Tuttle to Sadie Derouin dated October 30, 2018).

<sup>12</sup> See Attachment K (Letter from Sadie Derouin to William Tuttle dated February 14, 2020).

<sup>13</sup> See Attachment F.



cause environmental damage” (as stated in DNR’s February 14, 2020 letter), CP is concerned that the use of rip rap under B.R. 88.74 would.<sup>14</sup> CP raised this issue directly with DNR during the July 2019 meeting, and DNR has not responded to date.

### **III. CP’s Installation of the Grout Mat Is Legally Authorized under the USACE General Permit and Wisconsin Department of Transportation Regulations**

CP installed the grout mat as part of its emergency repair of B.R. 88.74. CP’s repairs, including the grout mat, were within the scope of Regional General Permit GP-002-WI as a non-reporting project, since it addressed an existing, previously authorized, currently serviceable structure being restored to its original condition. Accordingly, neither a separate Section 404 permit nor a separate water quality certification permit should have been required for CP’s bridge repair work and its installation of the grout mat.

In addition, as noted above, CP’s bridge repair work is permitted under the amended USACE Transportation Regional General Permit, which expressly allows “minor deviations in a culvert or bridge configuration,” including “the repair of a culvert aprons or bridge piles” and “lining or cleaning of pipes, culverts or bridges.

Finally, Wisconsin Department of Transportation regulations expressly authorize the use of grout, grout filled bags, and grout mats for scour protection.<sup>15</sup> CP’s installation of the grout mat along the river bed under B.R. 88.74 is consistent with these regulations. In fact, the contractor who performed the grout mat work for CP (J.F. Brennan Company, Inc.) is also used by WisDOT.

### **IV. DNR’s Chapter 30 Permit Requirement Is Preempted by ICCTA**

While CP has submitted a Chapter 30 permit application to DNR in a good faith effort to resolve this matter, CP reiterates that DNR’s Chapter 30 permit requirement is preempted by well-established federal law under ICCTA.

#### **A. ICCTA Preempts State and Local Environmental Permitting Requirements**

ICCTA expressly and expansively preempts state and local regulation of rail “transportation,” and provides the federal Surface Transportation Board (“STB”) with exclusive jurisdiction over the same. *See Soo Line R.R. Co. v. City of St. Paul*, 827 F. Supp. 2d 1017, 1021 (D. Minn. 2010). ICCTA defines “transportation” in a way that is “far broader than the term’s ordinary meaning.” *Union Pacific R.R. v. Chicago Transit Auth.*, No. 07-cv-229, 2009 WL 448897, at \*4 (N.D. Ill. Feb. 23, 2009), *aff’d*, 647 F.3d 675 (7th Cir. 2011). Courts have observed that “it is difficult to

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<sup>14</sup> See Attachment K.

<sup>15</sup> See Attachment G.

imagine a broader statement of Congress' intent to preempt state regulatory authority over railroad operations." *See, e.g., City of St. Paul*, 827 F. Supp. 2d at 1021.

Environmental permitting requirements, such as the Chapter 30 permit process imposed by DNR on CP, are precisely the type of state and local regulation that is preempted by ICCTA. "[S]tate or local permitting or preclearance requirements, including building permits, zoning ordinances, and *environmental and land use permitting requirements*, are *categorically preempted* as to any facilities that are an integral part of rail transportation." *Soo Line R.R. Co. – Petition for Declaratory Order*, 2014 WL 7330097, at \*4 (STB served Dec. 22, 2014) (emphasis added) (holding that ICCTA preempted environmental permitting requirements in connection with a project to upgrade a rail yard); *Green Mountain R.R. Co. v. State of Vermont*, 404 F.3d 638 (2d Cir. 2005) (holding that ICCTA preempted environmental review processes in connection with railroad's construction of a salt storage shed and unloading facilities); *City of Auburn v. U.S. Gov't*, 154 F.3d 1025, 1031 (9th Cir. 1998) (holding that ICCTA preempts state and local environmental permitting laws); *Joint Petition for Declaratory Order – Boston & Maine Corp. & Town of Ayer, MA*, FD 33971, 5 S.T.B. 500 (STB served May 1, 2001) (holding that ICCTA preempted the planning board's permitting and review processes and an environmental pre-construction review process). This categorical preemption applies "regardless of the context or rationale for the [local or state] action." *Soo Line R.R. Co.*, 827 F. Supp. 2d at 1021 (quoting *CSX Transportation, Inc. – Petition for Declaratory Order*, FD 34662, 2005 WL 1024490, at \*2 (S.T.B. May 3, 2005)).

Here, DNR's Chapter 30 permit requirement is categorically preempted under the overwhelming weight of ICCTA authority.

### **B. ICCTA Also Preempts Pretextual and Discriminatory Enforcement of State Regulations**

Courts and the STB have also held that state regulation is preempted by ICCTA where the regulation is applied in a discriminatory manner or as a pretext for some other purpose. *Tipton v. CSX Transp., Inc.*, 2017 WL 10398182, at \*15 (E.D. Tenn. 2017) (quoting *Adrian & Blissfield R.R. v. Vill. of Blissfield*, 550 F.3d 533, 539-40 (6th Cir. 2008)); *Town of Ayer*, 2001 WL 458685 (courts analyze "whether the statute or regulation is being applied in a discriminatory manner, or being used as a pretext for frustrating or preventing a particular activity, in which case the application of the statute or regulation would be preempted").

The substantial delay and inconsistency in DNR's enforcement process raise serious questions regarding DNR's purpose in continuing to threaten CP with enforcement and daily fines of \$5,000. As noted above, DNR's February 14, 2020 letter comes more than two years after CP first requested water quality certification from DNR in October 2017; 23 months after DNR's NOV dated March 13, 2018; more than 15 months after CP submitted its Chapter 30 permit application at the express request of DNR; and over 6 months after CP and DNR met in person at the site on

July 30, 2019. CP has participated in numerous meetings with DNR and has provided DNR with all requested information, including information on river bed topography and elevation, information on why a grout mat was the only feasible alternative to prevent further scour under B.R. 88.74, and information on why rip rap would increase the risk of flooding. Yet DNR is now apparently refusing to issue the Chapter 30 permit, despite inviting CP to apply for the permit. And throughout this time, DNR's threat of enforcement, including daily penalties up to \$5,000,<sup>16</sup> has loomed over CP.

Further, in light of WisDOT's regulations expressly allowing the use and installation of grout mats, DNR's enforcement of a Chapter 30 permit requirement against CP appears to be selective and discriminatory.

CP is also aware that the City of Milwaukee and Milwaukee Metropolitan Sewer District ("MMSD") have been undertaking efforts to re-naturalize urban portions of the Menomonee River in order to reduce flooding and beautify the landscape. As you may be aware, CP has been working cooperatively with MMSD to evaluate alternatives to reduce flooding along the Menomonee River. It is unclear whether DNR's continued enforcement actions have any connection to these efforts. Should that be the case, it would not be appropriate for DNR to use the ongoing threat of enforcement and civil penalties to coerce CP's participation in the MMSD project or any other City initiative.

Based on these facts, the STB will conclude that DNR's enforcement action against CP is preempted by ICCTA.

## **V. Next Steps**

CP would obviously prefer to avoid litigation with DNR on this issue and continue to work in good faith to resolve this matter. To that end, CP believes it would be beneficial for representatives of DNR and CP, including their counsel, to talk or meet to see whether this matter can be resolved once and for all. Failing resolution, CP will have no choice but to commence an action at the STB seeking a declaration that DNR's Chapter 30 permitting requirement is preempted by ICCTA.

We look forward to your response.

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<sup>16</sup> As CP stated in its March 29, 2018 letter to WDNR, the legal basis for WDNR's threatened financial penalties is unclear. CP does not concede or waive its right to contest that WDNR has the authority impose a daily fine of \$5,000 or to seek injunctive relief without court involvement. *See* Attachment C, at p. 2.

Ms. Sadie Derouin  
Mr. Michael Kowalkowski  
March 16, 2020  
Page 8

Sincerely,

**Stinson LLP**

A handwritten signature in blue ink, appearing to read "Andrew Davis", with a horizontal line extending to the right.

Andrew Davis

AWD:

Attachments

cc: Erin Cox, DNR – Milwaukee (via e-mail)  
Michelle Hase, DNR – Waukesha (via e-mail)  
William Tuttle, Esq.  
Scott Paradise

# **ATTACHMENT A**



Karl Rittmeyer  
Senior Bridge Engineer  
East Region

11306 Franklin Ave.  
Franklin Park, IL  
60131  
USA

Cell 224-500-4641  
Karl\_Rittmeyer@cpr.ca

October 30, 2017

Elaine Johnson  
Water Management Specialist  
WI DNR  
141 NW Barstow, Room 180  
Waukesha, WI 53188

**RE: Canadian Pacific – Watertown BR 88.74 (B-18), Emergency Scour Repair**

On behalf of Canadian Pacific (CP), I am writing to request WIDNR water quality certification under Section 401 of the Clean Water Act from the WI DNR. This is required under General Condition 26 of the USACE Regional (non-reporting) General Permit GP-002-WI. CP must repair a scoured condition under Abutment 1 of Watertown BR 88.74 (B-18).

Please find included with this submittal:

- Exhibit drawing containing the proposed project layout and elevation view showing the scour mitigation measures planned.
- Photo log of the existing conditions.

We believe this work qualifies as a non-reporting project under Regional General Permit GP-002-WI and does not require an individual Section 404 permit application for the following reasons:

- The project will repair an existing, previously authorized, currently serviceable structure, which will maintain the same use of carrying railroad traffic as when it was authorized. The existing structure is considered previously authorized as it was in place prior to December 18, 1968 (see 33 CFR 330.3).
- The structure is being restored to its original condition by pumping grout underneath the existing footing.
- Stream channel modifications, which are immediately adjacent to the structure and on CPR Right-of-Way, are limited to the minimum necessary and are intended to hold the channel elevation and prevent further undermining of the abutment.

Therefore, a copy of the enclosed information for this work is being sent to the US Army Corps of Engineers and the City of Milwaukee Floodplain Administrator for their information purposes only.

Watertown BR 88.74 is located in Miller Valley, WI crossing over the Menomonee River at these coordinates (43.042426, -87.972293). As shown in the attached drawing, CP plans to pump grout beneath the footing of Abutment 1 to fill any voids that exist; the total volume of grout is unknown. Additionally, in order to prevent further erosion of the river bed within Span 1, 1900 square feet of grout mats will be placed on the river bed.

As recently confirmed by the Surface Transportation Board, state and local permitting or preclearance requirements (including, but not limited to, building permits, zoning ordinances, and environmental and land use permitting requirements) are categorically preempted for the construction of rail facilities by the ICC Termination

Act of 1995 (ICCTA). See *Soo Line Railroad Company-Pet. For Declaratory Order*, FD 35850 at 4 (STB Dec. 22, 2014). Accordingly, this letter shall serve as notice that we are choosing to forgo the State of Wisconsin and City of Milwaukee permitting process. This letter and application is additionally being shared with the WI DNR for the purpose of meeting General Condition 26 of the USACE Regional General Permit GP-002-WI.

It is CP's intent to begin the emergency work the week of November 6th with the Contractor using State of Wisconsin Best Management Practices to protect the waterway during low flows. Material excavated and not reused in the project will be removed and disposed of off site. Native grasses will be planted on disturbed areas when work is complete.

Should you have any questions please feel free to contact HDR Project Manager Michael Keller at 406-532-2233 or myself at 224-500-4641.

Sincerely,



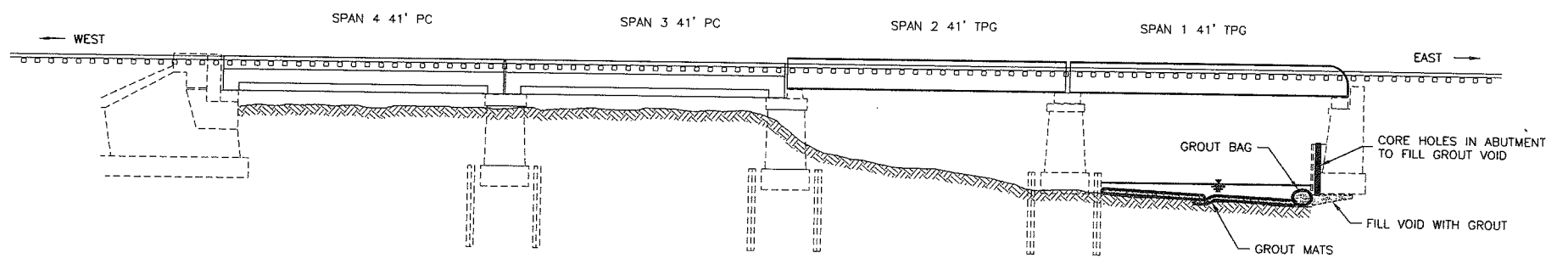
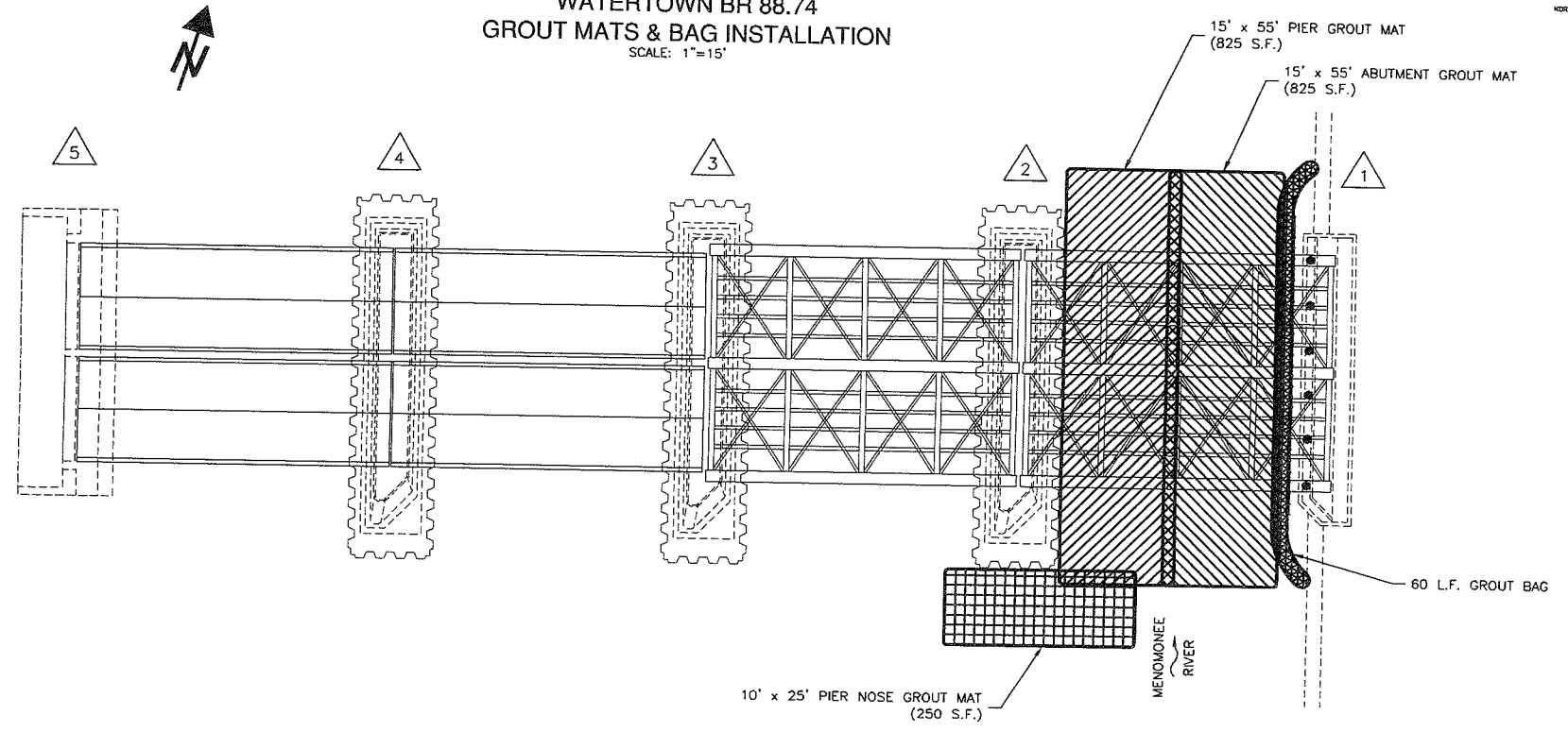
Karl Rittmeyer  
Senior Bridge Engineer – East Region

Cc: US Army Corps of Engineers, St. Paul District – Regulatory, 180 5<sup>th</sup> Street  
East, Suite 700, St. Paul, MN 55101  
Chris Rute, Floodplain Administrator – City of Milwaukee, 809 N Broadway,  
Milwaukee, WI 53202  
Wisconsin DNR Service Center, 141 NW Barstow, Room 180, Waukesha, WI  
53188

encl

WATERTOWN BR 88.74  
 GROUT MATS & BAG INSTALLATION  
 SCALE: 1"=15'

NOV 10/12/17





**CPR Watertown BR 88.74 (B-18) – Photo Log**

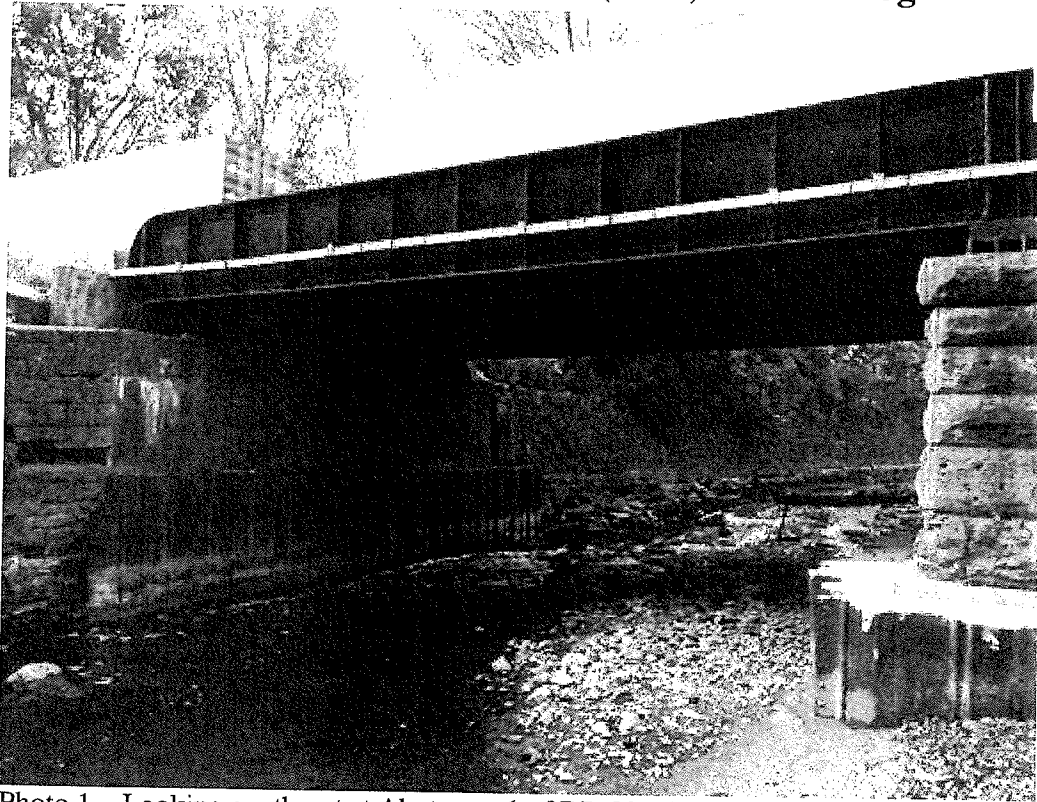


Photo 1 – Looking southeast at Abutment 1 of BR 88.74.

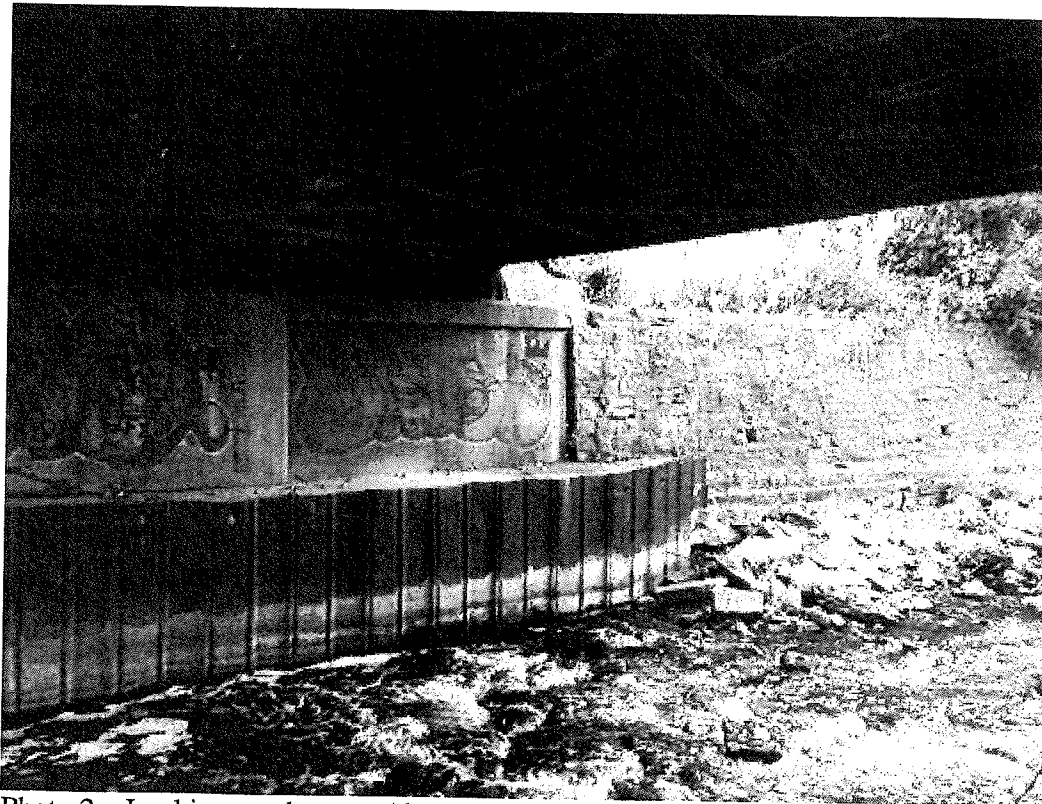


Photo 2 – Looking southeast at Abutment 1 of BR 88.74.

**CPR Watertown BR 88.74 (B-18) – Photo Log**

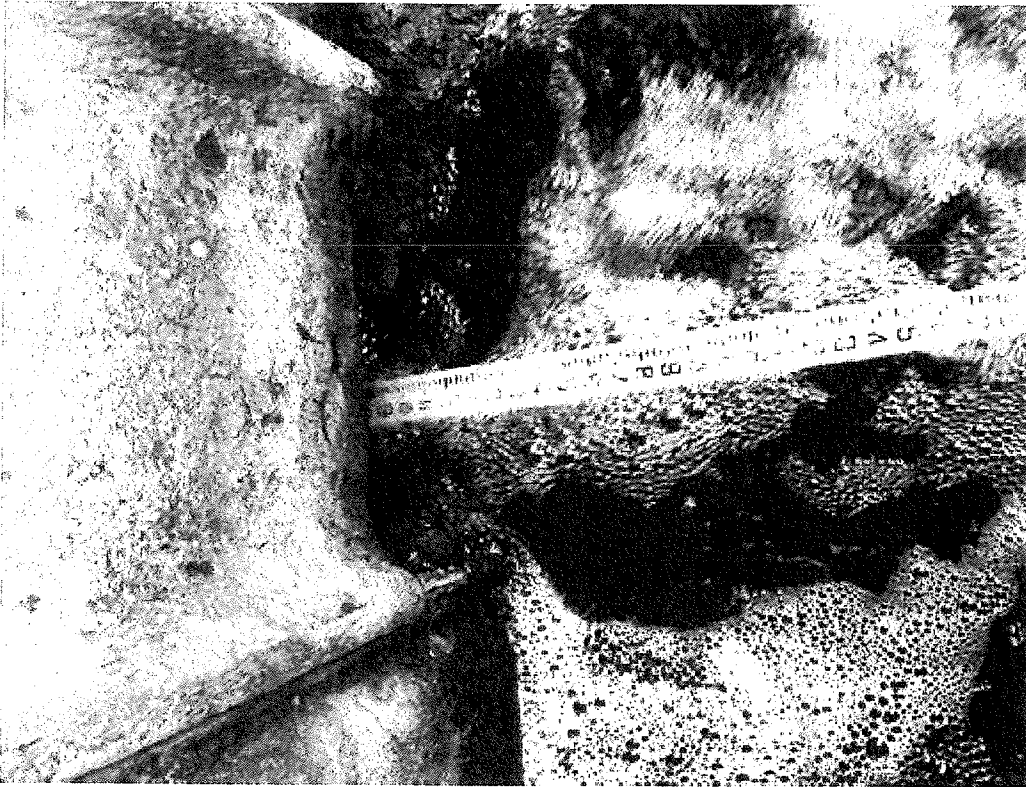


Photo 3 – Tape measure extended 5' beneath footing of Abutment 1.



Photo 4 – Looking below the bottom of the sheet piling and into the void beneath the footing of Abutment 1.

**CPR Watertown BR 88.74 (B-18) – Photo Log**



Photo 5 – Full extension of 13' long tape measure under the Abutment 1 footing.

# **ATTACHMENT B**



March 13, 2018

Certified Mail/Return Receipt Requested  
Milwaukee County

SOO Line Railroad Company  
C/O Real Estate  
501 Marquette Ave, STE 1525  
Minneapolis, MN 55402

Karl Rittmeyer  
11306 Franklin Ave.  
Franklin Park, IL 60131

Subject: NOTICE OF VIOLATION AND ENFORCEMENT CONFERENCE REQUEST – April 5, 2018

Dear Mr. Karl Rittmeyer,

The Department of Natural Resources (department) has reason to believe that SOO Line Railroad Company (SOO), a subsidiary of Canadian Pacific Railway, is in violation of state navigable waterway laws at Watertown BR 88.74 (B-18) bridge crossing, City of Milwaukee, Milwaukee County, Wisconsin (the site). These violations are based upon a site inspection and records review.

The department alleges the following violations:

1. **Section 30.12(1)a Wisconsin Statutes (Wis. Stats) states:** Permits required. Unless an individual or a general permit has been issued under this section or authorization has been granted by the legislature, no person may do any of the following: Deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established.
2. **Section 299.03(1) Wisconsin Administrative Code (Wis. Code):** No person may conduct any activity which may result in any discharge into the waters of the state unless the person has received a certification or waiver under this chapter.
  - On October 30, 2017, SOO contacted the department requesting a 401 Water Quality Certification for a non-reporting activity under their current RGP-002 (general permit) from the U.S. Army Corps of Engineers.
  - On November 2, 2017, the department informed SOO that a Chapter 30 permit would be required and recommended modification of the proposed project due to concerns the project may affect fish passage, alter flood elevations and cause downstream erosion.
  - On November 17, 2017, the department confirmed during a site visit that SOO installed a grout mat on the bed of the Menomonee River at Watertown BR 88.74 (B-18) bridge crossing without a Chapter 30 permit.
  - The general permit from the U.S. Army Corps of Engineers states that "All GP-002-WI authorizations are provisional, and require individual Section 401 Clean Water Act Water Quality Certification or waiver from the Wisconsin Department of Natural Resources" and "GP-002-WI authorizations are provisional and require that the WDNR provide confirmation that the activity complies with state water quality certification".

We have scheduled the following Enforcement Conference to discuss this matter in more detail:

Conference Date: Thursday, April 5, 2018  
Conference Time: 10:00am  
Location: DNR Service Center – Waukesha  
Conference Room 163  
141 NW Barstow St # 180, Waukesha, WI 53188

**Please come to the meeting prepared to discuss a restoration plan and permit requirements.**

We request you attend the Enforcement Conference as it is an important opportunity to discuss the circumstances surrounding the alleged violations and to learn your perspective on this matter. Please note that in an effort to encourage a candid and productive conversation, attendance is limited to you, your legal counsel and others with the technical expertise necessary to understand, evaluate and correct the violation.

The department's enforcement decision will be based upon available information if you do not attend the Enforcement Conference.

Please be advised, the department is authorized to seek injunctive or other appropriate relief for violations of navigable waterway laws, including forfeitures of up to \$5,000 per day. Each day of continued violation is a separate offense. In addition to the penalties, the court may order the defendant to perform or refrain from performing such acts as may be necessary to fully protect and effectuate the public interest in navigable waters. The court may order abatement of a nuisance, restoration of a natural resource or other appropriate action designed to eliminate or minimize any environmental damage caused by the defendant.

Pursuant to s. 30.292, Wis. Stats, Parties to a violation: Whoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

If you have questions or need to reschedule the conference, please contact me at 608-622-8247 or through email at [sadie.derouin@wi.gov](mailto:sadie.derouin@wi.gov).

Sincerely,



Sadie Derouin  
Environmental Enforcement Specialist

Encl: Environmental Enforcement Conference Information Sheet

cc: E. Johnson, DNR – Waukesha  
M. Scott, DNR – Waukesha  
M. Kowalkowski, DNR – LS/8  
April Marcangeli, U.S. Army Corps of Engineers  
Jeff Johnson, HDR Inc.  
Micheal Keller, HDR Inc.



## Environmental Enforcement Conference

An Enforcement Conference (EC) is a meeting between Department of Natural Resources staff and representatives of a person or business that the Department believes has violated an environmental law. The Department issues a Notice of Violation (NOV) when it has reason to believe that a violation of a permit condition, administrative rule or statutory requirement has occurred. The NOV either offers or schedules an EC.

### **Why Should I Attend?**

The EC is an important opportunity to discuss the Department's basis for the alleged violation(s) and learn more about what happened, why it may have happened, and any factors you believe the Department should consider, such as steps that have been or will be taken to stop the violation, correct any effects of the violation, and prevent violations from occurring in the future. It is also your opportunity to explain why you might disagree with the factual and legal conclusions underlying the NOV.

Historic data shows that most violations are resolved at the EC level, without the need for court ordered compliance and/or penalties. In situations where the significance of the violation warrants further enforcement action, your cooperative efforts to resolve the violation and prevent future violations will help minimize your legal and financial liability.

### **Who Should Attend the EC?**

Department staff involved in the EC typically consists of an Environmental Enforcement Specialist and regulatory staff that are familiar with the issues identified in the NOV.

While not required, you may seek representation by legal counsel or the assistance of an environmental consultant to prepare for and/or attend the EC. The EC is most productive when all involved are well-prepared to discuss the allegations and any corrective actions that may be necessary.

To ensure a productive candid discussion, participation in the EC is limited to the person or business involved and others with the legal or technical expertise necessary to understand, evaluate, mitigate and correct the violation. The EC is not an open meeting under state law and the Department will limit participation to those directly involved in the resolution of the matter.

### **What Happens if I don't Attend the EC?**

If a party is unable to attend the EC, they should immediately contact the Environmental Enforcement Specialist at the phone number in the NOV to reschedule. When a party refuses to attend the EC and provides no further information to the Department, the Department's enforcement decision will be based upon available information.

### **What Happens Following the EC?**

The EC is part of the Department's stepped enforcement process. At the EC, Department staff will explain the process and options available to address the alleged violation. Generally, the options range from closing the matter with no further action to referral to the Wisconsin Department of Justice (DOJ) or to U.S. EPA, for further enforcement action. In limited circumstances, the Department can issue citations, which are handled in local court similar to traffic offenses. If a case is referred to DOJ, the DOJ may initiate an action in court on behalf of the State. The State typically asks the Court to impose financial penalties and order completion of any necessary corrective actions. In most of the Department's cases, a cooperative return to compliance with any necessary restoration results in close out of the case. At close out, the Department will send a letter advising of no further enforcement action.

# **ATTACHMENT C**



CP

**March 29, 2018**

**By U.S. Mail and E-mail**

Sadie Derouin  
Environmental Enforcement Specialist  
Department of Natural Resources  
State of Wisconsin  
3911 Fish Hatchery Rd.  
Fitchburg, WI 53711

**Re: Response to Notice of Violation and Enforcement Conference Request**

Dear Ms. Derouin:

Soo Line Railroad Company, d/b/a Canadian Pacific (“CP”), is in receipt of the Department of Natural Resources’ (“DNR”) Notice of Violation and Enforcement Conference Request letter (“NOV Letter”) dated March 13, 2018. The NOV Letter alleges violations of Wis. Stat. §§ 30.12(1)(a) and 299.03(1) relating to emergency scour repair work CP performed at Watertown BR 88.74(B-18). CP appreciates the opportunity to meet with the DNR to further discuss the NOV Letter.

Prior to a meeting, however, it is important that you understand why CP strongly believes its emergency repairs to BR 88.74 were appropriate and legally justified. As the DNR is aware, in October 2017 CP identified severe structural damage to BR 88.74 resulting from the scour of more than 10 feet of material at the base of the eastern bridge abutment, causing CP to have concerns about the structural integrity of the bridge. Because the bridge is located in a dense, urban area and is heavily used, carrying two passenger trains and up to sixteen freight trains daily, this was an emergency situation with a potential risk to public safety. The failure to take immediate action would have required CP to place the bridge out of service, significantly affecting interstate passenger and rail traffic.

CP therefore commenced repair work on the bridge as soon as possible. As CP has explained, given the extent of the scour in the river bed, the only feasible repair option involved the use of a grout mat to stabilize the bridge abutment. The use of riprap, which was suggested by the DNR, would have required additional excavation of the river bed in order to avoid significant impact to fish passage and the risk of flooding caused by placing riprap on the existing river bed. Such excavation was not possible without risking further damage to the bridge. Excavation also would have required using large equipment in and around the river. CP’s use of the grout mat therefore minimized environmental impacts compared to riprap or other alternatives.

CP understands that the request for riprap may have been motivated by ongoing re-naturalization efforts on the Menomonee River. CP would welcome the opportunity to discuss how the bridge can be part of the DNR’s ongoing re-naturalization efforts, but that issue is separate from the legality of CP’s conduct in making emergency repairs to the bridge.

In addition to being the only technically feasible option, CP's use of the grout mat was legally authorized. CP complied with the applicable USACE Regional General Permit GP-002-WI when conducting its repairs. The ICC Termination Act of 1995 ("ICCTA") preempts the DNR's attempts to require a permit and Section 401 certification for CP's repair work, as well as the DNR's current attempts to enforce the alleged violations cited in the NOV Letter. *See Soo Line R.R. Co. – Pet. for Declaratory Order*, FD 35850, 2014 WL 7330097, at \*4 (served Dec. 23, 2014) (ICCTA categorically preempts "state or local permitting or preclearance requirements, including building permits, zoning ordinances, and environmental and land use permitting requirements" for facilities that "are an integral part of rail transportation"). The *Soo Line* case involved the City of St. Paul's attempt to require CP to procure state permits, beyond its pending USACE permits, prior to performing work adjacent to the Mississippi River. Here, CP also believes that its USACE permit was sufficient for the work performed. Requiring CP to obtain state or local permits also would have placed an unreasonable burden on CP's ability to make these emergency repairs, particularly where CP selected the least intrusive alternative available to it.

Finally, CP is not aware of any statute or rule that authorizes the DNR to seek a penalty of \$5,000 per day for these alleged violations, or to seek injunctive relief without court involvement. Wisconsin statutes provide that a violation of Wis. Stat. §§ 30.12 to 30.21 may result in a one-time fine of no more than \$10,000, but only if "a penalty is not provided under the applicable section." Wis. Stat. § 30.298(1). The NOV Letter alleges that CP violated Wis. Stat. § 30.12(1)(a), which specifically provides for a one-time fine of "not more than \$1,000." Wis. Stat. § 30.12(5). Further, Wis. Stat. § 30.298(5) only authorizes a court to issue the injunctive relief referenced in the NOV Letter. In advance of our meeting, it would be helpful if you provide the applicable statutes or rules that specifically authorize the DNR to seek a \$5,000 daily penalty and injunctive relief, particularly without court involvement.

Finally, the CP personnel and consultant most familiar with the bridge repair (Karl Rittmeyer of CP and Michael Keller of HDR, Inc.) are not available on April 5. They are available on April 9 and on other dates later in April. Please let me know if April 9 will work for a meeting, or contact me so we can arrange a mutually agreeable time.

Thank you for your consideration of these matters. We look forward to our upcoming meeting.

Sincerely,



William M. Tuttle  
General Counsel U.S.  
Canadian Pacific Railway

cc: Karl Rittmeyer  
Scott Paradise  
E. Johnson, DNR – Waukesha  
M. Koalkowski, DNR – LS/8  
April Marcangeli, U.S. Army Corps of Engineers  
Jeff Johnson, HDR Inc.  
Michael Keller, HDR Inc.

# **ATTACHMENT D**



4/27/2018

Certified Mail/Return Receipt Requested  
Milwaukee County

SOO Line Railroad Company  
C/O Real Estate  
501 Marquette Ave, STE 1525  
Minneapolis, MN 55402

Karl Rittmeyer  
11306 Franklin Ave.  
Franklin Park, IL 60131

**SUBJECT: Enforcement Conference Summary Letter 4/12/2018**

Dear Mr. Rittmeyer:

Thank you for attending the meeting with the Wisconsin Department of Natural Resources (department) to discuss the alleged violations of state navigable waterway laws at Watertown BR 88.74 (B-18) bridge crossing, City of Milwaukee, Milwaukee County, Wisconsin (the site).

Conference Date: Thursday, April 12, 2018  
Conference Time: 1:00pm  
Location: DNR Service Center- Fitchburg  
Bluff/Drumlin Room  
3911 Fish Hatchery Rd, Fitchburg, WI 53711

Attendance list is attached

### Discussion

Representatives of the Canadian Pacific Railway (CP) explained to department staff that the railway at the site is used as a freight and commuter rail. This railway is required by the Federal Railroad Administration (FRA) to have annual inspections to ensure safe load capacity. During an October 2017 inspection by CP staff showed a significant void under the bridge, which was not recorded under previous inspections. Addressing structural concerns at the site was deemed to be an urgent priority by CP, due to concerns that settling could cause potholing on the tracks and potential train derailment.

CP indicated several alternatives to correct the issue were reviewed; 1) installation of rock riprap, 2) installation of a grout mat with grout injection, and 3) installation of new bridge piers. Options 1 and 3 were rejected by CP due to costs, timing, and belief that installation of riprap could be impactful to water flow and the floodplain. Option 2 was chosen by CP.

CP indicated the work was conducted by J.F. Brennan Company, Inc. Approximately 8 cubic yards of concrete was pumped into the bridge pier abutment. CP and HDR staff explained that these types of grout mats are designed to be unstable, break apart, and are not typically "keyed-in" to the substrate. CP stated they did not believe the 50-60 foot long grout mat would be an impediment to fish passage. They explained the mats span the entire width of the channel so as not to increase flow velocity and to protect the other bridge piers. CP provided a 1937 aerial photo showing the river in relation to the bridge piers.

Department staff explained that a Chapter 30 individual permit is required for the placement of a structure such as a grout mat on the bed of a navigable waterway. The U.S. Army Corps of Engineers GP-002 approval is not valid unless water quality certification is received from the department. This water quality certification is typically issued in the form of the Chapter 30 permit.

As part of the Chapter 30 application process, the department is instructed to review the project to determine that the structure or deposit will not materially obstruct navigation, will not reduce the flood flow capacity of the stream, and will not be detrimental to the public interest (i.e. navigation, fish and wildlife habitat, natural scenic beauty, water quality/quantity, recreation). Department staff explained the public trust concerns with the structure as installed at the site (see attached Department Project Comments list).

#### Agreements

CP maintains that state authorization is not required on this project, but is willing to work in good faith with the department to address concerns. CP informed the department that the Milwaukee Metropolitan Sewerage District (MMSD) has plans to perform stream habitat activities in the location of the bridge and want to be sure all parties are coordinating on these efforts. The department has agreed to provide CP with a list of concerns by 4/27/2018 and provide CP with 30 days to investigate options to mitigate those concerns (5/27/2018). It is understood by the department that some of these options may require additional time to investigate and requests that CP and/or their consultants check back with the department by the close of the 30 days with an update. The department requests that the final project be authorized under a Chapter 30 individual permit application.

Please note, as outlined in the Notice of Violation, the department may pursue escalated enforcement actions for the alleged violations. The department may seek forfeitures or other appropriate relief, such as a restoration order, through a referral to the Department of Justice.

If you have any technical questions, please call me at (262) 574-2136 or email [Elaine.Johnson@wisconsin.gov](mailto:Elaine.Johnson@wisconsin.gov).

Sincerely,



Elaine Johnson  
Water Management Specialist

Encl: Attendance List  
Department Project Comments

cc: S. Derouin, DNR- Fitchburg  
M. Scott, DNR- Waukesha  
M. Hase, DNR- Waukesha  
C. Helker, DNR- Sturtevant  
M. Kowalkowski, DNR- LS/8  
April Marcangeli, U.S. Army Corps of Engineers  
Bill Tuttle, CP  
Scott J. Paradise, CP  
Jeff Johnson, HDR, Inc.  
Michael Keller, HDR, Inc.

**Department Project Comments:**

1. Chapter 30 individual permit application submittal:  
<https://dnr.wi.gov/topic/waterways/documents/PermitDocs/IPs/IndividualPermitAll.pdf>
  - a. The department intends to include conditions in the permit for site maintenance should any of the grout mats become dislodged, moved, or cantilevered, etc..
2. Provide a PE signed/stamped narrative outlining what work was performed and why. This statement should include information on the alternatives reviewed and why each of those alternatives were rejected as not feasible (i.e. information on why the grout mat cannot be cut away and the channel stabilized using rip rap or alternate method). The statement should also include information on how these types of grout mats are designed to function and are installed to resist uplift and drag forces.
3. As-built channel survey elevations up, under, and downstream of the bridge will be necessary.
4. The channel is isolated to one side of the waterway, this area now has higher, concentrated velocities, which is an impediment to fish passage. The channels roughness has been changed to a smoother surface, and the construction of the grout mats as opposed to rip rap eliminates the resting/pool-type areas that would normally be present to facilitate fish passage.
5. There may be an impact to navigation- both by concentrating flows and the area of exposed grout mats can be an obstruction.
6. The grout mats impact natural scenic beauty as they are an man-made construction mats as opposed to a naturalized rock/cobble stream bottom
7. The grout mats have exposed tie-in wires. These can be a safety hazard and over time will rust and degrade and can become hazardous.

# **ATTACHMENT E**



CP

May 25, 2018

**By E-mail Only**

Elaine Johnson  
Water Management Specialist  
Department of Natural Resources  
State of Wisconsin  
141 NW Barstow, Room 180  
Waukesha, WI 53188

**Re: Enforcement Conference Summary**

Dear Ms. Johnson:

Soo Line Railroad Company, d/b/a Canadian Pacific (“CP”), is in receipt of the Department of Natural Resources’ (“DNR”) 4/27/18 Summary Letter documenting the 4/12/2018 meeting between CP and the DNR regarding the emergency repair work CP completed last November at Watertown BR 88.74 over the Menomonee River. We appreciate you taking the time to summarize the discussion that occurred, but offer the following clarifications to the “Discussion” section of the summary that was provided:

- Approximately 8 CY of concrete was pumped “under” (not “into”) the east bridge abutment.
- The grout mat is designed to be able to flex and adjust with a changing river bed elevation and that this mat in particular was keyed in on the upstream end of the mat. The mat is not designed to break apart or be unstable.
- The mats span the entire width of the channel to prevent the streambed from lowering any further beneath Span 1 (east span) to mitigate potential future undermining of Abutment 1 or Pier 2. Our intent in installing the mat across the channel under Span 1 was not to “not increase flow velocity.” Maintaining channel velocity was a result of the scour mitigation.

Your letter of 4/27/2018 also included a complete list of DNR’s concerns about the project, most of which were discussed in the meeting. CP is still working towards developing one of the items you requested on the attachment titled “Department Project Comments,” but wanted to provide you with the information we have at this time. The following responses correlate numerically with the DNR’s comments provided in the attachment:

1. CP understands the WI DNR will issue a 401 water quality certification for the project. CP also understands that the DNR “typically” prefers to provide this certification in the form of a Section 30 permit issued under Wisconsin state law. As I indicated in my previous letter, CP strongly believes that any purported requirement that a railroad apply for and receive such a permit, in this context, is preempted by the Interstate Commerce Commission Termination Act of 1995. That said, CP will consider the Section 30 application process and I will address the issue further with your attorney, Mr. Kowalkowski, if necessary. As discussed, CP performs annual bridge inspections at all bridges on their system, this project location included, and will address future maintenance related issues of the grout mat in connection with those inspections.

2. CP is prepared to provide the following narrative signed/stamped by a licensed Wisconsin Professional Engineer stating “what work was performed and why:”

During the 2017 annual bridge inspection of Watertown BR 88.74 over the Menomonee River, CP discovered that the low flow channel of the river had migrated further east and was flowing directly in front of, and below, the east abutment. Due to low flow at the time of the inspection, the bottom of the sheet piling that exists in front of the abutment was exposed and the opportunity was taken to probe behind the sheet pile to confirm if any scour existed below the abutment spread footing. Extensive undermining of the footing was found and it was determined that a majority of the existing footing had been undermined, which could potentially cause the abutment to become unstable. This condition required emergency repair work to ensure the continued safe operation of passenger and freight railroad service at the location.

In addition to pumping grout under the Abutment 1 footing to restore the bearing capacity of the abutment, CP evaluated three options to stop the channel from scouring further, thereby protecting the stability of both Abutment 1 and Pier 2. The options considered and the reasons why it was or was not selected is as follows:

- a. **Rock Riprap:** Riprap is commonly used by CP to restore a river bank or protect a bridge pier or abutment, but it derives its protective ability from the interlock of large sized rocks of varying size installed in a large thickness “blanket;” drag and uplift forces that result from flowing water are therefore resisted by the mass of the individual rocks and frictional resistance of interlocked rocks. For velocities that this particular bridge experiences, rock riprap was estimated to require a D<sub>50</sub> diameter of 1.80 ft. and require a thickness of up to 5 ft. Usually, riprap is buried and keyed in to the stream bank, but in this case further excavation of the channel was not feasible given the current undermined situation at Abutment 1 and Pier 2. Therefore, to install riprap to the depth and size required for the velocities at the site, the riprap would have been laid on the channel bottom and would have therefore obstructed flow, causing impacts to fish passage, floodplain, and other concerns. Riprap was determined not to be feasible given the inability to excavate in the channel to place the riprap and the need to maintain flows through the bridge opening.
- b. **Articulating Grout Bag Mat:** Articulating mats provide the same scour protection as riprap, but resist the river’s drag and uplift forces by physically tying each grout bag together by a connecting element (wire and interwoven fiberglass mesh in this case) to act as a unit. The upstream, leading edge of grout mats are typically keyed in to help prevent scour from undermining the mat and lifting the leading row of bags or blocks. The connected, but flexible nature of the mat then allows the mat to flex with the river bed should any scour occur along the edges of the mat. Articulating grout mats are more expensive than installing riprap, but their low profile (8” thick in this case) and scour protection qualities lent them to have the minimal adverse effect of any feasible option in this situation. This was the selected alternative.

Upon selecting the articulated grout bag mat as the proposed scour mitigation measure, it was deemed most effective to place the grout mat continuously between the west face of Abutment 1 and the east face of Pier 2 for several reasons. First, the mat loses strength the

smaller it is, as it uses the total weight of the mat to resist drag and uplift forces on the individual bags. Second, the industry standard recommended extension of a mat from the face of a pier is equal to 2 times the pier width. Pier 2 is approximately 10 ft. wide at the base, which necessitates that the mat extend 20 ft. from the face of Pier 2; while Abutment 1 is not fully exposed to stream flow, applying this same distance from the face of Abutment 1 causes the full channel width of the 42' long Span 1 to be protected by a grout mat. Third, if the center of the grout mat were removed leaving a small width of exposed natural channel bottom, it is likely the river bed would continue to erode and the stability of Abutment 1 and Pier 2 would remain in question.

- c. **Pier/Abutment Replacement:** While replacement of Abutment 1 and Pier 2 was a feasible alternative, the high construction cost, long lead time to construct, and impact to train operations during construction did not make this a suitable alternative. Replacement of either or both Abutment 1 and Pier 2 would have likely necessitated the replacement of Spans 1 and 2 as well, given the inability to replace the Piers exactly where they are now and limitations on superstructure depth. Pier/Abutment Replacement was immediately ruled out as an alternative.
3. CP will provide a figure within 60 days of this letter showing the channel elevations taken prior to the installation of the grout mat and will superimpose the grout mat on top of them, thereby documenting the as-built condition.
4. As discussed at the meeting, CP does not believe the grout mat installation was the cause of the low flow channel shifting to the east, just in front of Abutment 1, nor is it causing water velocities to speed up appreciably.
  - a. As Photo 1 of the permit package CP sent to the WI DNR on 10/30/2017 (attached as Exhibit 1 hereto) shows, the channel was already isolated to flow just in front of the east abutment; in this photo, flows are very low and the channel depth is extremely shallow. Comparing this photo to an as-built, post-grout mat installation photo taken by CP (attached as Exhibit 2), the low flow channel has been moved away from the abutment wall to the west, and remains similarly concentrated at low flow conditions. CP believes that any impediment to fish passage remains materially unchanged from conditions existing prior to the bridge repairs.
  - b. From a HEC-RAS water modeling perspective, the channel roughness prior to the grout mat installation would likely have been assumed to have a Manning's n coefficient of 0.03 to 0.035. Based on the size and installation method of the grout mat used in this project, it is estimated that the Manning's n coefficient would not substantially change and would be of a similar order of magnitude as the original channel bottom, at approximately 0.035 to 0.045. CP has inquired with the manufacturer to determine if it has actual data in this regard. As information, the higher the number, the rougher the substrate is considered to be, with water velocities generally reducing as the roughness increases. From an engineering perspective, CP believes the channel roughness is materially unchanged, or perhaps nominally rougher, than conditions existing prior to the bridge repairs.

- c. In CP's experience, riprap installations look very similar to grout mats in their uniformity, and small resting pools for fish to do not occur within a riprapped bank/slope. The pre- and post-construction photos at Watertown BR 88.74 show that the deeper pool downstream of the bridge remains and has not been disturbed. Additionally, the addition of an 8" mat on top of the existing channel bottom seemingly helped to create an 8" minimum deep pool on the upstream side of the mat.
5. The pre- and post-construction photos show the flow characteristics are materially unchanged at similar low flow rates. In both photos, it is apparent that navigation at flow rates such as these would be very difficult, if not impossible. Similarly, after comparing both photos, it appears that the pre-repair channel bottom (with larger rocks sporadically situated across/within the channel) presented as much or more of an obstruction to navigation as the post-repair channel with grout mats.
6. We agree that the grout mat does not look as natural as riprap might have looked had it been feasible. However, given the situational context of the grout mat and where it was placed, in an urban river that is already highly channelized with concrete lining up and downstream of this structure, CP does not believe that use of the grout mats resulted in any significant aesthetic impairment.
7. As stated previously, CP performs annual bridge inspections at this project location and is prepared to address maintenance related issues of the grout mat, and bridge as a whole, in order to ensure the safe passage of freight and passenger trains over the structure. Any frayed wires identified during annual bridge inspection scour assessments will be removed. CP believes that premature cutting of the wire loops would likely increase the risk for a frayed wire and could affect the stability of the grout mat installation.

Thank you for your consideration of these matters. We will provide you with a figure showing the as-built contours. Please let us know if there is any other information that you need in the meantime. We look forward to working towards a resolution that is satisfactory to both your agency and CP.

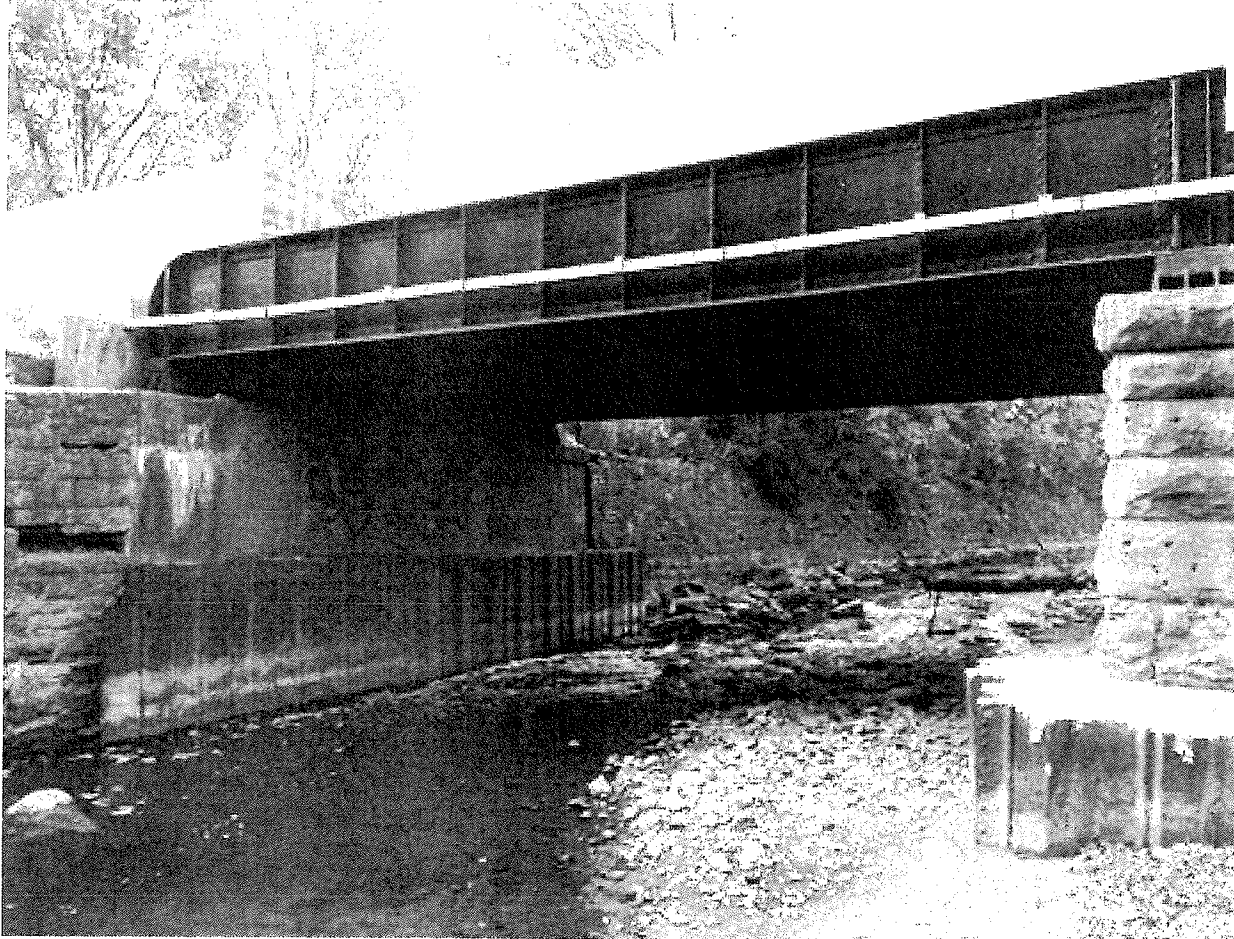
Sincerely,



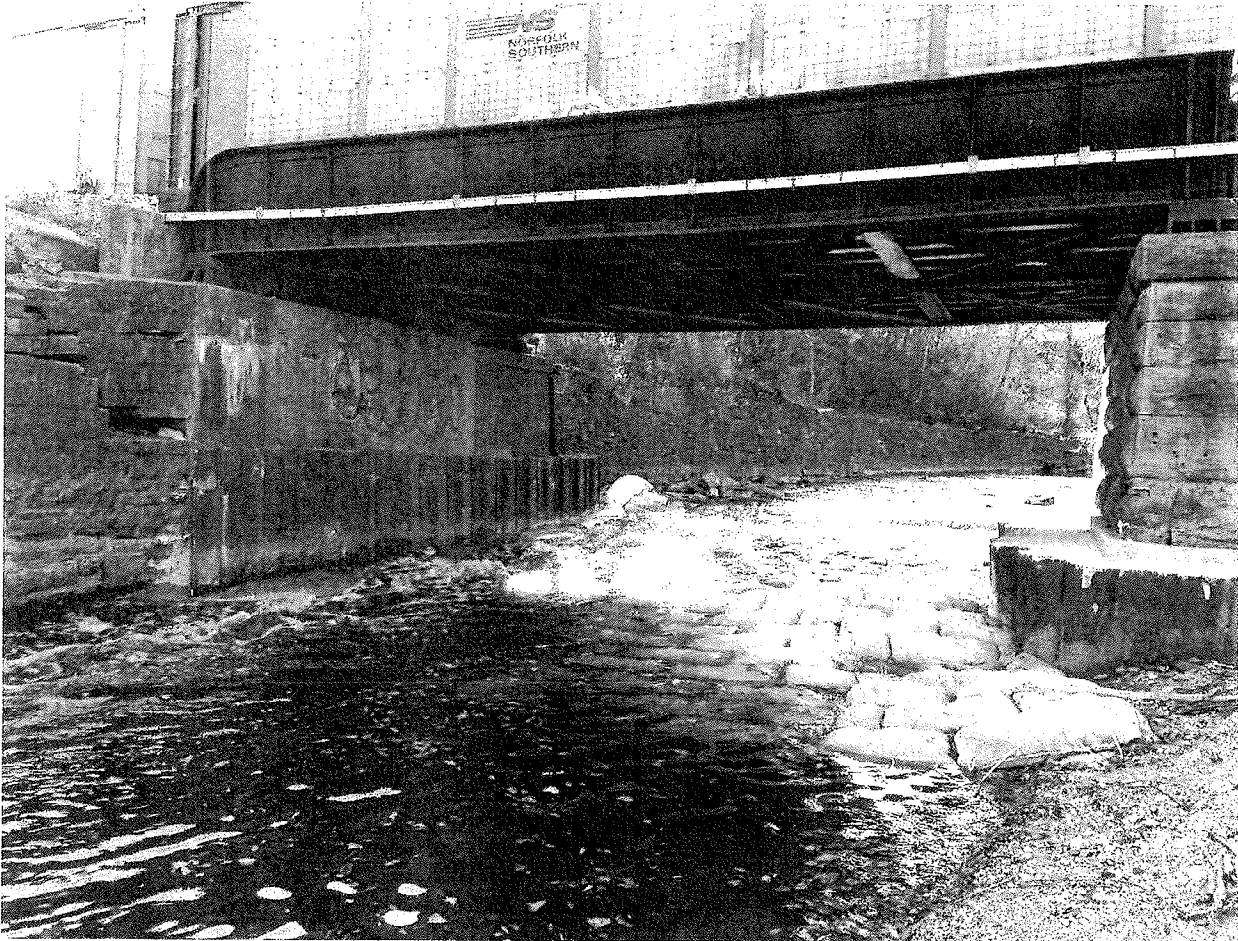
William M. Tuttle  
General Counsel U.S.

cc: Karl Rittmeyer  
Scott Paradise  
M. Kowalkowski, DNR  
Michelle Scott, DNR  
Michelle Hace, DNR  
Craig Helker, DNR  
Sadie Derouin, DNR  
April Marcangeli, U.S. Army Corps of Engineers  
Jeff Johnson, HDR Inc.  
Michael Keller, HDR Inc.

**Exhibit 1:** The photo is looking southeast at Abutment 1 and Span 1 of Watertown BR 88.74 and shows the project site prior to placement of the grout bag mat. This photo was originally provided to the WI DNR as Photo 1 in the October 30, 2017 letter requesting a Section 401 Water Quality Certification.



**Exhibit 2:** The photo is looking southeast at Abutment 1 and Span 1 of Watertown BR 88.74 and shows the project site after placement of the grout bag mat.



# **ATTACHMENT F**



July 31, 2018

**By E-mail Only**

Elaine Johnson  
Water Management Specialist  
Department of Natural Resources  
State of Wisconsin  
141 NW Barstow, Room 180  
Waukesha, WI 53188

**Re: Enforcement Conference Summary**

Dear Ms. Johnson:

I am writing to follow up on my letter of May 25, 2018. Attached please find two exhibits, depicting the stream bed contour of the Menomonee River at Watertown BR 88.74. The first shows the contour in 2015, prior to CP's bridge work. The second shows the contour as of July 19, 2018. CP believes these exhibits further demonstrate that stream topography was not significantly altered as a result of CP's work.

Sincerely,

A handwritten signature in cursive script that reads "William M. Tuttle".

William M. Tuttle  
General Counsel U.S.

cc: Karl Rittmeyer  
Scott Paradise  
M. Kowalkowski, DNR  
Michelle Scott, DNR  
Michelle Hace, DNR  
Craig Helker, DNR  
Sadie Derouin, DNR  
April Marcangeli, U.S. Army Corps of Engineers  
Jeff Johnson, HDR Inc.  
Michael Keller, HDR Inc.



Exhibit I

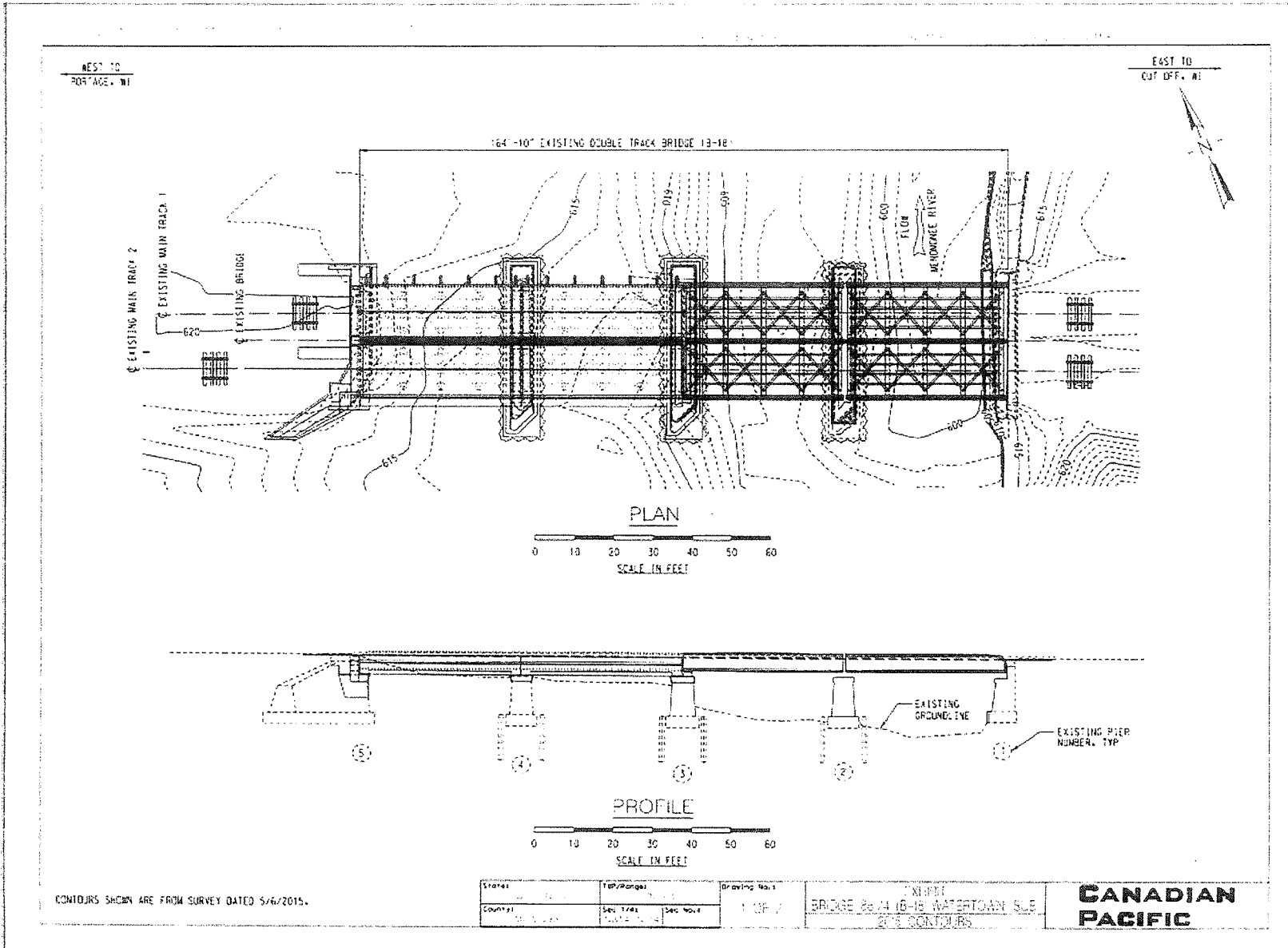
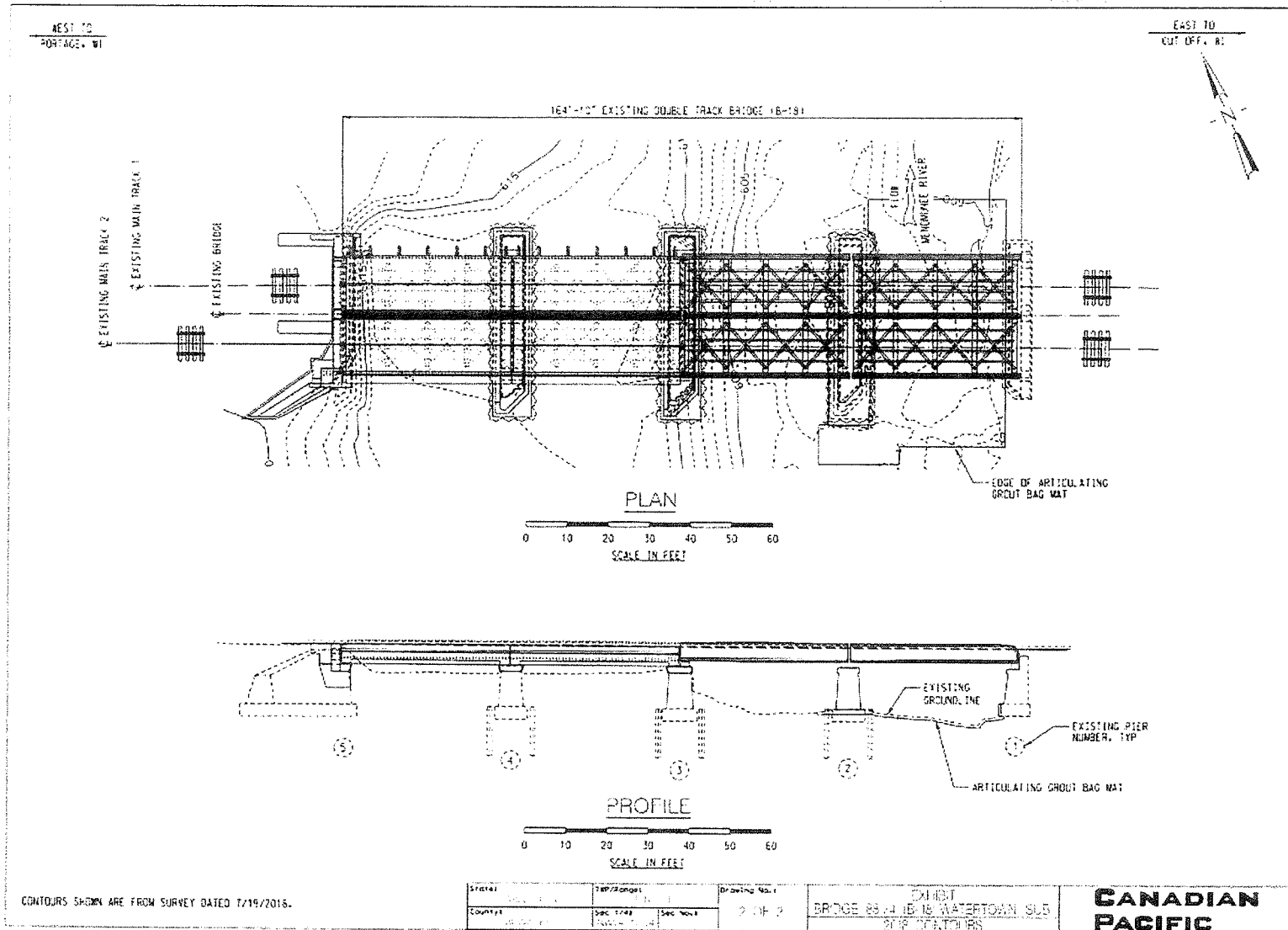


Exhibit 2:



# **ATTACHMENT G**

## Bill Tuttle

---

**From:** Bill Tuttle  
**Sent:** Wednesday, July 24, 2019 3:39 PM  
**To:** Michael.Kowalkowski@wisconsin.gov  
**Subject:** WisDOT

Hi Mike,

Thanks for getting back to me this afternoon. Below is a link to WisDOT's Design & Construction Special Provisions. Within that document are numerous Word file, including three that address the use of grout, grout filled bags and grout filled mats for scour protection.

Thanks

Bill

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State of Wisconsin  
Department of Transportation

# Special Provisions

Bureau of Structures

Design & Construction

Maintenance &  
Inspection

Fabrication & Quality  
Assurance










Manuals & HSI Quick  
Links











Research & Outreach









## Design & Construction

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| File                                 | Description   | Updated |
|--------------------------------------|---|---------|
| <a href="#">Adjusting Diaphragms</a> | This special provision describes adjusting diaphragms and cross frames where girders are vertically realigned. Perform the work in accordance with section 506 of the standard specifications, as shown on the plans, and as hereinafter provided.          | 04/18   |
| <a href="#">Asphalt Panels</a>       | This special provision describes furnishing and placing asphalt protection in accordance with Chapter 29, Part 2 of the American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual, as shown on the plans, and as hereinafter provided. | 04/18   |











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| <u> Bearing Maintenance</u>                             | This special provision describes removing the expansion bearings at the abutments and piers, blast cleaning and painting them, and reinstalling the bearings, in accordance with the plans and as hereinafter provided.  | 04/18 |
| <u> Bearing Repair</u>                                  | This special provision describes removing the bearings at the piers, blast cleaning and priming the bearings, furnishing and placing shims, resetting the bearings, and furnishing and placing new anchor bolts. All work shall be in accordance with the pertinent provisions of the standard specifications, the plans, and as hereinafter provided.               | 04/18 |
| <u> Boulder Retards</u>                                 | This special provision describes furnishing and placing boulder retards in a given waterway.   | 04/18 |
| <u> Cleaning and Painting Bearings</u>                  | This special provision describes cleaning and painting the existing steel bearings on structures as shown on the plans, as directed by the engineer, and in accordance with section 517 of the standard specifications. Use this special provision when only the bearings are to be cleaned and painted (not structural steel, etc.).                                | 04/18 |
| <u> Clearance Gauge</u>                                 | This special provision describes cleaning the end of a pier and painting a clearance gauge on it. This work shall be in accordance with the plans, as directed by the engineer, and as hereinafter provided.   | 04/18 |
| <u> Concrete Masonry Bridges Lightweight</u>          | This special provision describes furnishing and placing lightweight concrete masonry for the open grid bridge deck in accordance with section 502 of the standard specifications, as shown on the plans, and as hereinafter provided.  | 04/18 |
| <u> Concrete Masonry Overlay Silica Fume Modified</u> | This special provision describes furnishing and placing a silica fume modified concrete masonry overlay in accordance with the plans, the applicable parts of sections 501, 502 and 509 of the standard specifications, as directed by the engineer, and as hereinafter provided.  | 04/18 |
| <u> Concrete Masonry Soldier Pile Footings</u>        | This special provision describes furnishing and placing concrete into predrilled holes for soldier piles and installing soldier piles.   | 04/18 |
| <u> Deck Drainage System</u>                          | This special provision describes furnishing, coating, and installing deck drains, in accordance with the plans, the pertinent requirements of sections 514 and 612 of the standard specifications, and as hereinafter provided. Included in this work are the deck drain downspouts at the abutments and all other components required for draining the bridge deck. | 04/18 |

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| <u> Diamond Grinding</u>                         | This special provision describes diamond grinding the surface of the existing concrete deck in a longitudinal direction, as directed by the engineer, and as hereinafter provided.  | 04/18 |
| <u> Drilled Shaft Foundation</u>                 | This special provision describes installing drilled shafts for bridge foundations, as shown on the plans, as directed by the engineer, and as hereinafter provided.   | 04/18 |
| <u> Drilled Shaft Quality Management Program</u> | Perform this work in accordance to the requirements of standard specifications section 501, section 502, section 701, section 710 and section 715 (conform to QMP Concrete Structures) except as deleted or additionally stipulated herein. This specification applies to all drilled shaft concrete placed under the following bid item:<br><br>SPV.0090.xx Drilled Shaft Foundation xx-Inch | 04/18 |
| <u> Embedded Galvanic Anodes</u>                 | This special provision describes furnishing all labor, materials, and equipment necessary to properly install embedded galvanic anodes in concrete.   | 04/18 |
| <u> Fabricated Expansion Bearing Assemblies</u>  | This special provision describes furnishing, fabricating, storing, and transporting to the project site the fixed bearing assemblies in accordance with the details shown on the plans, section 506 of the standard specifications, and as hereinafter provided.  | 04/18 |
| <u> Fabricated Fixed Bearing Assemblies</u>    | This special provision describes furnishing, fabricating, storing, and transporting to the project site the fixed bearing assemblies in accordance with the details shown on the plans, section 506 of the standard specifications, and as hereinafter provided.  | 04/18 |
| <u> Fence Chain Link Polymer Coated</u>        | This special provision describes furnishing and installing a new polymer-coated fence system on structures in accordance with the pertinent plan details, as directed by the Engineer and as hereinafter provided. The color of all components in this fence system shall be the same and shall be as specified on the plans.   | 09/18 |
| <u> Fiber Wrap Non-Structural</u>              | This special provision describes providing non-structural protection using externally bonded, high-strength, fiber reinforced polymer (FRP) composite/epoxy resin systems field-applied per the details shown in the plans.   | 07/18 |
| <u> Fiber Wrap Structural</u>                  | This special provision describes providing structural protection using externally bonded, high-strength, fiber reinforced polymer (FRP) composite/epoxy resin systems field-applied per the details shown in the plans.   | 04/18 |
| <u> Flashing Stainless Steel</u>               | This special provision describes furnishing and installing a flashing system on structures.   | 04/18 |

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|---|--|-------|
|  <u>Geosynthetic Reinforced Soil Abutment</u>      | <p>This special provision describes designing, furnishing materials and erecting a permanent earth retention system in accordance to the lines, dimension, elevations and details as shown on the plans and provided in the contract. The design life of the abutment and all abutment components shall be 75 years.</p>   | 04/18 |
|  <u>Grouted Bar Couplers</u>                       | <p>This special provision describes furnishing and installing grouted bar couplers for precast columns and caps.</p>   | 07/19 |
|  <u>Heat Straightening of Damaged Girders</u>      | <p>This special provision describes heat straightening portions of bent or damaged girders which are left in place, back to their original shape.</p>  | 04/18 |
|  <u>High-Load Multi-Rotational Bridge Bearings</u> | <p>This special provision describes designing, manufacturing, furnishing, fabricating, and installing high-load multi-rotational bearing assemblies in accordance with the details shown on the plans, section 506 of the standard specifications, as directed by the engineer, and as hereinafter provided. Define high-load multi-rotational bearings as pot or disc style bearings where called for on the plans.</p>                             | 09/18 |
|  <u>High Performance Concrete (HPC) Structures</u> | <p>This special provision describes specialized material and construction requirements for high-performance concrete used in bridge structures.</p>  | 04/18 |
| <u>Longitudinal Grooving Bridge Deck</u>  | <p>Contact BOS Design before using and to obtain the most recent version.</p>  | 04/18 |
|  <u>Membrane Waterproofing Railroad</u>          | <p>This special provision describes furnishing and installing a rubber-based bonding adhesive and a layer of butyl rubber sheeting continuously along the horizontal surface of the deck plates, the vertically inclined surface of the ballast stop plates, and the back face of the abutment backwalls of the railroad structure, in accordance with the details shown on the plans, as directed by the engineer, and as hereinafter provided.</p> | 04/18 |
|  <u>Non-Shrink Grout</u>                         | <p>This special provision describes furnishing and placing non-shrink grout.</p>   | 04/18 |
|  <u>Parapet Concrete Type 'TX'</u>               | <p>This special provision describes construction of a decorative concrete parapet in accordance with section 501, 502 and 505 of the Standard Specifications, as shown on the plans, and as hereinafter provided. The concrete mix used for this parapet shall include polypropylene fibers.</p>   | 04/18 |



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| <p><u>Pile Dynamic Analyzer (PDA) Testing Restrikes CAPWAP</u></p>                 | <p>The items consist of providing Pile Dynamic Analyzer (PDA) load testing and analyses/evaluation, as outlined in the contract plans and this special provision. This is the preferred option for supplying PDA evaluation.</p>                                     | <p>04/18</p> |
| <p><u>Pile Dynamic Analyzer (PDA) Testing: PDA Restrikes</u></p>                   | <p>These items consist of providing means to perform Pile Dynamic Analyzer (PDA) load testing by the engineer, as outlined in the contract plans and this special provision. Please contact Central Office Geotechnical Unit before using the special provision.</p> | <p>04/18</p> |
| <p><u>Pile Dynamic Analyzer - Standard Specification 550.3.6 Modifications</u></p> | <p>This special provision describes the modifications to Standard Specification 550.3.6 regarding pile driving using the Pile Dynamic Analyzer (PDA).</p>  | <p>01/19</p> |
| <p><u>Piling Sleeves</u></p>   | <p>This special provision describes furnishing and installing a corrugated steel piling sleeve or pile wrap in the reinforced earth zone of mechanically stabilized earth (MSE) retaining walls and other locations shown on the plans.</p>                          | <p>04/18</p> |
| <p><u>Polyester Polymer Concrete Overlay</u></p>                                   | <p>This special provision describes furnishing and applying a polyester polymer concrete overlay with a high molecular weight methacrylate (HMWM) resin prime coat, to the limits shown on the plans.</p>  | <p>08/19</p> |
| <p><u>Precast Panels for Soldier Pile Walls</u></p>                                | <p>This special provision describes fabricating, furnishing, transporting and erecting precast concrete panels for soldier pile walls.</p>   | <p>04/18</p> |
| <p><u>Precast Pier Columns and Caps</u></p>  | <p>This special provision describes the manufacture, transportation, storage, installation and bracing as required for precast pier columns and precast pier caps.</p>   | <p>10/18</p> |
| <p>Prestressed Girders Box (Enter Type Name)</p>                                   | <p>Contact BOS Design before using and to obtain the most recent version.</p>  | <p>06/19</p> |
| <p><u>Prestressed Precast Concrete Wall Panel</u></p>                              | <p>This special provision describes constructing precast prestressed concrete wall panels with heights and patterns as shown on the plans and provided in the contract. The design life of the wall panel and all wall panel components shall be 75 years.</p>       | <p>12/18</p> |

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| QMP Bridge Ride;<br>Incentive IRI Ride Bridge  | Contact BOS Design before using and to obtain the most recent version.   | 04/18 |
| <u> Rapid Set Deck Repair</u>                       | This special provision describes furnishing, placing and curing a rapid setting non-shrink patch material on the sawed deck preparation areas of the concrete bridge deck.   | 11/18 |
| <u> Scour Repair Grout</u>                          | This special provision describes furnishing and installing grout for scour protection.   | 04/18 |
| <u> Scour Repair Grout Bags</u>                     | This special provision describes furnishing and installing grout filled bags for scour protection.   | 04/18 |
| <u> Scour Repair Grout Mats</u>                     | This special provision describes furnishing and installing grout filled mats for scour protection.   | 04/18 |
| <u> Select Crushed Material for Travel Corridor</u> | This special provision describes placing select crushed material to fill voids in riprap to create a wildlife travel corridor.   | 04/18 |
| <u> Sloped Paving Crushed Aggregate Special</u>    | This special provision describes furnishing, crushing, and placing aggregate for slope paving; and application of an epoxy resin binder with the aggregate.  | 04/18 |
| <u> SPMT Bridge Construction</u>                  | This work consists of furnishing all labor, equipment, material and other services necessary to prepare the Bridge Staging Area and Travel Path, construct temporary supports to allow for the construction of the bridge superstructure of Enter Structure Number in the Bridge Staging Area, transport the bridge superstructure to its final location and place it on the substructure units using Self Propelled Modular Transporters (SPMTs). | 04/18 |
| <u> Strapping</u>                                 | This special provision describes securing a wing wall to a culvert or abutment body with a structural channel.   | 04/18 |
| <u> Temporary Shoring Railroad</u>                | This special provision describes furnishing and installing temporary shoring at locations alongside railroad tracks as shown in the plan and in accordance with the shoring design requirements.   | 04/18 |
| <u> Temporary Structure</u>                       | This special provision modifies Standard Spec 526.3.   | 09/19 |

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| <u>Temporary Wall Wire Faced Mechanically Stabilized Earth</u> | This special provision describes designing, furnishing materials and erecting a temporary earth retention system in accordance to the lines, dimension, elevations and details as shown on the plans and provided in the contract.   | 09/19 |
| <u>Three-Sided Precast Concrete Structure</u>                  | This special provision describes furnishing and installing a three-sided precast concrete structure (precast arch units, headwalls and wingwalls), in conformity with the lines, grades, dimensions, locations, and sections shown on the approved drawings and in accordance with the contract documents and the requirements set forth herein. | 04/18 |
| <u>Tieback Anchors and Tieback Anchor Performance Tests</u>    | This special provision describes permanent, pressure-grouted or post-grouted, ground anchors designed, furnished, installed, tested, and stressed.   | 04/18 |
| Underwater Substructure Inspection                             | See Standardized Special Provision 502-090.  |       |
| Underwater Substructure Backfill or Riprap Inspection          | See Standardized Special Provision 606-050.  |       |
| <u>Wall Concrete Panel Mechanically Stabilized Earth</u>       | This special provision describes designing, furnishing materials and erecting a permanent earth retention system in accordance to the lines, dimension, elevations and details as shown on the plans and provided in the contract. The design life of the wall and all wall components shall be 75 years.  | 09/19 |
| <u>Wall Modular Block Gravity</u>                              | This special provision describes designing, furnishing materials and erecting a permanent earth retention system in accordance to the lines, dimension, elevations and details as shown on the plans and provided in the contract. The design life of the wall and all wall components shall be 75 years.  | 09/19 |

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|--|--|-------|
| <a href="#">Wall Modular Block Gravity Landscape</a>             | <p>This special provision describes designing, furnishing materials and erecting a permanent earth retention system in accordance to the lines, dimension, elevations and details as shown on the plans and provided in the contract. The design life of the wall and all wall components shall be 75 years. To be used as a roadway bid item. Use "Wall Modular Block Gravity" for all structures assigned a structure number R-XX-XXX.</p> | 09/19 |
| <a href="#">Wall Modular Block Mechanically Stabilized Earth</a> | <p>This special provision describes designing, furnishing materials and erecting a permanent earth retention system in accordance to the lines, dimension, elevations and details as shown on the plans and provided in the contract. The design life of the wall and all wall components shall be 75 years.</p>   | 10/19 |
| <a href="#">Wall Wire Faced Mechanically Stabilized Earth</a>    | <p>This special provision describes designing, furnishing materials and erecting a permanent earth retention system in accordance to the lines, dimension, elevations and details as shown on the plans and provided in the contract. The design life of the wall and all wall components shall be 75 years.</p>   | 09/19 |

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Contact [Aaron Bonk](#) or [Laura Shadewald](#) for questions about this page.

## Scour Repair Grout Bags, Item SPV.0035.xx.

### A Description

This special provision describes furnishing and installing grout filled bags for scour protection.

### B Materials

The grout shall consist of a mixture of portland cement, 6±1 percent air entrainment by volume, mortar sand aggregate, additives, and water proportioned to provide a pumpable mixture. The 28 day compressive strength shall be as specified on the plans or 3,000 psi minimum whichever is greater. Compressive strength test shall be made using grout cubes or 3"x6" cylinders. Submit the mix design and laboratory test results to the Engineer for approval prior to proceeding with the work.

Grout bags shall be made of high strength water permeable fabric of nylon and/or polyester. Each bag shall be provided with a self closing inlet valve to accommodate insertion of the grout pumping hose. Seams shall be folded and double stitched. Grout bags shall have length, width, and thickness as defined on the plans. Alternate sizes require approval of the Engineer. Grout bag fabric shall meet or exceed the following properties:

| Property                          | Test Method | Units  | Specified Minimum |
|-----------------------------------|-------------|--------|-------------------|
| Wide-Width Strip Tensile Strength |             |        |                   |
| - Machine Direction (MD)          | ASTM D 4595 | lbf/in | 190               |
| - Cross Machine Direction (CD)    | ASTM D 4595 | lbf/in | 140               |
| Trapezoidal Tear Strength         |             |        |                   |
| - Machine Direction (MD)          | ASTM D 4533 | lbf    | 100               |
| - Cross Machine Direction (CD)    | ASTM D 4533 | lbf    | 115               |

Fabric porosity and limited cement lost through fabric is essential to the successful execution of this work. Suitability of fabric and grout design shall be demonstrated by injecting the proposed grout mix into three 24-inch long by approximately 6-inch diameter fabric sleeves under a pressure of not more than 15 psi which shall be maintained for not more than 10 minutes. A 12-inch long test cylinder shall be cut from the middle of each cured test specimen and tested per ASTM C39. The average seven day compressive strength of the grout within the fabric shall be at least equal to that of standard companion test cylinders made per ASTM C31. In lieu of the above testing requirements the Contractor may submit test results from past successful projects and manufacturers test results to the Engineer for approval prior to proceeding with the work.

### C Construction

Install grout bags as shown on the plans, given in these special provisions and as directed by the Engineer.

Before placement, thoroughly clean the area to be covered with grout bags of loose material. Position and fill the bags so that they abut tightly to each other and to the substructure units.

Make appropriate allowance for contraction of bags resulting from grout injection. Stagger joints between bags in successive rows and tiers. Contractor may use temporary or permanent rods or other devices to hold the mats in place and to maintain the desired final shape. Remove temporary materials after grout has reached self supporting strength.

**D Measurement**

The department will measure Scour Repair Grout Bags by the cubic yard acceptably completed.

**E Payment**

The department will pay for measured quantities at the contract unit price under the following bid item:

| ITEM NUMBER | DESCRIPTION             | UNIT |
|-------------|-------------------------|------|
| SPV.0035.xx | Scour Repair Grout Bags | CY   |

Payment for Scour Repair Grout Bags is full compensation for cleaning the area to be covered, furnishing, placing, and filling the grout bags.

## Scour Repair Grout Mats   -Inch, Item SPV.0035.xx.

### A Description

This special provision describes furnishing and installing grout filled mats for scour protection.

### B Materials

The grout shall consist of a mixture of portland cement, 6±1 percent air entrainment by volume, mortar sand aggregate, additives, and water proportioned to provide a pumpable mixture. The 28 day compressive strength shall be as specified on the plans or 3,000 psi minimum whichever is greater. Compressive strength test shall be made using grout cubes or 3"x6" cylinders. Submit the mix design and laboratory test results to the Engineer for approval prior to proceeding with the work.

Grout mats shall be made of high strength water permeable fabric of nylon and/or polyester sewn into a series of compartments that are connected intermittently by ducts. Mats shall have a nominal thickness when filled with grout of the size specified. Each mat shall be provided with a self closing inlet valve to accommodate insertion of the grout pumping hose. Grout mat fabric shall meet or exceed the following properties:

| Property                          | Test Method | Units  | Specified Minimum |
|-----------------------------------|-------------|--------|-------------------|
| Wide-Width Strip Tensile Strength |             |        |                   |
| - Machine Direction (MD)          | ASTM D 4595 | lbf/in | 140               |
| - Cross Machine Direction (CD)    | ASTM D 4595 | lbf/in | 110               |
| Trapezoidal Tear Strength         |             |        |                   |
| - Machine Direction (MD)          | ASTM D 4533 | lbf    | 125               |
| - Cross Machine Direction (CD)    | ASTM D 4533 | lbf    | 100               |

Grout mat shall have cables laced through the grout ducts of each mat pillow in each direction creating an interlocking grid. Cables shall be installed prior to filling with grout. Where necessary, cables shall be joined by means of copper connectors providing a minimum of 80% of the breaking strength of the cable. Aluminum connectors in direct contact with grout will not be permitted. Cables shall be low elongation continuous filament polyester fiber, with a core contained within an outer jacket. The core should be between 65 and 75 % of the total weight of the cable. The cables shall meet or exceed the following properties for the mat thickness specified:

| Property                        | Units  | Mat Thickness |       |      |
|---------------------------------|--------|---------------|-------|------|
|                                 |        | 4"            | 6"    | 8"   |
| Cable Nominal Diameter          | Inches | 1/4           | 11/32 | 5/16 |
| Cable Average Breaking Strength | lbf    | 3700          | 4500  | 5200 |

Fabric porosity and limited cement lost through fabric is essential to the successful execution of this work. Suitability of fabric and grout design shall be demonstrated by injecting the proposed grout mix into three 24 inch long by approximately 6 inch diameter fabric sleeves under a pressure of not more than 15 psi which shall be maintained for not more than 10 minutes. A 12 inch long test cylinder shall be cut from the middle of each cured test specimen and tested per ASTM C39. The average seven day compressive strength of the grout within the fabric shall be at least equal to that of standard companion test cylinders made per ASTM C31. In lieu of the above testing requirements the Contractor may submit test results from past successful projects and manufacturers test results to the Engineer for approval prior to proceeding with the work.

**C Construction**

Install grout mats as shown on the plan, given in these special provisions and as directed by the Engineer.

Before placement, thoroughly clean the area to be covered with grout mats of loose material. Place interconnected mats and cables underwater. Make appropriate allowance for contraction of fabric mat resulting from grout injection. Start grout placement at toe of the slope or at the lowest elevation. Contractor may use temporary or permanent rods or other devices to hold the mats in place and to maintain the desired final shape. Remove temporary materials after grout has reached self supporting strength.

**D Measurement**

The department will measure Scour Repair Grout Mats the cubic yard acceptably completed.

**E Payment**

The department will pay for measured quantities at the contract unit price under the following bid item:

| ITEM NUMBER | DESCRIPTION                    | UNIT |
|-------------|--------------------------------|------|
| SPV.0035.xx | Scour Repair Grout Mats 4-Inch | CY   |
| SPV.0035.xx | Scour Repair Grout Mats 6-Inch | CY   |
| SPV.0035.xx | Scour Repair Grout Mats 8-Inch | CY   |

Payment for Scour Repair Grout Mats X-Inch is full compensation for cleaning the area to be covered, furnishing, placing, and filling the grout mats.



**Scour Repair Grout, Item SPV.0035.xx.**

**A Description**

This special provision describes furnishing and installing grout for scour repair.

**B Materials**

The grout shall consist of a mixture of portland cement, 6±1 percent air entrainment by volume, mortar sand aggregate, additives, and water proportioned to provide a pumpable mixture. The 28 day compressive strength shall be as specified on the plans or 3,000 psi minimum whichever is greater. Compressive strength test shall be made using grout cubes or 3"x6" cylinders. Submit the mix design and laboratory test results for approval by the Engineer prior to proceeding with the work.

**C Construction**

Install grout as shown on the plan, given in these special provisions and as directed by the Engineer.

Before placement, thoroughly clean the area to be filled with grout of loose material. Install a 4-inch minimum diameter vent pipe at 4-foot maximum spacing when grout bags are used to seal off a void. Insert the concrete/grout tube delivering the mix to the void so the mix does not free fall. Fill the void by the tremie or pump method. Remove the pipe or cut off flush with the bags when complete.

**D Measurement**

The department will measure Scour Repair Grout by the cubic yard acceptably completed.

**E Payment**

The department will pay for measured quantities at the contract unit price under the following bid item:

| ITEM NUMBER | DESCRIPTION        | UNIT |
|-------------|--------------------|------|
| SPV.0035.xx | Scour Repair Grout | CY   |

Payment for Scour Repair Grout is full compensation for furnishing and placing the grout.

**Scour Repair Grout Mats \_-Inch, Item SPV.0035.xx.**

**A Description**

This special provision describes furnishing and installing grout filled mats for scour protection.

**B Materials**

The grout shall consist of a mixture of portland cement, 6±1 percent air entrainment by volume, mortar sand aggregate, additives, and water proportioned to provide a pumpable mixture. The 28 day compressive strength shall be as specified on the plans or 3,000 psi minimum whichever is greater. Compressive strength test shall be made using grout cubes or 3"x6" cylinders. Submit the mix design and laboratory test results to the Engineer for approval prior to proceeding with the work.

Grout mats shall be made of high strength water permeable fabric of nylon and/or polyester sewn into a series of compartments that are connected intermittently by ducts. Mats shall have a nominal thickness when filled with grout of the size specified. Each mat shall be provided with a self closing inlet valve to accommodate insertion of the grout pumping hose. Grout mat fabric shall meet or exceed the following properties:

| Property                          | Test Method | Units  | Specified Minimum |
|-----------------------------------|-------------|--------|-------------------|
| Wide-Width Strip Tensile Strength |             |        |                   |
| - Machine Direction (MD)          | ASTM D 4595 | lbf/in | 140               |
| - Cross Machine Direction (CD)    | ASTM D 4595 | lbf/in | 110               |
| Trapezoidal Tear Strength         |             |        |                   |
| - Machine Direction (MD)          | ASTM D 4533 | lbf    | 125               |
| - Cross Machine Direction (CD)    | ASTM D 4533 | lbf    | 100               |

Grout mat shall have cables laced through the grout ducts of each mat pillow in each direction creating an interlocking grid. Cables shall be installed prior to filling with grout. Where necessary, cables shall be joined by means of copper connectors providing a minimum of 80% of the breaking strength of the cable. Aluminum connectors in direct contact with grout will not be permitted. Cables shall be low elongation continuous filament polyester fiber, with a core contained within an outer jacket. The core should be between 65 and 75 % of the total weight of the cable. The cables shall meet or exceed the following properties for the mat thickness specified:

| Property                        | Units  | Mat Thickness |       |      |
|---------------------------------|--------|---------------|-------|------|
|                                 |        | 4"            | 6"    | 8"   |
| Cable Nominal Diameter          | Inches | 1/4           | 11/32 | 5/16 |
| Cable Average Breaking Strength | lbf    | 3700          | 4500  | 5200 |

Fabric porosity and limited cement lost through fabric is essential to the successful execution of this work. Suitability of fabric and grout design shall be demonstrated by injecting the proposed grout mix into three 24 inch long by approximately 6 inch diameter fabric sleeves under a pressure of not more than 15 psi which shall be maintained for not more than 10 minutes. A 12 inch long test cylinder shall be cut from the middle of each cured test specimen and tested per ASTM C39. The average seven day compressive strength of the grout within the fabric shall be at least equal to that of standard companion test cylinders made per ASTM C31. In lieu of the above testing requirements the Contractor may submit test results from past successful projects and manufacturers test results to the Engineer for approval prior to proceeding with the work.

**C Construction**

Install grout mats as shown on the plan, given in these special provisions and as directed by the Engineer.

Before placement, thoroughly clean the area to be covered with grout mats of loose material. Place interconnected mats and cables underwater. Make appropriate allowance for contraction of fabric mat resulting from grout injection. Start grout placement at toe of the slope or at the lowest elevation. Contractor may use temporary or permanent rods or other devices to hold the mats in place and to maintain the desired final shape. Remove temporary materials after grout has reached self supporting strength.

**D Measurement**

The department will measure Scour Repair Grout Mats the cubic yard acceptably completed.

**E Payment**

The department will pay for measured quantities at the contract unit price under the following bid item:

| ITEM NUMBER | DESCRIPTION                    | UNIT |
|-------------|--------------------------------|------|
| SPV.0035.xx | Scour Repair Grout Mats 4-Inch | CY   |
| SPV.0035.xx | Scour Repair Grout Mats 6-Inch | CY   |
| SPV.0035.xx | Scour Repair Grout Mats 8-Inch | CY   |

Payment for Scour Repair Grout Mats X-Inch is full compensation for cleaning the area to be covered, furnishing, placing, and filling the grout mats.

# **ATTACHMENT H**

## Bill Tuttle

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**From:** Bill Tuttle  
**Sent:** Friday, October 19, 2018 10:25 AM  
**To:** Kowalkowski, Michael J - DNR  
**Subject:** Watertown BR 88.74

Mike,

Thanks for talking to me today. Below are links to the two documents we discussed.

Bill

- USACE Transportation RGP:  
[http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RGP/Transportation\\_RGP.pdf?ver=2018-02-22-093530-183](http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RGP/Transportation_RGP.pdf?ver=2018-02-22-093530-183)
- WI DNR WQC:  
[http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RGP/RGP\\_WisconsinDNR\\_401Decision.pdf?ver=2018-02-22-110951-117](http://www.mvp.usace.army.mil/Portals/57/docs/regulatory/RGP/RGP_WisconsinDNR_401Decision.pdf?ver=2018-02-22-110951-117)



US Army Corps  
of Engineers  
St. Paul District

## DEPARTMENT OF THE ARMY

# TRANSPORTATION REGIONAL GENERAL PERMIT

PERMIT: Transportation Regional General Permit

ISSUING OFFICE: St. Paul District U.S. Army Corps of Engineers

EFFECTIVE DATE: February 21, 2018

EXPIRATION DATE: February 20, 2023

### A. AUTHORIZATION

Regulated activities conducted in accordance with the terms and conditions of the Transportation Regional General Permit (RGP or permit) are authorized in the States of Wisconsin and Minnesota and on Indian Reservations in Wisconsin and Minnesota. Certain regulated activities require an applicant to submit pre-construction notification (PCN) and receive written St. Paul District Corps of Engineers Regulatory Branch (Corps) verification prior to commencing work. Refer to the appropriate sections of this permit for a description of RGP procedures, eligible activities, conditions, exclusions and application instructions.

Unless otherwise specified in the Corps letter verifying a project complies with the terms and conditions of this RGP, the time limit for completing work authorized by the permit ends upon the expiration date of the RGP. Activities authorized under this RGP that have commenced construction or are under contract to commence construction in reliance upon this RGP, will remain authorized provided the activity is completed within 12 months of the date of the RGP expiration, suspension, or revocation; whichever is sooner.

Some Transportation RGP authorizations are not valid until a project proponent obtains a Clean Water Act Section 401 water quality certification (401 certification) or waiver from the appropriate water quality certifying agency; see general condition 27 in Section H below. Section 404, Clean Water Act regulated activities excluded from 401 certification in general condition 27 require a project-specific 401 certification or waiver from the appropriate agency. In addition, some RGP authorizations may be subject to project-specific special conditions that will be specified in the Corps verification letter. This RGP does not obviate the need for other necessary federal, state, tribal, or local authorizations or permits.

### B. TRANSPORTATION REGIONAL GENERAL PERMIT APPLICABILITY

The Transportation RGP applies to certain transportation associated activities in waters of the United States (US), including wetlands, as described in this permit, in the States of Wisconsin and Minnesota, including within the exterior boundaries of Indian Reservations.

**Regulatory Authorities:** The Transportation RGP may be used to authorize transportation related activities pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344, Section 404) for discharges of dredged and fill material into waters of the US, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, Section 10) for work and structures that are located in, under, or over any navigable water of the US. Activities subject to Section 404 and Section 10 regulatory requirements are hereafter referred to as regulated activities.

### CATEGORY 1: MINOR MAINTENANCE - LINEAR TRANSPORTATION

**Eligible Activities:** Regulated activities required for crossings of waters of the US associated with minor repairs, rehabilitation, or replacement of a previously authorized<sup>1</sup> currently serviceable linear transportation project provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated in the original permit or the most recently authorized modification.

<sup>1</sup> Previously authorized under 33 CFR 330.3 or by a Corps permit

**Regulated activities associated with new stormwater ponds; tributary channelization; slope widening; road widening; and new lanes, trails, railways and runways are NOT authorized by this category.** Activities authorized by this category are limited to:

- a. *Minor* deviations in a culvert or bridge configuration or filled area due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes, site conditions, or safety standards, including and limited to: the repair of a culvert aprons or bridge piles; lining or cleaning of pipes, culverts or bridges; extension of culverts without slope or shoulder widening; upsizing of culverts or flumes; maintenance of existing stream bank protection (not to expand original footprint); resetting or re-tying of aprons and culverts; and apron placements<sup>2</sup>; including the use of temporary discharges necessary to conduct those activities;
- b. Removal of previously authorized structures or fills, including temporary discharges necessary to conduct those activities;
- c. Repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage, including temporary discharges necessary to conduct those activities; and
- d. Removal of accumulated sediment and debris within the vicinity of bridges and culverted crossings, including temporary discharges necessary to conduct those activities<sup>2</sup>.

**Activity restrictions:**

- a. Removal of accumulated sediment and debris is limited to the minimum necessary to reestablish the approximate dimensions of a waterway in the vicinity of a structure to what existed when the structure was built and does not extend farther than 200 feet in any direction from the structure.
- b. All tributary channel modifications are limited to the minimum necessary for the repair, rehabilitation, or replacement of a structure or fill. Modifications to a tributary, including the removal of material from the tributary necessary to complete eligible activities, must be immediately adjacent to the structure or fill being maintained.
- c. All dredged or excavated material must be deposited and retained in an area that is not a water of the US.

A PCN is not required unless triggered by the terms and condition of this permit (See Section E. Pre-Construction Notification).

## **CATEGORY 2: MODIFICATION - LINEAR TRANSPORTATION**

**Eligible Activities:** Regulated activities required for crossings of waters of the US associated with the expansion, modification, improvement or minor realignments of an existing linear transportation project (e.g., roads, highways, attached frontage roads, railways, trails, airport runways, and taxiways), including the temporary structures, fills, and work, including the use of temporary mats, necessary for those activities.

**Activity restrictions:**

- a. Regulated activities cannot cause the loss of greater than 1.0 acre of waters of the US for each single and complete project, including the area of tributary loss (see definition of single and complete linear project).

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<sup>2</sup> The undertaking of these activities does not always result in a discharge or require a Corps permit. This RGP category authorizes the repair, rehabilitation, or replacement of previously authorized structures or fills that do not qualify for the Clean Water Act (CWA) Section 404(f) exemptions such as the maintenance exemption or the maintenance (but not construction) of drainage ditch exemption.

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- b. If the overall project (including all single and complete projects) would result in the loss of 3.0 acres or less of waters of the US, including the area of tributary loss, the 1.0 acre limit at each single and complete crossing does not apply.
- c. All tributary channel losses, including bank stabilization, are limited to the minimum necessary to construct or protect the linear transportation project and cannot exceed 500 linear feet<sup>3</sup> for each single and complete project, unless the Corps waives the 500 linear foot loss limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. An applicant may request, in writing, a waiver from the Corps.

**An applicant must submit a PCN:**

- a. If a single and complete linear project exceeds 0.1 acre of loss of waters of the US;
- b. If the single and complete linear project exceeds 0.5 acre of temporary impact to waters of the US;
- c. If a waiver from General Condition 15 for the duration of temporary impacts in waters of the US is requested by the applicant (allowing temporary fill to remain in place longer than 90 days between May 15 and November 15);
- d. If a waiver from the 500 linear foot tributary limit is requested by an applicant; or
- e. If triggered by the project's location or potential impacts as described in Section E. Pre-Construction Notification.

**Reporting requirements for Category 2 activities:** For overall projects (defined in Section I) that do not require a PCN, but would result in the cumulative loss of 10,000 square feet or more of waters of the US, project proponents are required to report the overall project to the Corps. See Section E below for additional information.

**CATEGORY 3: NEW CONSTRUCTION - LINEAR TRANSPORTATION**

**Eligible Activities:** Regulated activities required for crossings of waters of the US associated with the construction of a linear transportation project (e.g., roads, highways, railways, trails, airport runways, and taxiways). Examples of eligible regulated activities include those necessary for the construction of: (1) new roads or major realignments of existing roadways; (2) new railroad spurs or tracks; (3) new or detached frontage roads; (4) new airport runways; (5) new or detached trails; (6) associated linear infrastructure for those new construction projects, and (7) temporary structures, fills, and work, including the use of temporary mats, necessary for activities 1-6.

**Activity restrictions:**

- a. Regulated activities cannot cause the loss of greater than 0.5 acre of waters of the US for each single and complete project, including the area of tributary loss (see definition of single and complete linear project).
- b. All tributary channel losses, including bank stabilization, are limited to the minimum necessary to construct or protect the linear transportation project and cannot exceed 500 linear feet for each single and complete project, unless the Corps waives the 500 linear foot loss limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. An applicant may request, in writing, a waiver from the Corps.

**An applicant must submit a PCN:**

- a. If a single and complete linear project exceeds 400 square feet of loss of waters of the US;
- b. If a single and complete linear project exceeds 0.5 acre of temporary impact to waters of the US;

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<sup>3</sup> When calculating loss of a tributary for a culvert replacement, the linear foot length of the existing culvert does not count toward the 500 linear foot limit. Rip-rap and other tributary impacts count towards the tributary loss limit. See Section D. Calculating Impacts to Waters of the United States for more information.



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- c. If a waiver from General Condition 15 for the duration of temporary impacts in waters of the US is requested by an applicant (allowing temporary fill to remain in place longer than 90 days between May 15 and November 15);
- d. If a waiver from the 500 linear foot tributary limit is requested by an applicant; or
- e. If triggered by the project's location or potential impacts as described in Section E. Pre-Construction Notification.

**CATEGORY 4: NON-LINEAR TRANSPORTATION PROJECTS**

**Eligible Activities:** Regulated activities required for the construction, expansion, or maintenance of non-linear features associated with transportation projects, including the use of temporary discharges necessary to conduct those activities. Such projects may include: stormwater management facilities, vehicle maintenance or storage buildings, weigh stations, rest-stops, parking lots, train stations, aircraft hangars, and associated infrastructure.

**Activity restrictions:**

- a. Regulated activities cannot cause the loss of greater than 0.5 acre of waters of the US, including the area of tributary loss (see definition of single and complete non-linear project).
- b. The discharge must not cause the loss of greater than 300 linear feet of a tributary, unless the Corps waives the 300 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects (see definition of single and complete non-linear project). An applicant may request, in writing, a waiver from the Corps.

**An applicant must submit a PCN:**

- a. If the single and complete project exceeds 0.1 acre of loss of waters of the US;
- b. If the single and complete project exceeds 0.5 acre of temporary impact to waters of the US;
- c. If a waiver from General Condition 15 for the duration of temporary impacts in waters of the US is requested by an applicant (allowing temporary fill to remain in place longer than 90 days between May 15 and November 15);
- d. If a waiver from the 300 linear foot tributary limit is requested by an applicant; or
- e. If triggered by the project's location or potential impacts as described in Section E. Pre-Construction Notification.

**CATEGORY 5: TRANSPORTATION SURVEYING**

**Eligible Activities:** Regulated temporary activities required for surveying activities necessary for transportation projects, such as core sampling, exploratory-type bore holes, exploratory trenching, soil surveys, sediment sampling, sample plots or transects for wetland delineations, historic resources surveys, and temporary access roads necessary to perform those activities.

**Activity restrictions:**

- a. Regulated activities for the recovery of historic resources are not authorized.
- b. Losses of waters of the US are not authorized.
- c. Bore holes must be properly sealed following completion of survey activities.

**An applicant must submit a PCN:**

- a. If the single and complete project exceeds 0.5 acre of temporary impact to waters of the US; or
- b. If triggered by the project's location or potential impacts as described in Section E. Pre-Construction Notification.

### C. TRANSPORTATION REGIONAL GENERAL PERMIT EXCLUSIONS

The following activities are INELIGIBLE for Transportation RGP authorization:

1. Regulated activities that would divert more than 10,000 gallons per day of surface or ground water into or out of the Great Lakes Basin.
2. Regulated activities that may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
3. Regulated activities eligible for authorization under a valid Corps Special Area Management Plan (SAMP) general permit, see <http://www.mvp.usace.army.mil/Missions/Regulatory/Permitting-Process-Procedures/> for more information on SAMPs.
4. Regulated activities that would occur in a calcareous fen, unless the Wisconsin Department of Natural Resources (WI DNR) has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources (MN DNR) has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: [http://files.dnr.state.mn.us/eco/wetlands/calcareous\\_fen\\_list.pdf](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf).
5. Activities that would occur in or affect designated portions of a National Wild and Scenic River System, including parts of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin, or a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.
6. Regulated activities which are likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No regulated activity is authorized which "*may affect*" a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed.
7. Regulated activities which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, unless the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
8. Regulated activities which may result in disturbance or removal of human remains unless disposition of the remains has been determined by the appropriate authority under applicable laws, and the work is authorized by the Corps. See Section H, Condition 10 for more information.
9. Regulated activities which require permission from the Corps pursuant to 33 U.S.C. 408 (Section 408) because they will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues the Section 408 permission to alter, occupy, or use the Corps federally authorized civil works project.
10. Regulated activities where applicants are unable to demonstrate that the structures comply with applicable state dam safety criteria or have been designed by qualified persons.
11. Regulated activities which would adversely affect public water supplies.

### D. CALCULATING IMPACTS TO WATERS OF THE UNITED STATES

1. **Waters of the US** may include waterbodies such as streams, rivers, lakes, ponds, and wetlands (see Definitions, Section I).
2. **Loss of waters of the US** is the sum of all permanently adversely affected jurisdictional waterbodies for a single and complete project. Temporary impacts to waters of the US, discussed below, are calculated separately from losses of waters of the US and do not contribute to loss thresholds. Permanent adverse effects include filling, flooding, excavation, or drainage in waters of the US as a result of the regulated activity. Permanent adverse effects to

waters of the US include regulated activities that change a waterbody to dry land, increase the bottom elevation of a waterbody, decrease the bottom elevation of a waterbody (e.g. excavation of a sedge meadow wetland to shallow marsh), or change the use of a waterbody.

- a. Losses of wetlands must be reported in either acres or square feet, as appropriate.
  - b. Losses of tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed at multiple locations, they are added together to determine the overall amount of linear loss to waters of the US.
  - c. Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B or in Pre-Construction Notification Information, Section E.
3. **Temporary impacts to waters of the US** include the sum of all regulated impacts to waters of the US for a single and complete project which are restored to preconstruction conditions after construction. Examples of temporary impacts to waters of the US may include the placement of timber matting, installation of coffer dams, trenching and backfilling, and in many cases, mechanized land-clearing.
- a. Temporary impacts to wetlands must be reported in either acres or square feet, as appropriate.
  - b. Temporary impacts to tributaries, ponds, and lakes must be reported in acres or square feet and linear feet below the plane of the ordinary high water mark. If regulated activities are proposed at multiple locations, temporary impacts must be added together to determine the overall amount of temporary linear impact.
  - c. Additional measurements for waterbodies may be required. If required, these measurements will be specified in the Regional General Permit Applicability, Section B or in Pre-Construction Notification Information, Section E.
4. **Losses and temporary impacts to waters of the US do not include:**
- a. Activities that do not require Department of the Army authorization, such as activities eligible for exemptions under Section 404(f) of the Clean Water Act.
  - b. Impacts to linear ditches, as defined in Section I, provided the ditch does not abut a wetland. Sections of linear ditches in or abutting wetlands do contribute to loss and temporary impact thresholds.
5. The measurements of loss and temporary impact to waters of the US are for determining whether a project may qualify for the RGP, and are not reduced by compensatory mitigation.

## **E. PRE-CONSTRUCTION NOTIFICATION (PCN) INFORMATION**

Projects that meet the terms and conditions of the Transportation RGP and do not require submittal of a PCN, as outlined below, may commence work after project proponents have carefully confirmed that the activity will be conducted in compliance with all applicable terms and conditions of the RGP.

**For all activities which require PCN, project proponents must obtain written Corps verification of Transportation RGP coverage before starting regulated work.** For Transportation RGP activities that require PCN, the PCN must include all other nationwide permits, programmatic general permits, RGPs, or individual permits used or intended to be used to authorize any part of the overall linear and non-linear project (including all single and complete projects), including regulated activities that require Corps authorization but do not require PCN.

**Reporting requirements for Category 2 activities:** For overall projects (defined in Section I) that do not require a PCN, but would result in the cumulative loss of 10,000 square feet or more of waters of the US, project proponents are required to report the overall project to the Corps. The project proponent must minimally provide items 1 through 6 below (Form and Content of PCN) to the Corps at least 30 days prior to starting work. Project proponents do not have to wait for written verification of coverage unless notified by the Corps.

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**When PCN is required:** In addition to the table below, please refer to Section B above. A PCN is required for the locations, impact thresholds, and activities listed below.

|  |  |  |
|--|--|--|
| <p><b>With the exception of all category 1 activities, a PCN is required for regulated activities proposed in these aquatic resources<sup>4</sup>:</b></p> | <p><b>WISCONSIN:</b></p> <ol style="list-style-type: none"> <li>1. The Apostle Islands National Lakeshore;</li> <li>2. Madeline Island;</li> <li>3. State-designated wild rice waters (<a href="https://data.glifwc.org/manoomin.harvest.info">https://data.glifwc.org/manoomin.harvest.info</a>);</li> <li>4. Coastal plain marshes;</li> <li>5. Bog wetland plant communities;</li> <li>6. Interdunal wetlands;</li> <li>7. Great Lakes ridge and swale complexes;</li> <li>8. Fens; and</li> <li>9. Wetland sites designated by the Ramsar Convention (as of the date of publication, these include: the Horicon Marsh, Upper Mississippi River Floodplain wetlands, Kakagon and Bad River Sloughs, Door County Peninsula Coastal wetlands, and the Chiwaukee Illinois Beach Lake Plain), see <a href="https://rsis.ramsar.org/">https://rsis.ramsar.org/</a>.</li> </ol>   | <p><b>MINNESOTA:</b></p> <ol style="list-style-type: none"> <li>1. Wild rice waters identified in Minn. R. 7050.0470, subpart 1 (or as amended by the Minnesota Pollution Control Agency);</li> <li>2. Bog wetland plant communities; and</li> <li>3. Fens.</li> </ol> |
| <p><b>PCN is required for the following activities to comply with other federal laws:</b></p>  | <ol style="list-style-type: none"> <li>1. Regulated activities which might affect Federally-listed threatened, endangered, or proposed threatened and endangered species, designated critical habitat, or proposed critical habitat <u>unless</u> ESA Section 7 consultation addressing the effects of the proposed activity has been completed by a federal applicant or lead federal agency.</li> <li>2. Regulated activities which might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties <u>unless</u> the requirements of Section 106 of the NHPA have been satisfied by a federal applicant or lead federal agency.</li> <li>3. Regulated activities which might result in disturbance or removal of human remains.</li> <li>4. Regulated activities which require Section 408 permission from the Corps because it will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project.</li> <li>5. Regulated activities in the National Wild and Scenic River System, including the designated portions of the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status.</li> </ol> |  |
| <p><b>Other activities which require PCN include:</b></p>  | <ol style="list-style-type: none"> <li>1. Areas of suspected sediment or soil contamination, including but not limited to Superfund sites. Superfund sites in Minnesota or Wisconsin can be located by searching the EPA's website: <a href="https://www.epa.gov/superfund/search-superfund-sites-where-you-live">https://www.epa.gov/superfund/search-superfund-sites-where-you-live</a>.</li> <li>2. Bridges, structures, and sunken vessels more than 50 years old, unless already determined ineligible for listing on National Register of Historic Places. Culverts that are constructed using pre-cast concrete or corrugated metal are not subject to this PCN requirement.</li> <li>3. All regulated activities which require a waiver to be eligible for authorization by the RGP, including and limited to: a waiver to exceed the listed 500 linear foot tributary limit (Categories 2 and 3); a waiver to exceed the listed 300 linear foot tributary limit (Category 4); or a waiver from general condition 15, Duration of Temporary Impacts (Categories 2, 3, and 4).</li> </ol>   |  |

<sup>4</sup> Additional information for identifying listed plant communities can be found at: [www.mvp.usace.army.mil/Missions/Regulatory.aspx](http://www.mvp.usace.army.mil/Missions/Regulatory.aspx), the Wisconsin Department of Natural Resources' (WI DNR) website: [www.dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland](http://www.dnr.wi.gov/topic/EndangeredResources/Communities.asp?mode=group&Type=Wetland), or at the Minnesota Department of Natural Resources' Native Plant Community Classification's website: [www.dnr.state.mn.us/npc/classification.html](http://www.dnr.state.mn.us/npc/classification.html).

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**Timing of PCN:** Where required by the terms of this RGP, the prospective permittee must notify the Corps by submitting a PCN as early as possible. The Corps will determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. As a general rule, the Corps will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the Corps will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the Corps.

The prospective permittee shall not begin the activity until they are notified in writing by the Corps that the activity may proceed under the RGP with any special conditions imposed by the Corps.

**Form and Content of PCN:** The PCN must be in writing and should utilize the Minnesota Joint Waters Wetlands Application, WI DNR application or the Corps Application for Department of the Army Permit Form ENG 4345. A letter containing the required information may also be used. A complete PCN must include:

1. Contact information including the name, mailing address, email address, and telephone numbers of the prospective permittee and any third party agents.
2. Location of the proposed activity (i.e. section-township-range and latitude and longitude in decimal degrees).
3. A description of the proposed activity and its purpose; a description of any avoidance and minimization mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any and all other general or individual permits used or intended to be used to authorize any part of the overall proposed project including activities that require Corps authorization but do not require PCN.
4. A tabulation of all impacts to waters of the US, including the anticipated amount of loss of waters and temporary impacts expected to result from the proposed activity. Impacts to all waters of the US must be reported in acres or square feet. In addition, tributary, pond, and lake impacts must also be reported in linear feet. A table may be used to clearly and succinctly disclose this information (see Calculating Impacts to Waters of the United States, Section D).
5. Sketches, maps, drawings and plans must be provided to show that the activity complies with the terms of the RGP. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity. Large and small-scale maps must be provided to show the project site location. Drawings and plans should be to scale, with scale included, and depict all identified aquatic resources and aquatic resource impact areas, including plan-view drawings on a recent aerial photograph, and cross-section and profile drawings where appropriate.
6. Identification of all aquatic resources on the project site and the acreage of each aquatic resource present. Aquatic resources must be identified by type (e.g. wetland, tributary, lake, man-made ditch, pond, etc.) and impacts must be identified by type (e.g. fill, excavation, etc.) and permanence (permanent or temporary). A wetland delineation may be required.
7. A statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required. See Mitigation, Section F for more information.
8. If the proposed project would impact a calcareous fen, the PCN must include a copy of the WI DNR authorization for the proposed regulated activity, or a copy of the approved MN DNR calcareous fen management plan specific to the project.
9. If any federally-listed proposed, threatened or endangered species or proposed or designated critical habitat might be affected by the regulated activity, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with ESA Section 7.

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10. If the activity might have the potential to cause effects to a historic property listed on, eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity and include a vicinity map indicating the location of the historic property. Federal applicants or applicants that have federal funding (or whose project otherwise involves a lead federal agency) must provide documentation demonstrating compliance with Section 106 of the NHPA.
11. If an activity is proposed in a component of the National Wild and Scenic River System (including the St. Croix River in Minnesota and Wisconsin and the Wolf River in Wisconsin) or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river.”
12. The PCN must specify how long temporary impacts and structures will remain in place and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.
13. If a waiver for a specific category or condition of the permit is proposed (e.g. from a linear tributary impact limit or duration of temporary impact), the PCN must include an explanation of the need for a waiver and why the applicant believes the impacts would result in minimal individual and cumulative adverse environmental effects.
14. For an activity that requires permission from the Corps pursuant to Section 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the PCN must include a statement confirming if the project proponent has submitted a written request for Section 408 permission from the Corps office having jurisdiction over the Corps civil works project.

## F. MITIGATION

In accordance with the Federal Mitigation Rule (33 CFR part 332), the Section 404(b)(1) guidelines (40 CFR part 230), and current Corps policies and guidelines for compensatory mitigation, regulated activities must be designed and constructed to avoid and minimize (mitigate) adverse effects, both temporary and permanent, to waters of the US to the maximum extent practicable at the project site (i.e., on site). Mitigation includes actions which may avoid, minimize, rectify, reduce, or compensate for adverse environmental effects or activities which may otherwise be contrary to the public interest. Regulated activities which the Corps believes do not mitigate adverse environmental effects or are contrary to the public interest are ineligible for authorization by the Transportation RGP, and will be evaluated by the Corps using individual permit procedures.

After all practicable steps to avoid and minimize adverse effects to waters of the US have been considered, the Corps may require compensatory mitigation to ensure that the regulated activity results in no more than minimal adverse environmental effects, or will not be contrary to the public interest. In reviewing the complete PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps will issue the RGP verification for that activity if it meets the terms and conditions of the RGP, unless the Corps determines, after considering compensatory mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest. When this occurs, the Corps will exercise discretionary authority to require an individual permit evaluation for the proposed regulated activity.

Regulated activities eligible for this RGP which require submittal of a PCN must include a statement describing how compensatory mitigation requirements will be satisfied, or an explanation why compensatory mitigation should not be required for proposed impacts to waters of the US. Project proponents may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the project proponent must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of the current Corps policies, guidelines, and 33 CFR 332 (the Mitigation Rule).

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Information regarding current Corps policies and guidelines about compensatory mitigation in Minnesota and Wisconsin may be viewed online at [www.mvp.usace.army.mil/Missions/Regulatory/Mitigation](http://www.mvp.usace.army.mil/Missions/Regulatory/Mitigation). Information regarding existing banks and in-lieu fee programs is available online at [www.ribits.usace.army.mil](http://www.ribits.usace.army.mil). Nationally applicable information, including the Mitigation Rule, may be read online at [http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig\\_info/](http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/mitig_info/).

## G. USE OF MULTIPLE RGP CATEGORIES

Single and complete non-linear projects may not be “piecemealed” to avoid the limits in a general permit (nationwide, programmatic, or regional general permit). For example, multiple category 4 non-linear activities may be authorized by the Transportation RGP for an overall project, provided the cumulative loss of waters of the US does not exceed 0.5 acre. To illustrate this, consider two category 4 activities proposed as part of a new overall light-rail project, a proposed 0.25 acre loss for a stormwater pond and a 0.25 acre loss for a train station. Both are eligible for category 4 authorization, because the cumulative loss of waters of the US does not exceed 0.5 acre.

Categories 4 and 5 (non-linear single and complete projects) can be used in conjunction with other categories of this general permit.

Multiple linear categories (categories 1, 2, and 3) of this RGP may be utilized for the same single and complete linear project, provided the cumulative loss of waters of the US does not exceed the loss limit of the general permit category with the *highest* specified limit.

When general permit limits are exceeded, projects may be eligible for review and authorization by an individual permit.

## H. GENERAL CONDITIONS

To qualify for regional general permit (RGP) authorization, the prospective permittee must comply with the following conditions, as applicable, in addition to any category-specific requirements and project-specific conditions imposed by the Corps.

1. **Compliance:** The permittee is responsible for ensuring that whomever performs, supervises or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the RGP and any special (permit-specific) conditions included in any written verification letter from the Corps. The activity must also comply with any special conditions added by a state, tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the RGP. Any authorized structure or fill must be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the Corps to an RGP authorization.
2. **Compliance Certification:** Each permittee who receives an RGP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The Corps will provide the permittee the certification document with the RGP verification letter. The completed certification document must be submitted to the Corps within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.
3. **Site Inspection:** The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the RGP authorization.
4. **Migratory Birds and Bald and Golden Eagles:** The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service (FWS) to determine applicable measures to

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reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

5. **Endangered Species:**
  - a. No activity is authorized under this RGP which is likely to directly or indirectly jeopardize the continued existence of a federally threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), 50 CFR 402, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under the RGP which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the RGP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the RGP activity and are later in time, but still are reasonably certain to occur.
  - b. As a result of formal or informal consultation with the FWS, the Corps may add species-specific permit conditions to the RGP verification.
  - c. Information on the location of federally threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS on their web page at [www.fws.gov/ipac](http://www.fws.gov/ipac).
6. **Calcareous Fens:** The permittee may not complete regulated activities in a calcareous fen, unless the Wisconsin Department of Natural Resources has authorized the proposed regulated activity, or the Minnesota Department of Natural Resources has approved a calcareous fen management plan specific to the project. A list of known Minnesota calcareous fens can be found at: [http://files.dnr.state.mn.us/eco/wetlands/calcareous\\_fen\\_list.pdf](http://files.dnr.state.mn.us/eco/wetlands/calcareous_fen_list.pdf).
7. **Wild and Scenic Rivers:** The permittee may not complete regulated activities which may affect or are located in a designated portions of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.
8. **Historic Properties, Cultural Resources:**
  - a. No activity which may affect historic properties listed or potentially eligible for listing on the National Register of Historic Places is authorized until the requirements of Section 106 of the National Historic Preservation Act (Section 106) have been satisfied. If PCN is required for the proposed activity, the federal project proponent should follow their own procedures for complying with the requirements of Section 106 and provide documentation of compliance with those requirements.
  - b. Information on the location and existence of historic and cultural resources can be obtained from the State Historic Preservation Office, Tribal Historic Preservation Offices, and the National Register of Historic Places.
  - c. Rock or fill material used for activities authorized by this permit must either be obtained from existing quarries or, if a new borrow site is excavated to obtain fill material, the Corps must be notified prior to the use of the new site to determine whether a cultural resources survey of the site is necessary.
9. **Discovery of Previously Unknown Remains and Artifacts:** If any previously unknown historic, cultural or archeological remains and artifacts are discovered while accomplishing the activity authorized by this permit, the Corps must immediately be notified of the findings. To the maximum extent practicable, construction activities must avoided that may affect the remains and artifacts until the required coordination has been completed. The Corps 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.
10. **Burial Sites:** Burial sites, marked or unmarked, are subject to state law (Wisconsin Statute 157.70 and Minnesota Statutes 306 and 307.08). Native American burial sites on federal or tribal land are subject to the provisions of Native American Graves Protection and Repatriation Act (NAGPRA). Regulated activities may not result in disturbance or removal of human remains until disposition of the remains has been determined by the appropriate authority under these laws, and the work is authorized by the Corps. Regulated activities which result in an inadvertent discovery of human remains must stop immediately, and the Corps, as well as the



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appropriate state and tribal authority, must be notified. Regulated work at inadvertent discovery sites requires compliance with state law and NAGPRA, as appropriate, prior to re-starting work.

11. **Federally Authorized Corps Civil Works projects:** A permittee is not authorized to begin any regulated activities described in this RGP if activities will alter or temporarily or permanently occupy or use a Corps federally authorized civil works project, unless the appropriate Corps office issues a Section 408 permission to alter, occupy, or use the Corps civil works project (pursuant to 33 U.S.C. 408) and the Corps issues written RGP verification. Examples of federal projects include, but are not limited to, works that were built by the Corps and are locally maintained (such as local flood control projects) or operated and maintained by the Corps (such as locks and dams).
12. **Dam Safety:** Permittees are not authorized to begin regulated activities unless they are able to demonstrate that the structures, when appropriate, comply with applicable state dam safety criteria or have been designed by qualified persons. The Corps may require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications are made to ensure safety.
13. **Suitable Material:** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
14. **Restoration of Temporary Impacts:** All temporary impacts in waters of the US, including discharges resulting from side casting material excavated from trenching, that occur as a result of the regulated activity must be fully contained with appropriate erosion control or containment methods, be restored to preconstruction contours and elevations, and as appropriate, revegetated with native, non-invasive vegetation. In temporarily excavated wetlands, the top 6 to 12 inches of the excavation should normally be backfilled with topsoil originating from the wetland. No temporary excavation area, including, but not limited to trenches, may be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a French drain effect).
15. **Duration of Temporary Impacts:** Temporary impacts in waters of the U.S., including wetlands, must be avoided and limited to the smallest area and the shortest duration required to accomplish the project purpose.
  - a. Unless otherwise conditioned in a Corps RGP verification, temporary impacts may not remain in place longer than 90 days between May 15 and November 15. Before those 90 days have elapsed, all temporary discharges must be removed in their entirety.
  - b. If the temporary impacts would remain in place for longer than 90 days between May 15 and November 15, the PCN must include a request for a waiver from this condition and specify how long temporary impacts will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. The permittee must remove the temporary impacts in their entirety in accordance with the activity authorized their permit verification.
16. **Best Management Practices (BMPs):** To minimize adverse effects from soil loss and sediment transport that may occur as a result of the authorized work, appropriate BMPs must be implemented and maintained. For authorized work above an OHWM the BMPs must remain in place until the affected area is stabilized with vegetation or ground cover. For all authorized work below an OHWM, BMPs are required and must prevent or minimize adverse effects (e.g., total suspended solids or sedimentation) to the water column outside of the authorized work area. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance. All BMPs must be inspected and properly maintained following storm events to ensure they are operational. All exposed slopes and stream banks must be stabilized within 24 hours after completion of all tributary crossings.
17. **Culverts and Crossings:** Unless an RGP verification authorizes otherwise, replacement and installation of culverts or crossings authorized by an RGP are to follow (or be restored to) the natural alignment and profile of the tributary. The culverts or bridges must adequately pass low flow and bankfull events, bedload, sediment load, and provide site-appropriate fish and wildlife passage. Example design elements include recessing single culverts to

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accommodate natural bankfull width and adjusting additional culvert inverts at an elevation higher than the bankfull elevation.

18. **Aquatic Life Movements:** No regulated activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water.
19. **Spawning Areas:** Activities in spawning areas, during spawning seasons, must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial sedimentation) of a designated or known spawning area are not authorized.
20. **Riprap:** For RGP categories that allow for the use of riprap material for bank stabilization, only rock must be used and it must be of a size sufficient to prevent its movement from the authorized alignment by natural forces under normal or high flows.
21. **Pollutant or Hazardous Waste Spills:** The permittee is responsible for removing pollutants and hazardous materials and for minimizing any contamination resulting from a spill in accordance with state and federal laws. In accordance with applicable state, tribal and federal laws and regulations, if a spill of any potential pollutant or hazardous waste occurs, it is the responsibility of the permittee to immediately notify the National Response Center at 1-800-424-8802 or [www.nrc.uscg.mil](http://www.nrc.uscg.mil) AND  
IN WISCONSIN: the WI DNR Spills Team at 1-800-943-0003, or  
IN MINNESOTA: the Minnesota State Duty Officer at 1-800-422-0798.
22. **Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
23. **Navigation:** No activity may cause more than a minimal adverse effect on navigation. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the US. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
24. **Fills Within 100-Year Floodplains:** The regulated activity must comply with applicable FEMA-approved state or local floodplain management requirements.
25. **Access Roads:** Access roads must be sized appropriately and must be constructed in such a way to minimize adverse effects on waters of the US and elevations must be as near as practicable to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). All access roads constructed in waters of the US must be properly bridged or culverted to maintain surface flows.
26. **Tributary Modifications.** When stream channelization is performed with the construction of a road crossing, both activities should be considered as a single and complete project, which may be authorized by another form of authorization. The Corps does not consider installation of a culvert in a stream bed as stream channelization as long as those activities are conducted in accordance with the terms of the categories described in this permit. Unless the general permit verification authorizes otherwise, replacement and installation of culverts or crossings authorized are to follow (or be restored to) the natural alignment and profile of the tributary, see General Condition 17. Culverts and Crossings.
27. **Section 401 Clean Water Act, Water Quality Certification:** All regulated activities authorized by the Transportation RGP pursuant to Section 404 of the Clean Water Act require Section 401 Clean Water Act certification or waiver to be considered valid.
28. **Transfer of Regional General Permit Verifications:** If the permittee sells the property associated with a regional general permit verification, the permittee may transfer the regional general permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the regional general

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permit verification must be attached to the letter, and the letter must contain the following statement and signature "When the structures or work authorized by this regional general permit are still in existence at the time the property is transferred, the terms and conditions of this regional general permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional general permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

## I. DEFINITIONS

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: 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.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term discharge of dredged material is defined at 33 CFR 323.2(d) and the term discharge of fill material is defined at 33 CFR 323.2(f).

Exploratory trenching: temporary excavation of the upper soil profile to expose bedrock or substrate for the purpose of mapping or sampling the exposed material.

Historic property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete **non-linear** project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Linear ditch: A defined channel constructed adjacent to a linear transportation facility (e.g., roads, highways, railways, trails, airport runways, and taxiways, etc.) to convey runoff from the linear facilities and from areas which drain toward the linear facilities. The term linear ditch does not include natural tributaries, relocated natural tributaries, or modified natural tributaries.

Navigable waters: Waters subject to Section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Ordinary high water mark (OHWM): An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

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Overall project: The aggregate of all single and complete projects related to the same purpose, including both linear and non-linear activities with regulated losses and temporary impacts to waters of the US.

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

Pre-construction notification (PCN): A request submitted by the project proponent to the Corps for confirmation that a particular activity is verified by a general permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. PCN may be required by the terms and conditions of this regional general permit. A PCN may be voluntarily submitted in cases where PCN is not required and the project proponent wants verification that the activity is authorized by the general permit.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

Single and complete linear project (categories 1-3 and temporary access roads fills): A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term "single and complete project" is defined as that portion of the overall linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the US (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of this general permit authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately. The definition of "single and complete linear project" does not include the term "independent utility" because each crossing of waters of the US is needed for the single and complete linear project to fulfill its purpose of transporting people, goods, and services from the point of origin to the terminal point.

Single and complete non-linear project (categories 4 and 5): For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the overall project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility. Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an RGP authorization. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Stormwater management facilities: Stormwater management facilities are those facilities including, but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tribal lands: Any lands which are either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Tributary: For the purposes of this permit, a water that contributes flow, either directly or through another water to a traditionally navigable water or interstate water (including wetlands) and that is characterized by the presence of the

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physical indicators of bed and banks and ordinary high water mark. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches.

Waiver: An approval from the Corps which allows an applicant to exceed the activity restrictions or conditions described in an RGP. Waivers may only be considered when expressly indicated as available in an RGP and will only be granted once the Corps has made a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects. When a waiver is required, an applicant cannot start work until they have received an RGP verification letter with waiver approval.

Waterbody: For purposes of this RGP, a waterbody is a jurisdictional water of the US. Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

## J. FURTHER INFORMATION

1. Congressional authorities: The permittee has been authorized to undertake the activity described above pursuant to Section 404 of the Clean Water Act (33 U.S.C 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
2. The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by an RGP based on concern for the aquatic environment or for any other factor of the public interest.
3. Limits of this authorization:
  - a. This RGP does not obviate the need to obtain other federal, state, or local authorizations required by law;
  - b. This RGP does not grant any property rights or exclusive privileges;
  - c. This RGP does not authorize any injury to the property or rights of others; and
  - d. This RGP does not authorize interference with any existing or proposed federal project.
4. 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; or
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
5. Reliance on permittee's data: The determination of this office that an activity is not contrary to the public interest will be made in reliance on the information provided by the project proponent.
6. Re-evaluation of decision: This office may reevaluate its decision for an individual verification under this general permit 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 terms and conditions of this permit;
  - b. The information provided by the permittee in support of the pre-construction notification proves to have been false, incomplete, or inaccurate (See 5 above); or
  - c. Significant new information surfaces which this office did not consider in reaching the original 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 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring the permittee to comply with the terms and conditions of their permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and if the permittee fails to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill the permittee for the cost.

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7. This office may also reevaluate its decision to issue this RGP at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, 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.

**K. CORPS DECISION**

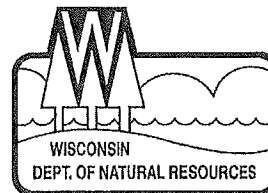
In reviewing the PCN for the proposed activity, the Corps will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific RGP, the Corps should issue the RGP verification for that activity if it meets the terms and conditions of that RGP, unless the Corps determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the US to determine whether they individually satisfy the terms and conditions of the RGPs, as well as the cumulative effects caused by all of the crossings authorized by RGP. If an applicant requests a waiver for any limit where waivers are indicated as available, the Corps will only grant the waiver upon a written determination that the RGP activity will result in only minimal individual and cumulative adverse environmental effects.

When making minimal adverse environmental effects determinations the Corps will consider the direct and indirect effects caused by the RGP activity. The Corps will also consider the cumulative adverse environmental effects caused by activities authorized by the RGP and whether those cumulative adverse environmental effects are no more than minimal. The Corps will consider site specific factors, such as the environmental setting in the vicinity of the RGP activity, the type of resource that will be affected by the RGP activity, the functions provided by the aquatic resources that will be affected by the RGP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the RGP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the Corps. The Corps may add case-specific special conditions to the RGP authorization to address site-specific environmental concerns.

The Corps will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal to inform decisions regarding whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the Corps determines that the activity complies with the terms and conditions of the RGP and that the adverse environmental effects are no more than minimal, after considering mitigation, the Corps will notify the permittee and include any activity specific conditions in the RGP verification the Corps deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). When compensatory mitigation is required, the Corps must approve the final mitigation plan before the permittee commences work in waters of the US, unless the Corps determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the Corps determines that the adverse environmental effects of the proposed activity are more than minimal, then the Corps will notify the applicant of next steps as described in 33 CFR 325.2.

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DEPARTMENT OF NATURAL RESOURCES  
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Scott Walker, Governor  
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February 15, 2018

Chad Konickson  
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180 5th St. East  
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St. Paul MN 55101

Subject: Water Quality Certification for the Regional General Permits in WI

Dear Mr. Konickson:

The Wisconsin Department of Natural Resources submits the attached water quality certification for U.S. Army Corps of Engineers' Regional General Permits for Beach Creation & Nourishment, Beach Raking, Minor Discharges, Piers and Docks, Wildlife Ponds, Transportation, and Utilities for projects in Wisconsin.

Please feel free to contact Cami Peterson or me with any questions.

Sincerely,

Benjamin Callan  
Chief, Integration Services Section

cc: Wendy Melgin, USEPA  
Jill Bathke, USACE  
Rebecca Graser, USACE

Attachment

## BEFORE THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Application of the United States Department of the Army,)
Corps of Engineers, for Water Quality Certification for the)
Final Regulations Pertaining to the Issuance
of Regional General Permits for Beach Creation & Nourishment, Beach Raking, Minor
Discharges, Piers and Docks, Transportation, Utilities, Wildlife Ponds)

On December 20, 2017, the United States Department of the Army, Corps of Engineers (COE), published its final notice regarding the Issuance of seven Regional General Permits (RGPs) in the Federal Register. The publication includes new RGPs. Publication of these RGPs serves as the Corps' application to the State for water quality certification (WQC) under Section 401 of the Federal Clean Water Act (CWA).

The Wisconsin Department of Natural Resources (WDNR) has examined the final regulations pursuant to Section 401, CWA, and Chapter NR 299, Wisconsin Administrative Code (Wis. Adm. Code).

The WDNR has determined the following conditions for the RGPs are required to ensure compliance with state water quality standards enumerated in s. 299.04, Wis. Adm. Code. The certification contained herein shall expire on February 16, 2023.

Section 401 Certification does not release the permittee from obtaining all other necessary federal, state, and local permits, licenses, certificates, approvals, registrations, charters, or similar forms of permission required by law. It does not limit any other state permit, license, certificate, approval, registration, charter, or similar form of permission required by law that imposes more restrictive requirements. It does not eliminate, waive, or vary the permittee's obligation to comply with all other laws and state statutes and rules throughout the construction, installation, and operation of the project. This Certification does not release the permittee from any liability, penalty, or duty imposed by Wisconsin or federal statutes, regulations, rules, or local ordinances, and it does not convey a property right or an exclusive privilege.

This Certification does not replace or satisfy any environmental review requirements, including those under the Wisconsin Environmental Policy Act (WEPA) or the National Environmental Policy Act (NEPA).

**Note:** The specific language in the RGPs is not included in this document. Copies of complete regional general permits published in the Federal Register on December 20, 2017, may be obtained from your local COE field office.

### STATE CONDITIONS AND LIMITATIONS OF CERTIFICATION

#### GENERAL CONDITIONS:

1. The permittee shall allow the WDNR reasonable entry and access to the discharge site to inspect the discharge for compliance with the certification and applicable laws.



2. If any of these §401 water quality certification conditions are found invalid or unenforceable, the water quality certification is denied for all activities to which that condition applies.

3. No discharges of dredged or fill material below the ordinary high water mark of a navigable stream as defined by s. 310.03(5), Wis. Adm. Code, may take place during fish spawning periods or times when nursery areas would be adversely impacted. These periods are:

- September 15<sup>th</sup> through May 15<sup>th</sup> for all trout streams and upstream to the first dam or barrier on the Root River (Racine County), the Kewaunee River (Kewaunee County), and Strawberry Creek (Door County). To determine if a waterway is a trout stream, you may use the WDNR website trout maps at <http://dnr.wi.gov/topic/fishing/trout/streammaps.html>.
- March 1<sup>st</sup> through June 15<sup>th</sup> for ALL OTHER waters.

4. Unless specifically exempt from state statute and federal Pre-Construction Notification (PCN) requirements, Applicants seeking authorization under these RGPs shall complete the Joint State/Federal Permit Application on the department e-permitting site at <http://dnr.wi.gov/Permits/Water/>.

Regional General Permits Granted Water Quality Certification:

- Beach Raking
- Minor Discharges
- Piers and Docks

Regional General Permits for which Water Quality Certification is Partially Denied

The specified activities authorized by the following RGP categories are denied WQC without prejudice and must apply to the WDNR for an individual 401 WQC. Activities that do not include the activities for which certification has been denied are certified subject to all applicable RGP general conditions.

- Utilities
  - WQC denied: Temporary access fill without PCN that is placed for 60 or more consecutive days between May 15 and November 15.
  - WQC certified: All other RGP activities.
- Transportation
  - WQC denied: Temporary access fill without PCN that is placed for 60 or more consecutive days between May 15 and November 15.
  - WQC certified: All other RGP activities.
- Beach Creation & Nourishment
  - WQC denied: Placement of sand for beach creation.
  - WQC certified: All other RGP activities.
- Wildlife Ponds
  - WQC denied: The project is located in a navigable water with stream history. (The Wisconsin Department of Natural Resources (WDNR) is responsible for interpretation of a navigable water with stream history. The point of contact for

questions relating to a navigable water with stream history is the local WDNR Water Management Specialist. Contact information can be found at <http://dnr.wi.gov/topic/Waterways/contacts.html> )

- WQC denied: If the project is located in existing wetland not in agricultural crops, not dominated by invasive species, or dominated by other than early successional hydrophyte species. (The WDNR is responsible for interpretation of these categories that are denied WQC. The point of contact for questions is the local WDNR Water Management Specialist. Contact information can be found at <http://dnr.wi.gov/topic/Waterways/contacts.html> )
- WQC certified: All other RGP activities.

#### NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to section 227.42, Wisconsin Statutes, you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources.

This determination becomes final in accordance with the provisions of s. NR 299.05(7), Wisconsin Administrative Code, and is judicially reviewable when final. For judicial review of a decision pursuant to Sections 227.52 and 227.53, Wisconsin Statutes, you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

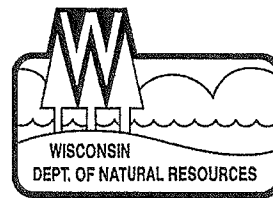
Dated at Madison, Wisconsin

February 15, 2018

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By Ed Elbrle  
for Daniel Meyer, Secretary

# ATTACHMENT I



September 27, 2018

Milwaukee County

Canadian Pacific  
William M Tuttle  
120 South 6<sup>th</sup> Street, Suite 800  
Minneapolis, MN 55402

Subject: Response Requested

Dear Mr. Bill Tuttle,

In the May 25, 2018 Response Letter from SOO Line Railroad Company dba Canadian Pacific (CP), CP outlined responses to the department related to the March 13, 2018 Notice of Violation and April 12, 2018 Enforcement Conference. CP agreed to submit additional information on the channel elevations and grout mat to document as-built conditions within 60 days of the May 25, 2018 letter. Additionally, the department agreed to issue a 401 water quality certification for the project through the Chapter 30 permitting process. To-date, the department has not received a Chapter 30 permit application from CP.

**Please submit the Chapter 30 permit application no later than October 30, 2018.** Along with the permit application, please submit the survey data for the stream channel including several cross sections starting upstream of the bridge to downstream and one profile under each bridge section with elevations of pre-project and post-project. If you have technical questions regarding the permit application, please contact Elaine Johnson at 414-263-8628.

Please note, as outlined in the Notice of Violation, the department may pursue escalated enforcement actions for the alleged violations. The department may seek forfeitures or other appropriate relief through a referral to the Department of Justice.

If you have questions regarding this letter, please contact me at 608-622-8247 or through email at [sadie.derouin@wi.gov](mailto:sadie.derouin@wi.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Sadie Derouin'.

Sadie Derouin  
Environmental Enforcement Specialist

cc: E. Johnson, DNR – Waukesha  
M. Scott, DNR – Waukesha  
M. Kowalkowski, DNR – LS/8  
April Marcangeli, U.S. Army Corps of Engineers

Karl Rittmeyer, Canadian Pacific  
Jeff Johnson, HDR Inc.  
Michael Keller, HDR Inc.

# **ATTACHMENT J**

## Bill Tuttle

---

**From:** Bill Tuttle  
**Sent:** Tuesday, October 30, 2018 1:05 PM  
**To:** Derouin, Sadie L - DNR; Scott Paradise; 'jeff.k.johnson@hdrinc.com'; 'Keller, Michael'; Karl Rittmeyer  
**Cc:** Johnson, Elaine M - DNR; Kowalkowski, Michael J - DNR; Scott, Michelle M - DNR; 'Marcangeli, April N MVP (April.N.Marcangeli@usace.army.mil)'  
**Subject:** Chapter 30 permit application  
**Attachments:** 2018.10.30 - Ch. 30 Permit Application Cover Letter.pdf; H2 CPR Watertown BR 88.74 - Survey Figures.pdf

Dear Ms. Derouin,  
Attached please find CP's correspondence, as well as the cross section figures you requested. The actual application, with various attachments, is being submitted on line.  
Thanks,  
Bill Tuttle

**From:** Derouin, Sadie L - DNR <Sadie.Derouin@wisconsin.gov>  
**Sent:** Thursday, September 27, 2018 10:51 AM  
**To:** Bill Tuttle <Bill\_Tuttle@cpr.ca>; Scott Paradise <Scott\_Paradise@cpr.ca>; 'jeff.k.johnson@hdrinc.com' <jeff.k.johnson@hdrinc.com>; 'Keller, Michael' <Michael.Keller@hdrinc.com>; Karl Rittmeyer <Karl\_Rittmeyer@cpr.ca>  
**Cc:** Johnson, Elaine M - DNR <Elaine.Johnson@wisconsin.gov>; Kowalkowski, Michael J - DNR <Michael.Kowalkowski@wisconsin.gov>; Scott, Michelle M - DNR <Michelle.Scott@wisconsin.gov>; 'Marcangeli, April N MVP (April.N.Marcangeli@usace.army.mil)' <April.N.Marcangeli@usace.army.mil>  
**Subject:** RE: CP correspondence - Enforcement Conference  
**Importance:** High

This email did not originate from Canadian Pacific. Please exercise caution with any links or attachments.

Good morning Bill,

Attached is a follow-up letter from the department regarding CP's submittal. A hard copy of the letter was placed in the mail as well. Please let me know if you have any questions.

Thank you,

**We are committed to service excellence.**

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Sadie Derouin  
Phone: (608) 622-8247  
[Sadie.Derouin@wisconsin.gov](mailto:Sadie.Derouin@wisconsin.gov)

**From:** Bill Tuttle <Bill\_Tuttle@cpr.ca>  
**Sent:** Tuesday, July 31, 2018 3:23 PM  
**To:** Johnson, Elaine M - DNR <Elaine.Johnson@wisconsin.gov>; Derouin, Sadie L - DNR <Sadie.Derouin@wisconsin.gov>; Scott, Michelle M - DNR <Michelle.Scott@wisconsin.gov>; Hase, Michelle M - DNR <Michelle.Hase@wisconsin.gov>; Helker, Craig D - DNR <Craig.Helker@wisconsin.gov>; Kowalkowski, Michael J - DNR

<Michael.Kowalkowski@wisconsin.gov>; 'Marcangeli, April N MVP (April.N.Marcangeli@usace.army.mil)'  
<April.N.Marcangeli@usace.army.mil>; Scott Paradise <Scott\_Paradise@cpr.ca>; 'jeff.k.johnson@hdrinc.com'  
<jeff.k.johnson@hdrinc.com>; 'Keller, Michael' <Michael.Keller@hdrinc.com>; Karl Rittmeyer <Karl\_Rittmeyer@cpr.ca>  
**Subject:** [WARNING: ATTACHMENT(S) MAY CONTAIN MALWARE]CP correspondence - Enforcement Conference

Attached please find my letter, with exhibits, regarding the above-referenced matter.

Thanks,  
Bill Tuttle

----- IMPORTANT NOTICE - AVIS IMPORTANT ----- Computer viruses can be transmitted via email. Recipient should check this email and any attachments for the presence of viruses. Sender and sender company accept no liability for any damage caused by any virus transmitted by this email. This email transmission and any accompanying attachments contain confidential information intended only for the use of the individual or entity named above. Any dissemination, distribution, copying or action taken in reliance on the contents of this email by anyone other than the intended recipient is strictly prohibited. If you have received this email in error please immediately delete it and notify sender at the above email address. Le courrier electronique peut etre porteur de virus informatiques. Le destinataire doit donc passer le present courriel et les pieces qui y sont jointes au detecteur de virus. L' expéditeur et son employeur declinent toute responsabilite pour les dommages causes par un virus contenu dans le courriel. Le present message et les pieces qui y sont jointes contiennent des renseignements confidentiels destines uniquement a la personne ou a l' organisme nomme ci-dessus. Toute diffusion, distribution, reproduction ou utilisation comme reference du contenu du message par une autre personne que le destinataire est formellement interdite. Si vous avez recu ce courriel par erreur, veuillez le detruire immediatement et en informer l' expéditeur a l' adresse ci-dessus. ----- IMPORTANT NOTICE - AVIS IMPORTANT -----

CP

October 30, 2018

Ms. Sadie Derouin  
State of Wisconsin – DNR  
3911 Fish Hatchery Road  
Fitchburg, WI 53711

*(Via E-Mail Only)*

**Re: Chapter 30 Permit Application**

Dear Ms. Derouin:

As requested in your letter of September 27, 2018, Soo Line Railroad Company, d/b/a Canadian Pacific ("CP") is today submitting the Water Resources Application for Project Permit for bridge repair work performed on CP's bridge (Watertown B.R. 88.74) located on the Menominee River. The actual application is being made today online. Attached to this letter are the additional cross sections requested in your letter, which are also included with the online permit application. Additional contours and bridge profiles were previously supplied on July 31, 2018.

As previously discussed, CP's use of a grout mat to complete emergency structural repairs on the Watertown bridge was legally authorized under the USACE Regional General Permit (GP-002-W1). Additionally, the Interstate Commerce Commission Termination Act ("ICCTA") preempts the state's attempt to regulate CP's emergency bridge repair work by imposing additional state law permitting conditions beyond those set forth in the Regional General Permit. See, e.g., *Soo Line R.R. Co. – Pet. for Declaratory Order*, FD 35850, 2014 WL 7330097, at \*4 (served Dec. 23, 2014) (ICCTA categorically preempts "state or local permitting or preclearance requirements, including building permits, zoning ordinances, and environmental and land use permitting requirements" for facilities that "are an integral part of rail transportation").

Finally, as I discussed with DNR Attorney Michael Kowalkowski, CP believes that its repair work, if undertaken today, would be authorized as "Minor Maintenance – Linear Transportation" activity under the USACE Transportation Regional General Permit, which became effective February 21, 2018. CP's repair work qualifies as a "minor deviation in a culvert or bridge configuration," which includes, among other repair activity, "the repair of a culvert aprons or bridge piles" and the "lining or cleaning of pipes, culverts or bridges." I provided Mr. Kowalkowski with links to the USACE Transportation Regional General Permit, and the DNR's related Water Quality Certification, dated February 15, 2018.



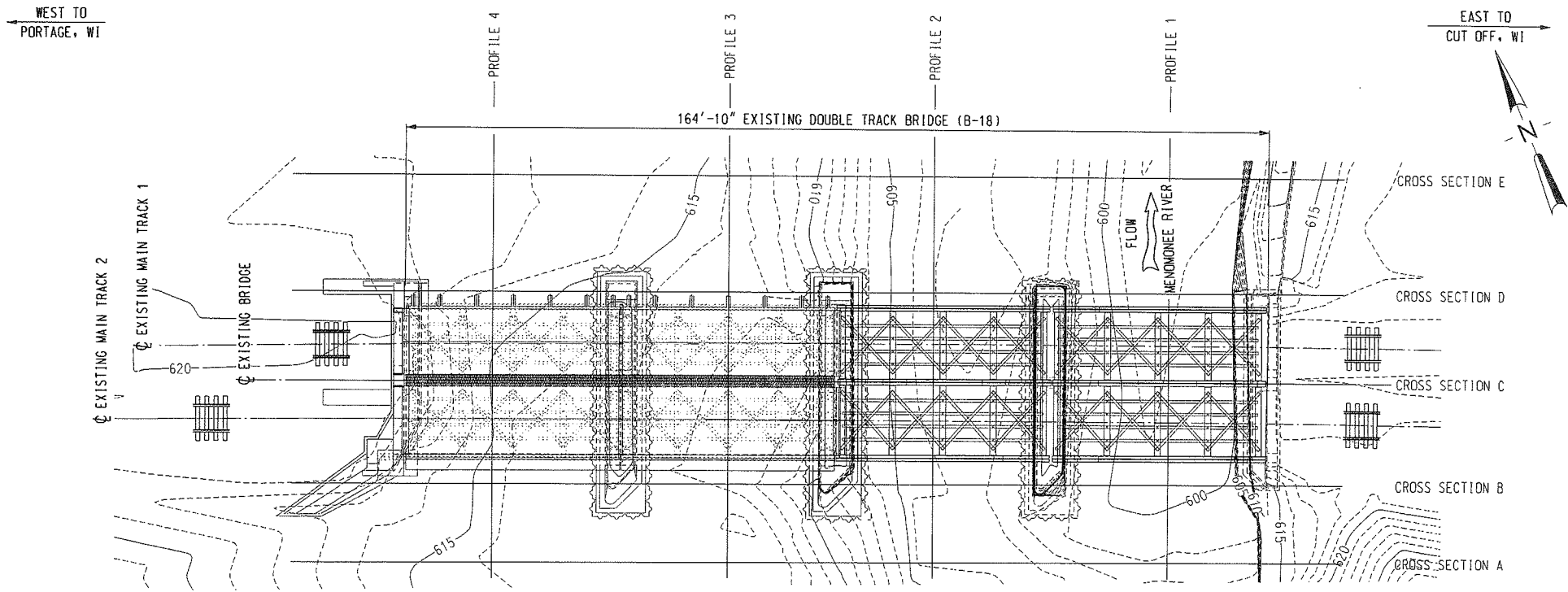
Notwithstanding that CP's bridge repair activity was legally authorized, CP has submitted its permit application for your review and approval. In doing so, CP reserves all rights under applicable law, including specifically the right to challenge the DNR permitting procedure as preempted by ICCTA in this context, in either Federal District Court or at the Surface Transportation Board. Please do not hesitate to contact me if you have any questions regarding the application.

Sincerely,

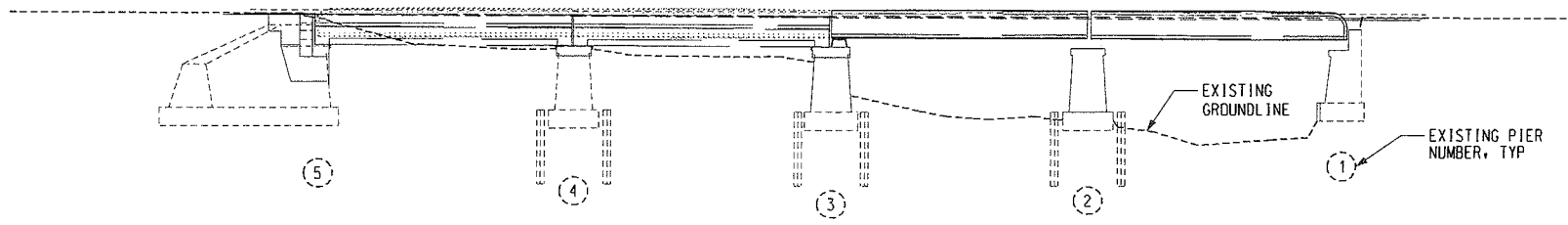
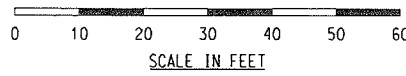
William M. Tuttle  
General Counsel – U.S.

Enc. 

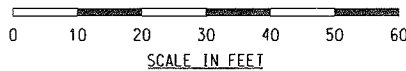
cc: Karl Rittmeyer  
Scott Paradise  
M. Kowalkowski, DNR  
Elaine Johnson, DNR  
Michelle Scott, DNR  
April Marcangeli, U.S. Army Corps of Engineers  
Jeff Johnson, HDR Inc.  
Michael Keller, HDR Inc.



PLAN



PROFILE



CONTOURS SHOWN ARE FROM SURVEY DATED 5/6/2015.

|                   |                       |              |
|-------------------|-----------------------|--------------|
| State: WISCONSIN  | TWP/Range: T7N, R21E  | Drawing No.: |
| County: MILWAUKEE | Sec 1/4: NW1/4ofNE1/4 | 26           |
|                   |                       | 1 OF 5       |

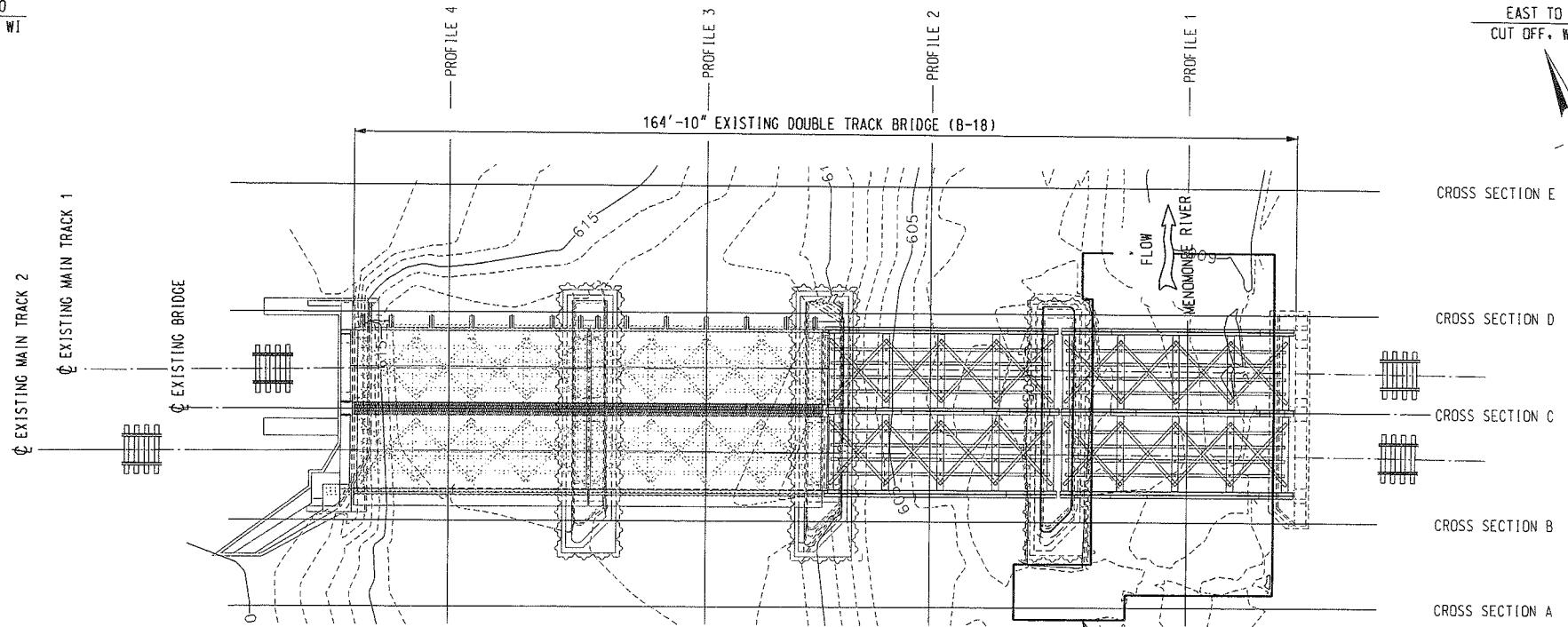
EXHIBIT  
 BRIDGE 88.74 (B-18) WATERTOWN SUB.  
 2015 CONTOURS

**CANADIAN  
 PACIFIC**

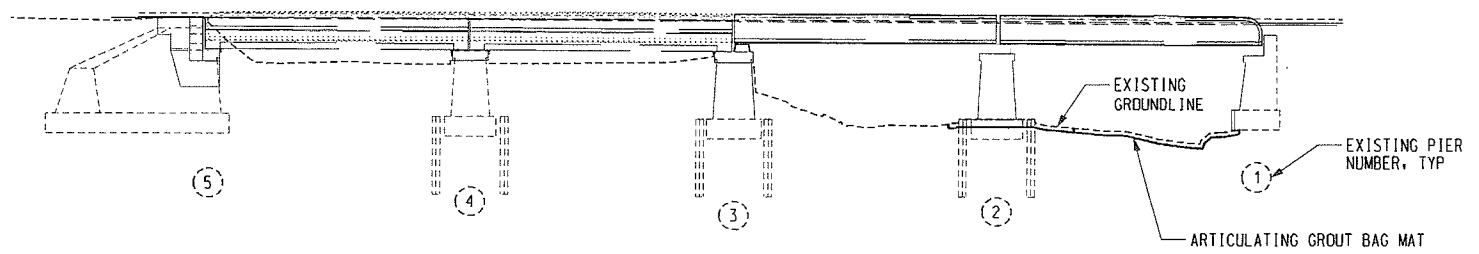
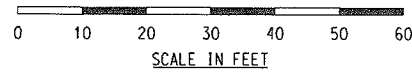
Ritmeyer V.S. Exhibit 16

WEST TO  
PORTAGE, WI

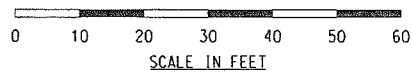
EAST TO  
CUT OFF, WI



PLAN



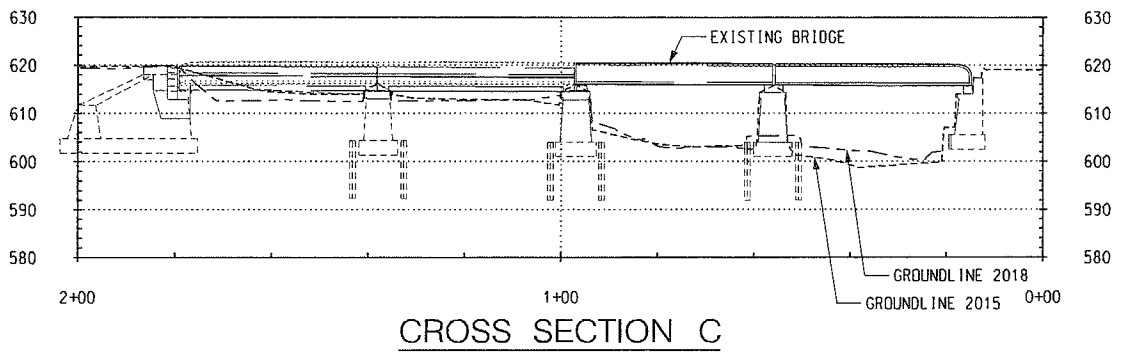
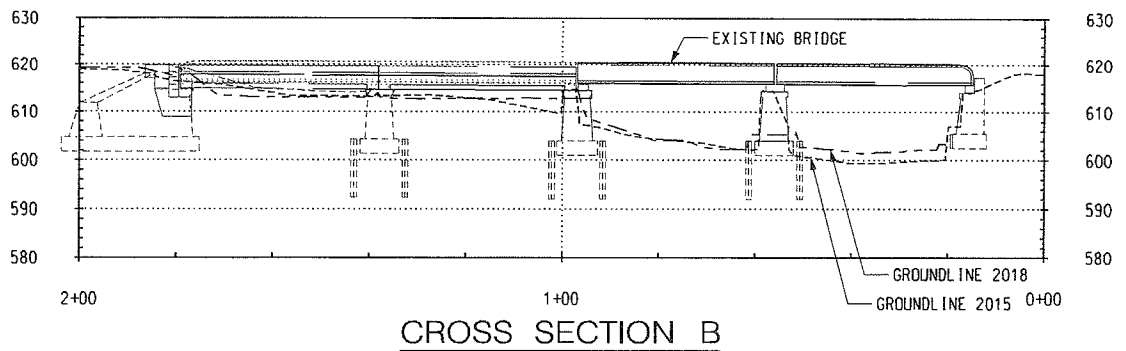
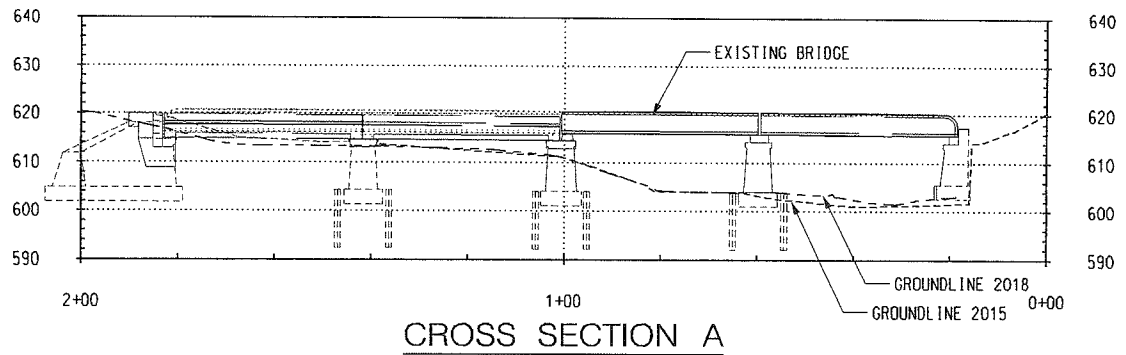
PROFILE



CONTOURS SHOWN ARE FROM SURVEY DATED 7/19/2018.

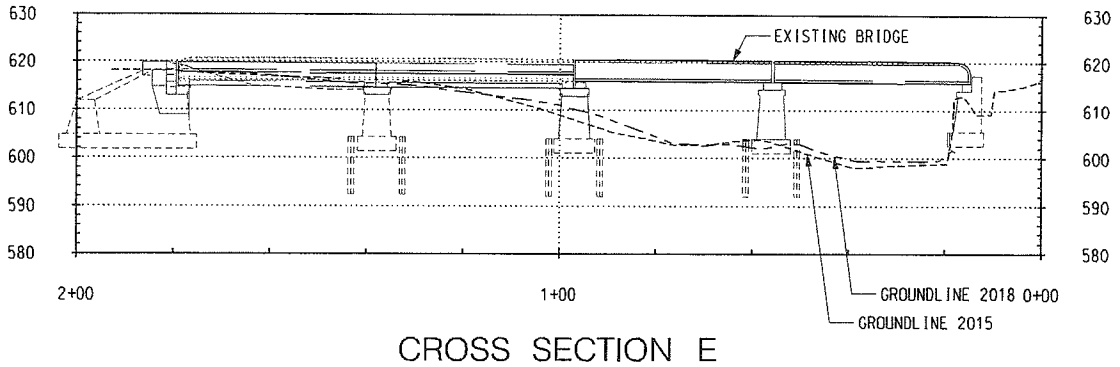
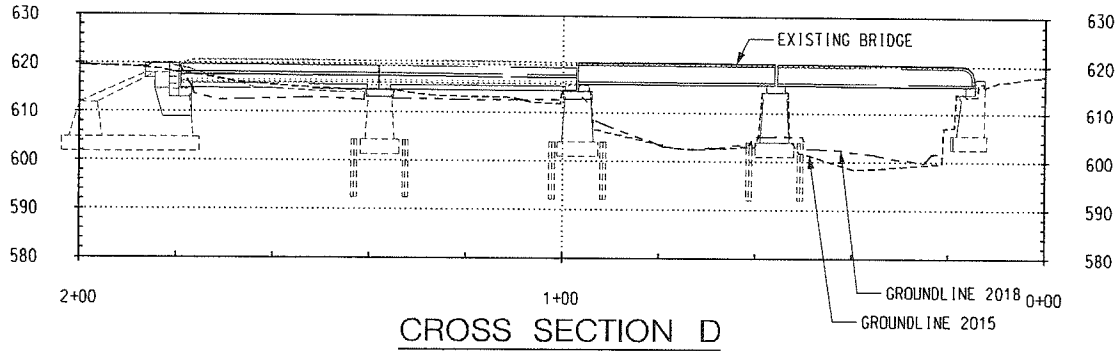
|                   |                       |                     |  |                             |
|-------------------|-----------------------|---------------------|--|-----------------------------|
| State: WISCONSIN  | TWP/Range: T7N, R21E  | Drawing No.: 2 OF 5 | EXHIBIT<br>BRIDGE 88.74 (B-18) WATERTOWN SUB.<br>2018 CONTOURS | <b>CANADIAN<br/>PACIFIC</b> |
| County: MILWAUKEE | Sec 1/4: NW1/4ofNE1/4 | Sec No.: 26         |  |                             |

Rittmeyer V.S. Exhibit 16



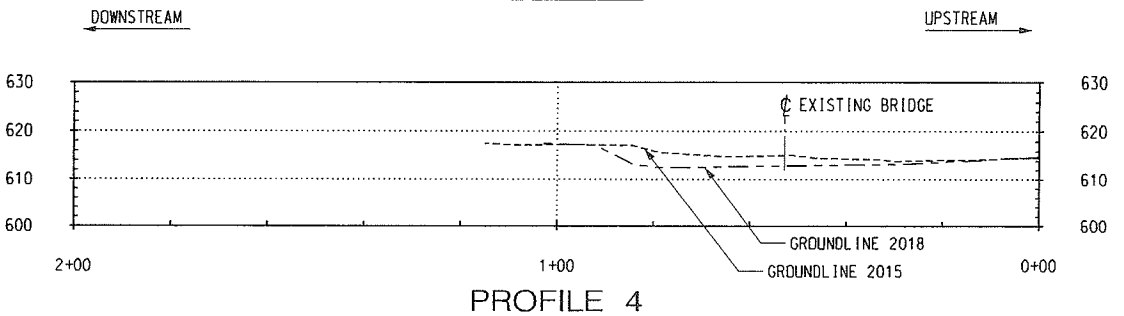
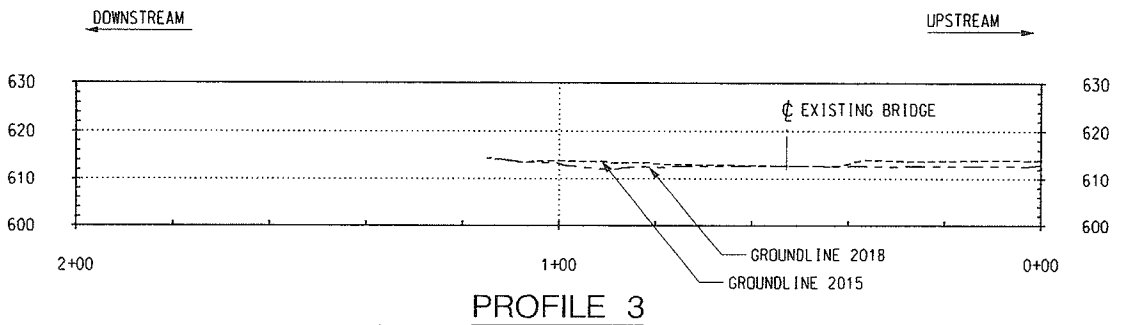
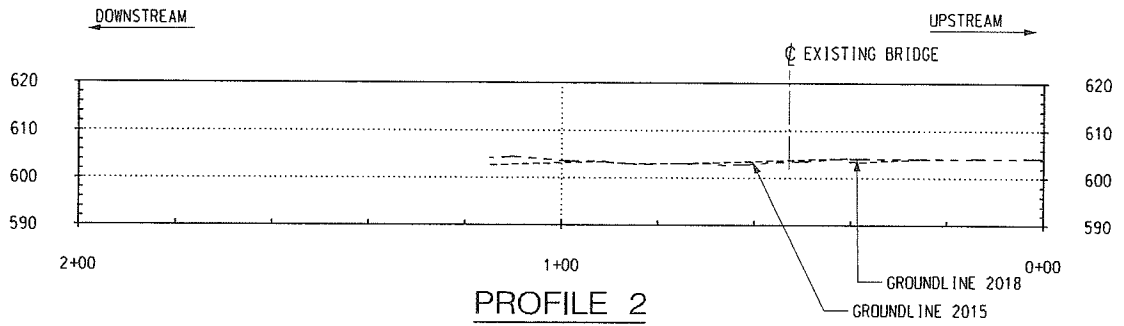
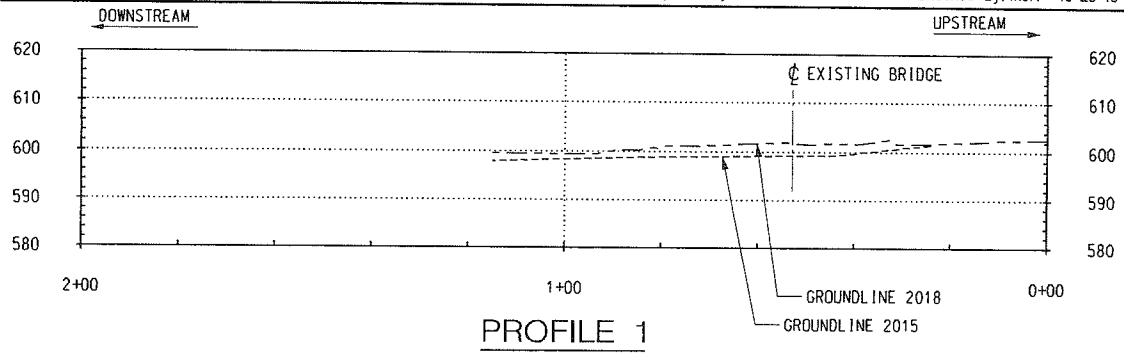
Rittmeyer V.S. Exhibit 16

|                   |                                      |                     |   |                             |
|-------------------|--------------------------------------|---------------------|---|-----------------------------|
| State: WISCONSIN  | TWP/Range: T7N, R21E                 | Drawing No.: 3 OF 5 | EXHIBIT<br>BRIDGE 88.74 (B-18) WATERTOWN SUB.<br>CROSS SECTIONS | <b>CANADIAN<br/>PACIFIC</b> |
| County: MILWAUKEE | Sec 1/4: NW1/4ofNE1/4<br>Sec No.: 26 |                     |   |                             |



Rittmeyer V.S. Exhibit 16

|                   |                         |                     |   |
|-------------------|-------------------------|---------------------|---|
| State: WISCONSIN  | TWP/Range: T7N, R21E    | Drawing No.: 4 OF 5 | EXHIBIT<br>BRIDGE 88.74 (B-18) WATERTOWN SUB.<br>CROSS SECTIONS |
| County: MILWAUKEE | Sec 1/4: NW1/4 of NE1/4 | Sec No.: 26         | <b>CANADIAN<br/>PACIFIC</b>                                     |



Rittmeyer V.S. Exhibit 16

|                   |                         |                     |   |                             |
|-------------------|-------------------------|---------------------|---|-----------------------------|
| State: WISCONSIN  | TWP/Range: T7N, R21E    | Drawing No.: 5 OF 5 | EXHIBIT<br>BRIDGE 88.74 (B-18) WATERTOWN SUB.<br>RIVER PROFILES | <b>CANADIAN<br/>PACIFIC</b> |
| County: MILWAUKEE | Sec 1/4: NW1/4 of NE1/4 | Sec No.: 26         |   |                             |

# **ATTACHMENT K**

State of Wisconsin  
DEPARTMENT OF NATURAL RESOURCES  
3911 Fish Hatchery Road  
Fitchburg, WI 53711

Tony Evers, Governor  
Preston D. Cole, Secretary  
Telephone 608-266-2621  
FAX 608-267-3579  
TTY Access via relay - 711



February 14, 2020

Milwaukee County

Canadian Pacific  
William M Tuttle  
120 South 6<sup>th</sup> Street, Suite 800  
Minneapolis, MN 55402

Subject: **Response Requested**

Dear Mr. Bill Tuttle,

The department met with you and representatives from CP on July 30, 2019 to review and discuss the grout mat placement project that occurred in the fall of 2017. The department shared concerns regarding environmental impacts including impacts to fish passage, recreational use, floodplain elevations, and erosion. Further review with the City of Milwaukee indicates ongoing floodplain concerns related to CP's project.

CP's submitted survey shows an increase to the elevation of the bed of the waterway from the grout mat placement. The City of Milwaukee's floodplain ordinance requires that projects within the mapped floodplain do not obstruct flows or cause increases to the floodplain elevation, unless easements and a Conditional Letter of Map Revision (CLOMR) are obtained. The department provides technical assistance to local communities to ensure compliance with their floodplain ordinance.

Due to the ongoing concerns, the Chapter 30 application submitted by CP remains on hold. Please note, pursuant to Wis. Adm. Code s. NR 301.40, the department shall not process after-the-fact permit applications prior to completing enforcement actions if the project is causing or is likely to cause environmental damage. Additionally, please note that the Chapter 30 permit issued by the department serves as the Water Quality Certification for Army Corps of Engineers permitting.

Please provide an update regarding CP's status in correcting the deficiencies outlined in the March 13, 2018 Notice of Violation, April 27, 2018 summary letter, and July 30, 2019 on site meeting. Please provide this update via email to Sadie Derouin at [sadie.derouin@wi.gov](mailto:sadie.derouin@wi.gov) no later than March 1, 2020.

If you have questions regarding this letter, please contact me at 608-622-8247.

Sincerely,

Sadie Derouin  
Environmental Enforcement Specialist

cc: Erin Cox, DNR – Milwaukee  
Michelle Hase, DNR – Waukesha



**Exhibit 17**



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

Josh Kaul  
Attorney General

17 W. Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
www.doj.state.wi.us

Zachary B. Corrigan  
Assistant Attorney General  
corriganzb@doj.state.wi.us  
608/266-1677  
FAX 608/294-2907

June 30, 2023

Canada Pacific Railway Limited  
SOO Line Railroad Company  
c/o Attorney Andrew W. Davis  
Stinson LLP  
50 South 6th Street, Suite 2600  
Minneapolis, Minnesota 55402

Re: *State of Wisconsin v. SOO Line Railroad Company and Canada  
Pacific Railway Limited*

Dear Mr. Davis:

The Wisconsin Department of Natural Resources (DNR) has asked the Wisconsin Department of Justice (DOJ) to prosecute SOO Line Railroad Company and Canada Pacific Railway Limited (collectively the Defendants) for alleged violations of the state's navigable waterway laws, particularly Wis. Stat. § 30.12(1)(a) and Wis. Admin. Code § NR 299.03(1), that occurred at the Watertown BR 88.74 bridge crossing near the Menomonee River in the City of Milwaukee.

It is my understanding that you are representing the Defendants in this matter. The Wisconsin Supreme Court has held that under Wis. Stat. § 757.30(2), "only lawyers can appear on behalf of, or perform legal service for, corporations in legal proceedings before Wisconsin courts." *Jadair Inc. v. United States Fire Ins. Co.*, 209 Wis. 2d 187, 202, 562 N.W.2d 401 (1997). Accordingly, I expect that the Defendants will maintain an attorney to represent it in this matter.

I have reviewed the material that DNR included in the referral and have determined that DOJ will accept the referral for prosecution. I am enclosing two draft Complaints that describe the alleged violations that the State believes occurred. Two complaints are required in this case because the Chapter 30 violation is governed by

SOO Line Railroad  
June 30, 2023  
Page 2

the procedures spelled out in Wis. Stat. § 23.50. I will seek a monetary penalty and injunctive relief for both alleged violations.

I am willing to meet with you prior to filing the Complaints to discuss a settlement in this matter that will require the Defendants to pay a penalty and complete injunctive relief to resolve the alleged violations. If we reach a settlement, the Complaints, a Stipulation for Judgment describing our agreement, and Orders for Judgment incorporating the Stipulation for Judgment will be filed with the court at the same time.

Please contact me no later than July 21, 2023, if you would like to discuss settling this case. If I do not hear from you, I will prepare to file the Complaint with the court.

I look forward to hearing from you.

Sincerely,

Electronically signed by Zachary B. Corrigan

Zachary B. Corrigan  
Assistant Attorney General

ZBC:ltm  
Enclosure

cc w/enc: Sadie Derouin, DNR (via email)

STATE OF WISCONSIN,  
17 West Main Street  
Post Office Box 7857  
Madison, Wisconsin 53707-7857,

Plaintiff;

v.

Case No. 23-CX-\_\_\_\_\_  
Complex Forfeiture: 30109

SOO LINE RAILROAD COMPANY,  
c/o C.T. Corporation System  
501 Marquette Avenue,  
Minneapolis, Minnesota 55402, USA,

and

CANADA PACIFIC RAILWAY LIMITED,  
c/o C.T. Corporation System  
7550 Ogden Dale Road S.E.,  
Calgary AB, T2C 4X9 Canada,

Defendants.

THE AMOUNT CLAIMED IS  
GREATER THAN THE AMOUNT  
CLAIMED UNDER WIS. STAT.  
§ 799.01(1)(d).

---

**COMPLAINT**

---

The State of Wisconsin, by Attorney General Josh Kaul and Assistant  
Attorney General Zachary B. Corrigan, brings this action against Defendants

Soo Line Railroad Company and Canada Pacific Railway Limited at the request of the Department of Natural Resources (DNR), and alleges as follows:

### **PARTIES**

1. Plaintiff State of Wisconsin is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin.

2. Under Article IX, § 1 of the Wisconsin Constitution, the State holds navigable waters in trust for the public.

3. The State through its legislature enacted Wis. Stat. ch. 30 (Chapter 30), delegating much of its public trust duties to DNR. Chapter 30 protects public rights to navigable waters and establishes a permitting process for construction in navigable waters. DNR issues permits for the depositing of materials and placement of structures in navigable waters under Wis. Stat. § 30.12 (a Chapter 30 Permit).

4. The Defendants are Soo Line Railroad Company and Canadian Pacific Railway Limited (collectively, Defendants).

5. Soo Line Railroad Company is a railroad corporation located at 501 Marquette Avenue, Minneapolis, Minnesota 55402-1243.

6. Soo Line Railroad Company is the owner and operator of a railroad bridge (B.R. 88.74), located in Milwaukee, Wisconsin.

7. B.R. 88.74 crosses the Menomonee River at or around 43.042° latitude and -87.97° longitude.
8. The Menomonee River outlets into Lake Michigan.
9. Soo Line Railroad Company is a wholly owned subsidiary of the Canadian Pacific Railway Limited.
10. Canadian Pacific Railway Limited is a railroad corporation located at 7550 Ogden Dale Road S.E., Calgary Alberta, T2C 4X9 Canada.
11. The Defendants' registered agent is C.T. Corporation System, located at 301 S. Bedford Street, Suite 1, Madison, Wisconsin 53703.

### **FACTUAL ALLEGATIONS**

12. On October 30, 2017, Defendants' representatives sent a letter informing DNR that they would begin what they claimed was emergency work on B.R. 88.74 on November 6, 2017. The work was to repair "scour," which is the erosion of the sediments around one of the bridge's "abutments." Abutments are structures that support bridge spans and serve as retaining walls abutting the river.

13. Defendants' October 30, 2017 letter informed DNR that they planned to pump an unknown amount of grout beneath the footing of a B.R. 88.74 abutment to fill a void. The letter also stated that "in order to prevent further erosion of the river bed within Span 1, 1900 square feet of grout mats [would] be placed on the river bed."

14. “Grout mats,” or “grout filled mattresses,” are also known as fabric-formed concrete and are permeable fabric forms filled with grout.

15. Defendants’ October 30, 2017 letter requested “a [DNR] water quality certification under Section 401 of the [CWA],” but indicated that an individual permit application was not needed under U.S. Army Corps of Engineers (USACOE) Regional General Permit GP-002-WI.

16. Defendants’ October 30, 2017 letter stated that it was “serv[ing] as notice that [it was] choosing to forgo the State of Wisconsin and City of Milwaukee permitting process[]” because “[a]s recently confirmed by the Surface Transportation Board, state and local permitting or preclearance requirements (including, but not limited to, building permits, zoning ordinances, and environmental and land use permitting requirements) are categorically preempted for the construction of rail facilities by the [Interstate Commerce Commission] Termination Act of 1995 (ICCTA).”

17. On November 2, 2017, DNR informed Defendants that a Chapter 30 Permit would be required. DNR also informed Defendants that placing grout mats on the riverbed would not be approved and instead traditional rock (known as rip-rap) should be used because of the harm to fish, altered flood elevations, and increased downstream erosion.

18. In an email on November 3, 2017, Defendants responded by again indicating that they would be forgoing a Chapter 30 Permit and asserting that the adverse impacts were minimal.

19. Within an hour, DNR Water Management Specialist Elaine Johnson sent an email response stating that Defendants would need to get a Chapter 30 Permit, asking them for more information about the emergency nature of the work, and stating that DNR would follow up with Defendants' representatives the following week.

20. The following Wednesday, November 8, 2017, Elaine Johnson sent an email to inform Defendants' representatives that DNR had determined that a Chapter 30 Permit was required. The email stated that "if this work does in fact meet the federal non-reporting general permit with [USACOE], the state can work with [Defendants] to issue a water quality certification for only the immediate repairs that may be needed to the bridge pilings (the grout injection and bag footer at the toe of the piling)." The email further stated that DNR would need more information about this request, including about "the emergency/safety aspects of the repair, whether the bridge is now closed, [and] what repairs are immediately needed, etc.[]" The email further indicated that DNR would also need information about "[c]onstruction means and methods, [a] narrative indicating how the work will be done, staging areas, grout bag size, how the material will be pumped into the bridge pilings, [and] what type



of best management practices will be used to prevent any materials from entering the stream during work activities, etc.” The email re-iterated that grout mats would not be allowed.

21. On November 10, 2017, Defendants sent an email stating that they would start work on a new date, November 13, 2017. Defendants again stated a grout mat was the only feasible option.

22. On November 10, 2017, DNR Streams Biologist Craig Helker visited the site of B.R. 88.74 for an initial assessment of the proposed work (the November 10, 2017 site visit).

23. No work had been done at the site of B.R. 88.74 at the time of the November 10, 2017 site visit.

24. On November 17, 2017, Craig Helker visited the site of B.R. 88.74 for a follow-up assessment (the November 17, 2017 site visit).

25. Defendants had installed or caused the installation of grout mats on the bed of the Menomonee River at the site of B.R. 88.74 by the November 17, 2017 site visit.

26. On November 30, 2017, Elaine Johnson, Craig Helker, and DNR Fisheries Biologist Tom Burzynski inspected the B.R. 88.74 site (the November 30, 2017 inspection).

27. The grout mats were not properly anchored into the substrate at the time of the November 30, 2017 inspection.

28. The river showed concentrated water flows, increased velocity, and a narrowed stream channel due to the grout mats at the time of the November 30, 2017 inspection.

29. On March 13, 2018, DNR issued Defendants a Notice of Violation (NOV) and requested an enforcement conference.

30. On April 12, 2018, DNR held an enforcement conference with Defendants' representatives. DNR explained to Defendants that a Chapter 30 Permit is required for the placement of a structure such as grout mats on the bed of a navigable waterway and that approval under GP-002-WI was not valid unless DNR issued a water quality certification, which is typically issued in the form of a Chapter 30 Permit.

31. At the April 12, 2018 enforcement conference, Defendants again contended that state authorization was not required, but they were willing to work with the DNR to address the concerns.

32. On April 27, 2018, DNR sent Defendants a letter detailing the seven concerns that it had with the project (the April 27, 2018 summary letter).

33. Defendants sent a letter to DNR on May 25, 2018, that again indicated that the permit was preempted under the ICCTA. But Defendants would "consider the Section 30 application process."

34. On July 31, 2018, Defendants submitted cross-sectional drawing showing the riverbed contour of the Menomonee River at the site of B.R. 88.74 in 2015 and 2018.

35. On September 27, 2018, DNR requested that Defendants submit a Chapter 30 Permit application no later than October 30, 2018.

36. On October 30, 2018, Defendants submitted cross-sectional drawings again along with a Chapter 30 Permit application.

37. On July 30, 2019, DNR met with Defendants' representatives at the site of B.R. 88.74 to discuss ongoing concerns regarding the environmental impacts of the grout-mats placement (the July 30, 2019 site visit).

38. At the July 30, 2019 site visit, DNR staff indicated its concerns about the disruption of the natural grade of the river channel due to the placement of the grout mats.

39. The cross-sectional drawings provided by Defendants on July 31 and October 30, 2018, indicated the grout mats changed the riverbed grade compared to 2015 by raising it one to two feet higher in some locations.

40. At the July 30, 2019 site visit, DNR indicated that the grout mats changed the velocity and flow of the waterway, created a barrier to fish passage, and affected the floodplain. DNR conveyed that the biological conditions were worse than before the grout mats were installed. DNR expressed concerns regarding safety issues for recreators from the grout mats.

DNR conveyed that the City of Milwaukee's concerns regarding floodplain issues due to the grout mats needed to be considered.

41. Defendants and DNR discussed alternatives to grout mats at the July 30, 2019 site visit. Defendants' representatives indicated that it would not likely spend money on alternatives if costs were significant.

42. On February 14, 2020, DNR sent Defendants a letter indicating that its Chapter 30 Permit application was put on hold due to concerns that the project was likely to cause environmental damage and the City of Milwaukee's ongoing floodplain concerns. The letter indicated that Defendants should correct the deficiencies outlined in the March 13, 2018 NOV, April 27, 2018 summary letter, and July 30, 2019 site visit.

43. On March 16, 2020, Defendants' counsel sent DNR a correspondence re-iterating its objections to the Chapter 30 Permitting requirement.

44. On December 23, 2020, the City of Milwaukee sent a letter to Defendants requesting information about the riverbed elevation being raised by approximately two feet due to the grout mats. The City asked that Defendants provide pre- and post-project hydraulic and hydrologic (H&H) analyses documenting the impact of the grout mats on base-flood elevations upstream and downstream.

45. In a letter dated February 17, 2021, Defendants disputed the impacts and declined to provide the requested information.

46. On April 13, 2021, Michelle Hase, a Dam Safety and Floodplain Engineer for DNR, investigated and determined that an H&H analysis was needed because the cross-sectional map provided by Defendants on July 31, and October 30, 2018, did not match a 2005 Flood Insurance Study model or a model that had been approved by DNR in 2020.

47. On May 4, 2021, the company Stantec performed a study for the Milwaukee Metropolitan Sewerage District that evaluated the placement of the grout mats. It concluded that their placement increased 100-year-flood-water-surface levels by approximately 0.06 feet starting from the railroad bridge to about 2,400 feet upstream.

48. On May 20, 2021, and August 15, 2022, DNR performed investigations of the site of B.R. 88.74 using drones.

49. As of August 15, 2022, no modifications had been made to the grout mats since July 30, 2019.

**VIOLATION: DEPOSITING MATERIAL UPON THE BED OF A  
NAVIGABLE WATER WITHOUT A PERMIT**

50. Wisconsin Stat. § 30.12(1)(a) states that “[u]nless an individual or a general permit has been issued under this section or authorization has been granted by the legislature, no person may . . . [d]eposit any material or place

any structure upon the bed of any navigable water where no bulkhead line has been established.”

51. Wisconsin Stat. § 30.292(1) states that “[w]hoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.”

52. Wisconsin Stat. § 30.292(2) states that a person is “concerned in the commission of the violation if the person . . . (a) [d]irectly commits the violation; (b) [a]ids and abets the commission of the violation[; or] (c) [i]s a party to a conspiracy with another to commit the violation or advises, hires, counsels or otherwise procures any person to commit it.”

53. On a date no later than November 17, 2017, one or both Defendants deposited grout mats upon the bed of the Menomonee River or caused grout mats to be deposited upon the bed of the Menomonee River by aiding and abetting, conspiring with, advising, hiring, counseling or otherwise procuring another person to deposit grout mats on the bed of the Menomonee River.

54. The Menomonee River is a navigable river where no bulkhead line has been established.

55. Neither Defendant had a Chapter 30 Permit when either or both deposited or caused grout mats to be deposited upon the bed of Menomonee River.

56. To date, the Defendants have not received a Chapter 30 Permit for the grout mats that either or both deposited or caused to be deposited upon the bed of the Menomonee River.

57. Upon information and belief, Defendants have not removed the grout mats that either or both deposited or caused to be deposited upon the bed of the Menomonee River to date.

58. The ICCTA does not preempt the requirement that a person obtain a Chapter 30 Permit for depositing or causing the deposit of material upon the bed of any navigable water where no bulkhead line has been established.

59. Defendants have violated and continue to be concerned in the commission of a violation of Wis. Stat. § 30.12(1)(a) since at least November 17, 2017, when either or both deposited or caused grout mats to be deposited upon the bed of the Menomonee River without a Chapter 30 Permit.

### **PENALTY PROVISIONS**

60. Wisconsin Stat. § 30.03 states that “[t]he district attorney of the appropriate county or, at the request of [DNR], the attorney general shall institute proceedings to recover any forfeiture imposed or to abate any nuisance committed under this chapter or ch. 31.”

61. Wisconsin Stat. § 30.15(1) states that “any person who does any of the following shall forfeit not less than \$10 nor more than \$500 for each offense: . . . (d) [c] constructs or places any structure or deposits any material in navigable waters in violation of [Wis. Stat. §] 30.12 . . . .”

62. Wisconsin Stat. § 30.15(3) states that “[e]ach day during which an obstruction, deposit or structure exists in violation of sub. (1) is a separate offense.”

63. Wisconsin Stat. § 30.294 states that “[e]very violation of this chapter is declared to be a public nuisance and may be prohibited by injunction and may be abated by legal action brought by any person.”

64. This is an action commenced under Wis. Stat. § 23.50(1) wherein “[t]he procedure in [Wis. Stat. §§] 23.50 to 23.85 applies to all actions in circuit court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of . . . [Wis. Stat.] chs. . . . 26–31 . . . and any administrative rules promulgated thereunder . . . .”

65. Wisconsin Stat. § 23.79(3) states that “[i]n addition any monetary penalties, the court may order the defendant to perform or refrain from performing such acts as may be necessary to fully protect and effectuate the public interest. The court may order abatement of a nuisance, restoration of a natural resource . . . or other appropriate action designed to eliminate or minimize any environmental damage caused by the defendant.”



66. Under Wis. Stat. § 23.82, “fees in forfeiture actions under this chapter are prescribed in [Wis. Stat. §] 814.63.”

67. Wisconsin Stat. § 814.63(3) states that “[i]n addition to any forfeiture imposed, a defendant shall pay the costs, fees, and surcharges imposed under this chapter.”

### **RELIEF REQUESTED**

WHEREFORE, the Plaintiff requests judgment as follows:

1. A mandatory injunction pursuant to Wis. Stat. §§ 30.294 and 23.79(3) requiring Defendants to: a) abate the nuisance and restore the portion of the Menomonee River and riverbed to their condition prior to their deposit of grout mats upon the bed of the Menomonee River; and b) submit a Chapter 30 Permit for any such activities involving the deposit of any material or placement of any structure upon the bed of any navigable water where no bulkhead line has been established.

2. Forfeitures against Defendants as provided in Wis. Stat. § 30.15(1)–(3) for each day of violations alleged in this complaint.

3. The 26% penalty surcharge pursuant to Wis. Stat. § 814.77(11), the 20% environmental surcharge pursuant to Wis. Stat. § 814.77(5), the 1% jail surcharge pursuant to Wis. Stat. § 814.77(7), \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1), the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.77(2), the \$68.00 court

support services surcharge under Wis. Stat. § 814.77(1m), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.77(8); and

4. Any other relief the Court deems just and appropriate.

Dated this \_\_\_ day of \_\_\_\_\_ 2023.

JOSHUA L. KAUL  
Wisconsin Attorney General

---

ZACHARY B. CORRIGAN  
Assistant Attorney General  
State Bar #1116596

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
(608) 266-1677  
(608) 294-2907 (Fax)  
corriganzb@doj.state.wi.us

**Exhibit 18**



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

Josh Kaul  
Attorney General

17 W. Main Street  
P.O. Box 7857  
Madison, WI 53707-7857  
www.doj.state.wi.us

Zachary B. Corrigan  
Assistant Attorney General  
corriganzb@doj.state.wi.us  
608/266-1677  
FAX 608/294-2907

June 30, 2023

Canada Pacific Railway Limited  
SOO Line Railroad Company  
c/o Attorney Andrew W. Davis  
Stinson LLP  
50 South 6th Street, Suite 2600  
Minneapolis, Minnesota 55402

Re: *State of Wisconsin v. SOO Line Railroad Company and Canada  
Pacific Railway Limited*

Dear Mr. Davis:

The Wisconsin Department of Natural Resources (DNR) has asked the Wisconsin Department of Justice (DOJ) to prosecute SOO Line Railroad Company and Canada Pacific Railway Limited (collectively the Defendants) for alleged violations of the state's navigable waterway laws, particularly Wis. Stat. § 30.12(1)(a) and Wis. Admin. Code § NR 299.03(1), that occurred at the Watertown BR 88.74 bridge crossing near the Menomonee River in the City of Milwaukee.

It is my understanding that you are representing the Defendants in this matter. The Wisconsin Supreme Court has held that under Wis. Stat. § 757.30(2), "only lawyers can appear on behalf of, or perform legal service for, corporations in legal proceedings before Wisconsin courts." *Jadair Inc. v. United States Fire Ins. Co.*, 209 Wis. 2d 187, 202, 562 N.W.2d 401 (1997). Accordingly, I expect that the Defendants will maintain an attorney to represent it in this matter.

I have reviewed the material that DNR included in the referral and have determined that DOJ will accept the referral for prosecution. I am enclosing two draft Complaints that describe the alleged violations that the State believes occurred. Two complaints are required in this case because the Chapter 30 violation is governed by

SOO Line Railroad  
June 30, 2023  
Page 2

the procedures spelled out in Wis. Stat. § 23.50. I will seek a monetary penalty and injunctive relief for both alleged violations.

I am willing to meet with you prior to filing the Complaints to discuss a settlement in this matter that will require the Defendants to pay a penalty and complete injunctive relief to resolve the alleged violations. If we reach a settlement, the Complaints, a Stipulation for Judgment describing our agreement, and Orders for Judgment incorporating the Stipulation for Judgment will be filed with the court at the same time.

Please contact me no later than July 21, 2023, if you would like to discuss settling this case. If I do not hear from you, I will prepare to file the Complaint with the court.

I look forward to hearing from you.

Sincerely,

Electronically signed by Zachary B. Corrigan

Zachary B. Corrigan  
Assistant Attorney General

ZBC:ltm  
Enclosure

cc w/enc: Sadie Derouin, DNR (via email)

STATE OF WISCONSIN,  
17 West Main Street  
Post Office Box 7857  
Madison, Wisconsin 53707-7857,

Plaintiff;

v.

Case No. 23-CX-\_\_\_\_\_  
Complex Forfeiture: 30109

SOO LINE RAILROAD COMPANY,  
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### STATUTORY BACKGROUND

10. The U.S. Congress enacted the federal Clean Water Act (CWA) to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). The CWA prohibits anyone from discharging pollutants, including dredged or fill material, into navigable waters of the United States. *Id.* §§ 1311(a), 1362(6). The U.S. Army Corps of Engineers (USACOE) may authorize such discharges but only pursuant to a general or individual permit. *Id.* § 1344.

11. Prior to receiving any such permit, an applicant must obtain a CWA § 401 water quality certification from the state in which the discharge originates. *Id.* § 1341(a). Any limitations or requirements in any state certification that assures compliance with certain sections of the CWA become a condition on any federal license or permit. *Id.* § 1341(d).

12. The State of Wisconsin through its Legislature enacted Wis. Stat. ch. 281 to protect, maintain, and improve the quality and management of the waters of the state, ground and surface, public and private, consistent with all the requirements of the CWA. It administers this statute through DNR regulations and permits, including water quality certifications issued pursuant to Wis. Admin. Code ch. NR 299.



13. Wisconsin Admin. Code ch. NR 299 was promulgated pursuant to Wis. Stat. ch. 281 “to establish procedures and criteria for the application, processing and review of state water quality certifications” required by the CWA. Wis. Admin. Code § NR 299.01(1).

14. Wisconsin Admin. Code § NR 299.01(2) states that “[i]t is the policy of [DNR] to review, consistent with the requirements of section [401] of the [CWA], all activities which require a federal license or permit which may result in any discharge to waters of the state.”

15. Wisconsin Admin. Code § NR 299.01(2) further states that it is the policy of DNR to:

(a) Deny certification for any activity where the department does not have reasonable assurance that any discharge will comply with effluent limitations or water quality related concerns or any other appropriate requirements of state law as outlined in [Wis. Admin. Code §] NR 299.04;

(b) Grant or grant conditionally certification for any activity where the department has reasonable assurance that any discharge will comply with effluent limitations, water quality related concerns or any other appropriate requirements of state law as outlined in [Wis. Admin. Code §] NR 299.04; or

(c) Waive certification for any activity which the department finds will result in no discharge, any wastewater discharge associated with an activity which will be regulated by the permit authority under [Wis. Stat. ch. 283], or any activity that does not fall within the purview of the department’s authority.

16. Wisconsin Admin. Code § NR 299.04(1) states that upon receipt of a complete water quality certification application, DNR shall evaluate whether it has reasonable assurance the proposed activity will result in a discharge and comply with water quality standards, including “[p]ublic interest and public

rights standards, related to water quality, set forth in . . . [Wis. Stat. § 30.12]. . . .”

17. Wisconsin Stat. § 30.12 provides DNR the authority to issue permits for the depositing of materials and placement of structures in navigable waters.

18. The State through its Legislature enacted Wis. Stat. ch. 30 (Chapter 30), which delegates much of its public trust duties to the DNR, regulates riparian rights to navigable waters, and establishes a permitting process for construction in navigable waters (a Chapter 30 Permit).

19. Pursuant to 33 U.S.C. § 1344, USACOE issued a Regional General Permit GP-002-WI (2016) that authorized certain discharges of dredge and fill materials into waters of the United States in Wisconsin, including for maintenance of currently authorized structures or fill, provided that the “impacts on water and wetland resources be avoided and minimized to the maximum extent practicable,” among other conditions.

20. DNR did not issue a CWA Section 401 water quality certification for GP-002-WI (2016), which means that the USACOE provisionally issued the general permit, and prospective permittees were required to obtain individual water quality certifications from DNR for certain projects.

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was not valid unless DNR issued a water quality certification, which is typically in the form of a Chapter 30 Permit. DNR agreed to review Defendants' Chapter 30 Permit application, which, if approved, would be the water certification for the project.

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41. On April 27, 2018, DNR sent Defendants a letter detailing the seven concerns that it had with the project (the April 27, 2018 summary letter).

42. Defendants sent a letter to DNR on May 25, 2018, that again indicated that the permit was preempted under the ICCTA. But Defendants would "consider the Section 30 application process."

43. On July 31, 2018, Defendants submitted cross-sectional drawing showing the riverbed contour of the Menomonee River at the site of B.R. 88.74 in 2015 and 2018.

44. On September 27, 2018, DNR requested that Defendants submit a Chapter 30 Permit application no later than October 30, 2018.

45. On October 30, 2018, Defendants submitted cross-sectional drawings again along with a Chapter 30 Permit application.

46. On July 30, 2019, DNR met with Defendants' representatives at the site of B.R. 88.74 to discuss ongoing concerns regarding the environmental impacts of the grout-mats placement (the July 30, 2019 site visit).

47. At the July 30, 2019 site visit, DNR staff indicated its concerns about the disruption of the natural grade of the river channel due to the placement of the grout mats.

48. The cross-sectional drawings provided by Defendants on July 31 and October 30, 2018, indicated the grout mats changed the riverbed grade compared to 2015 by raising it one to two feet higher in some locations.

49. At the July 30, 2019 site visit, DNR indicated that the grout mats changed the velocity and flow of the waterway, created a barrier to fish passage, and affected the floodplain. DNR conveyed that the biological conditions were worse than before the grout mats were installed. DNR expressed concerns regarding safety issues for recreators from the grout mats. DNR conveyed that the City of Milwaukee's concerns regarding floodplain issues due to the grout mats needed to be considered.

50. Defendants and DNR discussed alternatives to grout mats at the July 30, 2019 site visit. Defendants' representatives indicated that it would not likely spend money on alternatives if costs were significant.

51. On February 14, 2020, DNR sent Defendants a letter indicating that its Chapter 30 Permit application was put on hold due to concerns that



the project was likely to cause environmental damage and the City of Milwaukee's ongoing floodplain concerns. The letter further indicated that the Chapter 30 Permit issued by the DNR would serve as the water quality certification for USACOE permitting. The letter indicated that Defendants should correct the deficiencies outlined in the March 13, 2018 NOV, April 27, 2018 summary letter, and July 30, 2019 site visit.

52. On March 16, 2020, Defendants' counsel sent a correspondence to DNR re-iterating its objections to the Chapter 30 Permitting requirement.

53. On December 23, 2020, the City of Milwaukee sent a letter to Defendants requesting information about the riverbed elevation being raised by approximately two feet due to the grout mats. The City asked that Defendants provide pre- and post-project hydraulic and hydrologic (H&H) analyses documenting the impact of the grout mats on base-flood elevations upstream and downstream.

54. In a letter dated February 17, 2021, Defendants disputed the impacts and declined to provide the requested information.

55. On April 13, 2021, Michelle Hase, a Dam Safety and Floodplain Engineer for DNR, investigated and determined that an H&H analysis was needed because the cross-sectional maps provided by Defendants on July 31 and October 30, 2018, did not match a 2005 Flood Insurance Study model or a model that had been approved by DNR in 2020.

56. On May 4, 2021, the company Stantec performed a study for the Milwaukee Metropolitan Sewerage District that evaluated the placement of the grout mats. It concluded that their placement increased 100-year-flood-water-surface levels by approximately 0.06 feet starting from the railroad bridge to about 2,400 feet upstream.

57. On May 20, 2021, and August 15, 2022, DNR performed investigations of the site of B.R. 88.74 using drones.

58. As of August 15, 2022, no modifications had been made to the grout mats since the July 30, 2019 site visit.

**VIOLATION: DISCHARGING WITHOUT OBTAINING A WATER  
QUALITY CERTIFICATION**

59. Wisconsin Admin. Code § NR 299.03(1) states that “[n]o person may conduct any activity which may result in any discharge into the waters of the state unless the person has received a [water quality] certification or waiver under this chapter.”

60. Wisconsin Admin. Code § NR 299.02(3) states that a “[d]ischarge means any addition of any pollutant to the waters of the state from any point source.”

61. Wisconsin Admin. Code § NR 299.02(6) states that a “[p]ollutant” means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, hazardous waste, hazardous substance,

chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste.”

62. No later than November 17, 2017, Defendants deposited or caused grout mats to be deposited into the Menomonee River.

63. Grout mats are a pollutant under Wisconsin Admin. Code § NR 299.02(6).

64. The Menomonee River is a water of the State.

65. Neither Defendant had either a water quality certification or a waiver from DNR when either or both deposited or caused grout mats to be deposited upon the bed of Menomonee River.

66. To date, the Defendants have not received a water quality certification or a waiver from DNR for the grout mats that either or both deposited or caused to be deposited upon the bed of the Menomonee River.

67. Upon information and belief, the Defendants have not removed the grout mats that either or both deposited or caused to be deposited upon the bed of the Menomonee River to date,.

68. The ICCTA does not preempt the requirement that a person obtain a water quality certification or waiver from DNR for the discharge of a pollutant under Wis. Admin. Code § NR 299.03(1).

69. Defendants have violated Wis. Admin. Code § NR 299.03(1) since at least November 17, 2017, when either or both deposited grout mats or caused grout mats to be deposited upon the bed of the Menomonee River without receiving a water quality certification or waiver from DNR.

### **PENALTY PROVISIONS**

70. Wisconsin Stat. § 299.95 authorizes the Attorney General to enforce Wis. Stat. ch. 281 and all administrative rules adopted and permits issued by DNR under the authority of that chapter. Wis. Stat. § 299.95 also states that the Dane County circuit court or the circuit court of any county where a violation has occurred shall have jurisdiction to enforce Wis. Stat. ch. 281 “by injunctive and other relief appropriate for enforcement.”

71. Subject to exceptions not applicable in this case, Wis. Stat. § 281.98(1) states that “any person who violates this chapter or any rule promulgated . . . under this chapter shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense.”

72. Wisconsin Stat. § 281.98(2) states that the Court may additionally “award the department of justice the reasonable and necessary expenses of the investigation and prosecution of a violation of this chapter, including attorney fees.”

73. Wisconsin Stat. § 281.98(3) states that the Court may additionally “order the defendant to abate any nuisance, restore a natural resource or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the defendant.”

### **RELIEF REQUESTED**

WHEREFORE, the Plaintiff requests judgment as follows:

1. A mandatory injunction pursuant to Wis. Stat. §§ 299.95 and 281.98(3) requiring Defendants to: a) abate the nuisance and restore the portion of the Menomonee River and riverbed to their condition prior to their deposit of grout mats upon the bed of the Menomonee River; and b) obtain a water quality certification or waiver by DNR under Wis. Admin. Code § NR 299.03(1) for any such activities which may result in any discharges of pollutants into the waters of the State.

2. Forfeitures against Defendants as provided in Wis. Stat. § 281.98(1) for each day of violations alleged in this complaint.

3. The 26% penalty surcharge pursuant to Wis. Stat. § 814.77(11), the 20% environmental surcharge pursuant to Wis. Stat. § 814.77(5), the 1% jail surcharge pursuant to Wis. Stat. § 814.77(7), \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1), the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.77(2), the \$68.00 court

support services surcharge under Wis. Stat. § 814.77(1m), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.77(8);

4. The reasonable and necessary expenses of the prosecution, including attorney fees, under Wis. Stat. § 281.98(2); and

5. Any other relief the Court deems just and appropriate.

Dated this \_\_ day of \_\_\_\_\_, 2023.

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