

Brian R. Bjella  
100 West Broadway, Suite 250  
P.O. Box 2798  
Bismarck, ND 58502-2798  
701.223.6585  
bbjella@crowleyfleck.com



July 28, 2014

**VIA HAND DELIVERY**

Mr. Darrell Nitschke  
Executive Secretary  
North Dakota Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480

RE: North Dakota Pipeline Company LLC,  
Sandpiper Project – Siting Application  
Case No. PU-13-848

Dear Mr. Nitschke:

Enclosed for filing please find eleven copies of North Dakota Pipeline Company LLC's Complaint Handling Procedure and Environmental Information for the above captioned project.

Please call should you have any questions.

Very truly yours,

  
Brian R. Bjella

bw  
Enc.

Enbridge (U.S.) Inc.  
2505 16<sup>th</sup> St SW  
Minot, ND 58701  
P. 701-857-0800  
F. 701-857-0809



Operator, North Dakota Pipeline Company LLC

**North Dakota Public Service Commission  
Complaint and Response Procedures  
Sandpiper Pipeline Project**

North Dakota Pipeline Company LLC (NDPL LLC) will use the following process to receive and respond to complaints concerning the Sandpiper Pipeline Project (Facilities & Mainline).

**Complaint Processing and Documentation**

NDPL LLC will provide all affected landowners, elected officials and government entities with the following toll-free number to record a complaint:

**NDPL LLC Sandpiper Pipeline Hotline**  
**Toll-free number: 1-855-788-7805**  
**Email: sandpiperproject@enbridge.com**

The Hotline will be staffed from 8:00 a.m. to 5:00 p.m. Monday through Friday. It will be monitored periodically on weekends. The Hotline will be equipped with voicemail service to record after hour contacts.

Upon receipt of a phone call or email, a trained staff member will take the following steps:

1. Record the complaint in the Complaint Log. The following information will be captured:
  - a. Name of complainant, address, phone number and email address (if available);
  - b. Tract Number (if available or applicable);
  - c. Name of Enbridge representative receiving complaint and date of receipt;
  - d. Nature of complaint; and
  - e. Activities undertaken by the complainant to resolve the complaint prior to contacting the Hotline, if any.
2. Identify appropriate Sandpiper Project resource to follow up on the complaint based on subject matter:

<b>Category of Complaint</b>	<b>Responsible Enbridge Resource</b>
Landowner Property Access/Right-of-Way	Sandpiper Right-of-Way Supervisor
Public Official	Enbridge U.S. Liquids Public Affairs
Highway/Road Supervisor	Project Construction Manager
Environmental (wetland, water body, wildlife, etc.)	Project Environmental Supervisor

3. The appropriate resource will receive a call and email with the name and contact information, tract number and nature of the complaint on the day it is received. If it is received outside of business hours, the communication will occur on the next business day. The referral will include a request to provide a written response, which includes a summary of actions taken to assess or resolve the complaint.
4. Following receipt of the written response, Enbridge will record the summary of actions and final disposition of the "Complaint Log."

**Public Affairs Contacts:**

Katie Haarsager  
Community Relations Advisor  
2505 16<sup>th</sup> St SW  
Minot, ND 58701  
Email: [Katie.haarsager@enbridge.com](mailto:Katie.haarsager@enbridge.com)  
Work Phone: 701-857-0849  
Cell Phone: 701-340-5451



North Dakota Pipeline Company ("NDPL") received a Certificate of Corridor Compatibility (Number 153) and Route Permit (Number 165) from the Public Service Commission ("Commission") on June 25, 2014, for construction of the Sandpiper Pipeline Project, which consists of approximately 616 miles of new pipeline to be located in North Dakota, Minnesota, and Wisconsin. Approximately 300 miles of the Project will be located in North Dakota, beginning at NDPL's existing Beaver Lodge station south of Tioga, North Dakota, and extend easterly across North Dakota exiting the state just south of the City of Grand Forks. This new pipeline will consist of approximately 300 miles of 24-inch diameter pipe and associated facilities.

This filing serves to add NDPL's final preconstruction information into the project record. A detailed description of NDPL's preconstruction information is provided here, and in the enclosed supporting documentation.

1. Proposed start date. NDPL will schedule a Preconstruction Conference with the Commission when the construction start date is confirmed. NDPL will inform the Commission of its actual start date, and submit weekly construction update reports via e-mail.
2. North Dakota Department of Health ("NDDH"), Air Pollution Control Permit to Construct. On February 25, 2014, the North Dakota Department of Health Division of Air Quality issued its North Dakota Air Pollution Control Permit to Construct No. PTC14012 and PTC14013 for modifications to the Beaver Lodge and Stanley Stations in Williams and Mountrail counties. On June 19, 2014, the North Dakota Air Pollution Control Permit to Construct No. PTC14020 was issued for Berthold Station in Ward County. All three permits are enclosed with this filing.
3. NDDH, North Dakota Pollution Discharge Elimination System ("NDPDES") General Permit NDR10-0000. On June 27, 2014, NDPL submitted applications to NDDH to obtain coverage under the NDPDES General Permit for stormwater discharges associated with construction activity. Permit coverage is effective 7 days after the application is submitted. The NDPDES applications for Beaver Lodge, Stanley, and Berthold Stations are enclosed with this filing.
4. ND SHPO Concurrence. On May 20, 2014, the ND SHPO stated in a letter to NDPL that it concurred with a finding of "*No Historic Properties Affected*" at the Beaver Lodge, Stanley, and Berthold Stations provided five sites are avoided: 32WI100138, 32WI1434, and 32WI1435 at Beaver Lodge Station, site 32MN773 at Stanley Station, and site 32WD1627 at Berthold Station.

Site 32WI100138 is located at the far southern end of the Beaver Lodge facility property outside of the proposed construction workspace and will not be affected by construction. Site 32WD1627 at Berthold Station is also located away from the proposed construction workspace and will not be affected by construction. After further analysis and consultation on sites 32WI1434, and 32WI1435 at the Beaver Lodge Station, the ND SHPO on June 24, 2014, stated in a letter to NDPL that if consulted by a federal agency, it would concur with a determination of "*No Historic Properties Affected*" with respect to those sites provided the Sandpiper project remained the same as presented at that time concerning the properties surveyed and analyzed in Williams County. These consultation letters are enclosed with this filing.



5. U.S. Fish and Wildlife Service ("USFWS") Concurrence with Technical Memorandum. NDPL has requested technical assistance from the USFWS on proposed conservation measures to protect species where potential impacts, primarily from construction, could occur. No critical habitat is located within the environmental survey corridor. NDPL representatives have worked with USFWS representatives to survey the pipeline corridor to observe the presence of migratory bird and grassland habitat in order to develop an agreeable Migratory Bird Treaty Act and Voluntary Compensation Plan. NDPL has conducted surveys for the presence of piping plovers at the Beaver Lodge, Stanley, and Berthold Stations where construction is planned to begin in July. These surveys have not indicated the presence of piping plovers. An additional survey will be completed a week before and the morning before construction commences to ensure piping plover are not present. The technical memorandum is enclosed with this filing.
  
6. U.S. Army Corps of Engineers ("USACE"), Nationwide #12 Permit – Utility Line Activities. NDPL submitted a pre-construction notification ("PCN") for the Beaver Lodge to Berthold segment in accordance with the requirements of a Nationwide #12 Permit on May 13, 2014. NDPL has confirmed no USACE jurisdictional features are located within the Beaver Lodge, Stanley and Berthold Stations, and therefore no USACE permit is required for work at the Beaver Lodge, Stanley, or Berthold facilities.

**North Dakota Department of Health - Air Pollution  
Control Permit to Construct**



**NORTH DAKOTA**  
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION  
Gold Seal Center, 918 E. Divide Ave.  
Bismarck, ND 58501-1947  
701.328.5200 (fax)  
www.ndhealth.gov



February 25, 2014

**FILE**

Ms. Rhonda O'Leary  
Enbridge (U.S.), Inc.  
1320 Grand Avenue  
Superior, WI 54880

Re: Air Pollution Control  
Permits to Construct

Dear Ms. O'Leary:

Pursuant to the Air Pollution Control Rules of the State of North Dakota, the Department of Health has completed final review of your application to obtain Permits to Construct for modifications to the Beaver Lodge and Stanley Stations located in Williams and Mountrail Counties, North Dakota.

Based on the results of the documents reviewed, this Department hereby issues the enclosed North Dakota Air Pollution Control Permit to Construct Nos. PTC14012 and PTC14013.

Please advise the Department within 15 days after completing the project to allow for an inspection by the Department.

Note that the above-referenced permit addresses only air quality requirements applicable to your facility. Other divisions (Water Quality, Waste Management and Municipal Facilities) within the Environmental Health Section may have additional requirements. Contact information for the various divisions is listed at the bottom of this letter.

If you have any questions regarding air quality, please contact me at (701)328-5188.

Sincerely,

Craig D. Thorstenson  
Environmental Engineer  
Division of Air Quality

CDT:saj  
Enc:



**AIR POLLUTION CONTROL  
PERMIT TO CONSTRUCT**

Pursuant to Chapter 23-25 of the North Dakota Century Code, and the Air Pollution Control Rules of the State of North Dakota (Article 33-15 of the North Dakota Administrative Code), and in reliance on statements and representations heretofore made by the owner designated below, a Permit to Construct is hereby issued authorizing such owner to construct and initially operate the source unit(s) at the location designated below. This Permit to Construct is subject to all applicable rules and orders now or hereafter in effect of the North Dakota Department of Health and to any conditions specified below:

**I. General Information:**

A. **Permit to Construct Number:** PTC14012

B. **Source:**

1. Name: North Dakota Pipeline Company dba NDPL, LLC
2. Location: Beaver Lodge Station  
Sec. 32, T156N, R95W  
Williams County, North Dakota
3. Source Type: Crude Oil Storage
4. Equipment at the Facility:

<b>Emission Unit Description</b>	<b>Emission Unit (EU)</b>	<b>Emission Point (EP)</b>	<b>Air Pollution Control Equipment</b>
Existing:			
One 100,000-barrel (4,200,000 gallon) external floating roof crude oil storage tank (1981) (Subpart Ka)	BL-9500	1	EFR
One 56,500-barrel (2,373,000 gallon) external floating roof crude oil storage tank (1981) (Subpart Ka)	BL-9501	2	EFR
One 51,030-barrel (2,143,260 gallon) external floating roof crude oil storage tank (2008) (Subpart Kb)	BL-9502	3	EFR
One 120,000-barrel (5,040,000 gallon) external floating roof crude oil storage tank (2011) (Subpart Kb)	BL-9503	4	EFR

Emission Unit Description	Emission Unit (EU)	Emission Point (EP)	Air Pollution Control Equipment
New:			
One 150,000-barrel (6,300,000 gallon) external floating roof crude oil storage tank (2014)(Subpart Kb)	BL-9504	5	EFR
One 150,000-barrel (6,300,000 gallon) external floating roof crude oil storage tank (2014)(Subpart Kb)	BL-9505	6	EFR

C. **Owner/Operator (Permit Applicant):**

1. Name: North Dakota Pipeline Company dba NDPL, LLC
2. Address: 1320 Grand Avenue  
Superior, WI 54880
3. Application Date: February 13, 2014

II. **Conditions:** This Permit to Construct allows the construction and initial operation of the above-mentioned new or modified equipment at the source. The source may be operated under this Permit to Construct until a Permit to Operate is issued unless this permit is suspended or revoked. The source is subject to all applicable rules, regulations, and orders now or hereafter in effect of the North Dakota Department of Health and to the conditions specified below.

A. **New Source Performance Standards (NSPS) for Storage Tank(s):** The owner/operator shall operate the storage tank(s) in accordance with the following applicable requirement(s):

- 40 CFR Part 60, Subpart Ka - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After May 18, 1978, and Prior to July 23, 1984, as incorporated by reference into NDAC Chapter 33-15-12.
- 40 CFR Part 60, Subpart Kb - Standards of Performance for Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction or Modification Commenced after July 23, 1984, as incorporated by reference into NDAC Chapter 33-15-12.

B. **Storage Tanks:** All tanks shall be equipped with a submerged fill pipe in accordance with NDAC 33-15-07-01.3.

C. **Construction:** Construction of the above described facility shall be in accordance with information provided in the permit application as well as any plans, specifications and supporting data submitted to the Department. The Department shall be notified ten days in advance of any significant deviations from the

specifications furnished. The issuance of this Permit to Construct may be suspended or revoked if the Department determines that a significant deviation from the plans and specifications furnished has been or is to be made.

Any violation of a condition issued as part of this permit to construct as well as any construction which proceeds in variance with any information submitted in the application, is regarded as a violation of construction authority and is subject to enforcement action.

- D. **Startup Notice:** A notification of the actual date of initial startup of EUs BL-9504 and BL-9505 shall be submitted to the Department within 15 days after the date of initial startup.
- E. **Permit Invalidation:** This permit shall become invalid if construction is not commenced within eighteen months after issuance of such permit, if construction is discontinued for a period of eighteen months or more; or if construction is not completed within a reasonable time.
- F. **Fugitive Emissions:** The release of fugitive emissions shall comply with the applicable requirements in NDAC 33-15-17.
- G. **Annual Emission Inventory/Annual Production Reports:** The owner/operator shall submit an annual emission inventory report or an annual production report, upon request, on forms supplied or approved by the Department.
- H. **Source Operations:** Operations at the installation shall be in accordance with statements, representations, procedures and supporting data contained in the initial application, and any supplemental information or application(s) submitted thereafter. Any operations not listed in this permit are subject to all applicable North Dakota Air Pollution Control Rules.
- I. **Alterations, Modifications or Changes:** Any alteration, repairing, expansion, or change in the method of operation of the source which results in the emission of an additional type or greater amount of air contaminants or which results in an increase in the ambient concentration of any air contaminant, must be reviewed and approved by the Department prior to the start of such alteration, repairing, expansion or change in the method of operation.
- J. **Recordkeeping:** The owner/operator shall maintain any compliance monitoring records required by this permit or applicable requirements. The owner/operator shall retain records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report or application. Support information may include all calibration and maintenance records and all original strip-chart recordings/computer printouts for continuous monitoring instrumentation, and copies of all reports required by the permit.

- K. **Nuisance or Danger:** This permit shall in no way authorize the maintenance of a nuisance or a danger to public health or safety.
- L. **Malfunction Notification:** The owner/operator shall notify the Department of any malfunction which can be expected to last longer than twenty-four hours and can cause the emission of air contaminants in violation of applicable rules and regulations.
- M. **Operation of Air Pollution Control Equipment:** The owner/operator shall maintain and operate all air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.
- N. **Transfer of Permit to Construct:** The holder of a permit to construct may not transfer such permit without prior approval from the Department.
- O. **Right of Entry:** Any duly authorized officer, employee or agent of the North Dakota Department of Health may enter and inspect any property, premise or place at which the source listed in Item I.B of this permit is located at any time for the purpose of ascertaining the state of compliance with the North Dakota Air Pollution Control Rules. The Department may conduct tests and take samples of air contaminants, fuel, processing material, and other materials which affect or may affect emissions of air contaminants from any source. The Department shall have the right to access and copy any records required by the Department's rules and to inspect monitoring equipment located on the premises.
- P. **Other Regulations:** The owner/operator of the source unit(s) described in Item I.B of this permit shall comply with all State and Federal environmental laws and rules. In addition, the owner/operator shall comply with all local burning, fire, zoning, and other applicable ordinances, codes, rules and regulations.
- Q. **Permit Issuance:** This permit is issued in reliance upon the accuracy and completeness of the information set forth in the application. Notwithstanding the tentative nature of this information, the conditions of this permit herein become, upon the effective date of this permit, enforceable by the Department pursuant to any remedies it now has, or may in the future have, under the North Dakota Air Pollution Control Law, NDCC Chapter 23-25. Each and every condition of this permit is a material part thereof, and is not severable.
- R. **Odor Restrictions:** The owner/operator shall not discharge into the ambient air any objectionable odorous air contaminant which is in excess of the limits established in NDAC 33-15-16.

The owner/operator shall not discharge into the ambient air hydrogen sulfide (H<sub>2</sub>S) in concentrations that would be objectionable on land owned or leased by the complainant or in areas normally accessed by the general public. For the purpose

of complaint resolution, two samples with concentrations greater than 0.05 parts per million (50 parts per billion) sampled at least 15 minutes apart within a two-hour period and measured in accordance with Section 33-15-16-04 constitute a violation.

- S. **Sampling and Testing:** The Department may require the owner/operator to conduct tests to determine the emission rate of air contaminants from the source. The Department may observe the testing and may specify testing methods to be used. A signed copy of the test results shall be furnished to the Department within 60 days of the test date. The basis for this condition is NDAC 33-15-01-12 which is hereby incorporated into this permit by reference. To facilitate preparing for and conducting such tests, and to facilitate reporting the test results to the Department, the owner/operator shall follow the procedures and formats in the Department's Emission Testing Guideline.

FOR THE NORTH DAKOTA  
DEPARTMENT OF HEALTH

Date 2/25/14

By 

Terry L. O'Clair, P.E.  
Director  
Division of Air Quality



**NORTH DAKOTA**  
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION  
Gold Seal Center, 918 E. Divide Ave.  
Bismarck, ND 58501-1947  
701.328.5200 (fax)  
www.ndhealth.gov



February 25, 2014

**FILE**

Ms. Rhonda O'Leary  
Enbridge (U.S.), Inc.  
1320 Grand Avenue  
Superior, WI 54880

Re: Air Pollution Control  
Permits to Construct

Dear Ms. O'Leary:

Pursuant to the Air Pollution Control Rules of the State of North Dakota, the Department of Health has completed final review of your application to obtain Permits to Construct for modifications to the Beaver Lodge and Stanley Stations located in Williams and Mountrail Counties, North Dakota.

Based on the results of the documents reviewed, this Department hereby issues the enclosed North Dakota Air Pollution Control Permit to Construct Nos. PTC14012 and PTC14013.

Please advise the Department within 15 days after completing the project to allow for an inspection by the Department.

Note that the above-referenced permit addresses only air quality requirements applicable to your facility. Other divisions (Water Quality, Waste Management and Municipal Facilities) within the Environmental Health Section may have additional requirements. Contact information for the various divisions is listed at the bottom of this letter.

If you have any questions regarding air quality, please contact me at (701)328-5188.

Sincerely,

Craig D. Thorstenson  
Environmental Engineer  
Division of Air Quality

CDT:saj  
Enc:

Environmental Health  
Section Chief's Office  
701.328.5150

Division of  
Air Quality  
701.328.5188

Division of  
Municipal Facilities  
701.328.5211

Division of  
Waste Management  
701.328.5166

Division of  
Water Quality  
701.328.5210



**AIR POLLUTION CONTROL  
PERMIT TO CONSTRUCT**

Pursuant to Chapter 23-25 of the North Dakota Century Code, and the Air Pollution Control Rules of the State of North Dakota (Article 33-15 of the North Dakota Administrative Code), and in reliance on statements and representations heretofore made by the owner designated below, a Permit to Construct is hereby issued authorizing such owner to construct and initially operate the source unit(s) at the location designated below. This Permit to Construct is subject to all applicable rules and orders now or hereafter in effect of the North Dakota Department of Health and to any conditions specified below:

**I. General Information:**

A. **Permit to Construct Number:** PTC14013

**B. Source:**

1. **Name:** North Dakota Pipeline Company dba NDPL, LLC
2. **Location:** Stanley Station  
Sec. 27, T156N, R91W  
Mountrail County, North Dakota
3. **Source Type:** Crude Oil Storage
4. **Equipment at the Facility:**

<b>Emission Unit Description</b>	<b>Emission Unit (EU)</b>	<b>Emission Point (EP)</b>	<b>Air Pollution Control Equipment</b>
Existing:			
One 30,600-barrel (1,285,200 gallon) internal floating roof crude oil storage tank (1982)(Subpart Ka)	S-9002	1	EFR
One 75,321-barrel (3,163,482 gallon) external floating roof crude oil storage tank (2010) (Subpart Kb)	S-9004	2	EFR
One 80,000-barrel (3,360,000 gallon) external floating roof crude oil storage tank (2011)(Subpart Kb)	S-9005	3	EFR

<b>Emission Unit Description</b>	<b>Emission Unit (EU)</b>	<b>Emission Point (EP)</b>	<b>Air Pollution Control Equipment</b>
New:			
One 80,000-barrel (3,360,000 gallon) external floating roof crude oil storage tank (2014)(Subpart Kb)	S-9006	4	EFR
One 55,000-barrel (2,310,000 gallon) external floating roof crude oil storage tank (2014)(Subpart Kb)	S-9007	5	EFR

C. **Owner/Operator (Permit Applicant):**

1. Name: North Dakota Pipeline Company dba NDPL, LLC
2. Address: 1320 Grand Avenue  
Superior, WI 54880
3. Application Date: February 13, 2014

II. **Conditions:** This Permit to Construct allows the construction and initial operation of the above-mentioned new or modified equipment at the source. The source may be operated under this Permit to Construct until a Permit to Operate is issued unless this permit is suspended or revoked. The source is subject to all applicable rules, regulations, and orders now or hereafter in effect of the North Dakota Department of Health and to the conditions specified below.

A. **New Source Performance Standards (NSPS) for Storage Tank(s):** The owner/operator shall operate the storage tank(s) in accordance with the following applicable requirement(s):

- 40 CFR Part 60, Subpart Ka - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction or Modification Commenced After May 18, 1978, and Prior to July 23, 1984, as incorporated by reference into NDAC Chapter 33-15-12.
- 40 CFR Part 60, Subpart Kb - Standards of Performance for Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction or Modification Commenced after July 23, 1984, as incorporated by reference into NDAC Chapter 33-15-12.

B. **Storage Tanks:** All tanks shall be equipped with a submerged fill pipe in accordance with NDAC 33-15-07-01.3.

C. **Construction:** Construction of the above described facility shall be in accordance with information provided in the permit application as well as any plans, specifications and supporting data submitted to the Department. The Department shall be notified ten days in advance of any significant deviations from the

specifications furnished. The issuance of this Permit to Construct may be suspended or revoked if the Department determines that a significant deviation from the plans and specifications furnished has been or is to be made.

Any violation of a condition issued as part of this permit to construct as well as any construction which proceeds in variance with any information submitted in the application, is regarded as a violation of construction authority and is subject to enforcement action.

- D. **Startup Notice:** A notification of the actual date of initial startup of EUs S-9006 and S-9007 shall be submitted to the Department within 15 days after the date of initial startup.
- E. **Permit Invalidation:** This permit shall become invalid if construction is not commenced within eighteen months after issuance of such permit, if construction is discontinued for a period of eighteen months or more; or if construction is not completed within a reasonable time.
- F. **Fugitive Emissions:** The release of fugitive emissions shall comply with the applicable requirements in NDAC 33-15-17.
- G. **Annual Emission Inventory/Annual Production Reports:** The owner/operator shall submit an annual emission inventory report or an annual production report, upon request, on forms supplied or approved by the Department.
- H. **Source Operations:** Operations at the installation shall be in accordance with statements, representations, procedures and supporting data contained in the initial application, and any supplemental information or application(s) submitted thereafter. Any operations not listed in this permit are subject to all applicable North Dakota Air Pollution Control Rules.
- I. **Alterations, Modifications or Changes:** Any alteration, repairing, expansion, or change in the method of operation of the source which results in the emission of an additional type or greater amount of air contaminants or which results in an increase in the ambient concentration of any air contaminant, must be reviewed and approved by the Department prior to the start of such alteration, repairing, expansion or change in the method of operation.
- J. **Recordkeeping:** The owner/operator shall maintain any compliance monitoring records required by this permit or applicable requirements. The owner/operator shall retain records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report or application. Support information may include all calibration and maintenance records and all original strip-chart recordings/computer printouts for continuous monitoring instrumentation, and copies of all reports required by the permit.

- K. **Nuisance or Danger:** This permit shall in no way authorize the maintenance of a nuisance or a danger to public health or safety.
- L. **Malfunction Notification:** The owner/operator shall notify the Department of any malfunction which can be expected to last longer than twenty-four hours and can cause the emission of air contaminants in violation of applicable rules and regulations.
- M. **Operation of Air Pollution Control Equipment:** The owner/operator shall maintain and operate all air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.
- N. **Transfer of Permit to Construct:** The holder of a permit to construct may not transfer such permit without prior approval from the Department.
- O. **Right of Entry:** Any duly authorized officer, employee or agent of the North Dakota Department of Health may enter and inspect any property, premise or place at which the source listed in Item I.B of this permit is located at any time for the purpose of ascertaining the state of compliance with the North Dakota Air Pollution Control Rules. The Department may conduct tests and take samples of air contaminants, fuel, processing material, and other materials which affect or may affect emissions of air contaminants from any source. The Department shall have the right to access and copy any records required by the Department's rules and to inspect monitoring equipment located on the premises.
- P. **Other Regulations:** The owner/operator of the source unit(s) described in Item I.B of this permit shall comply with all State and Federal environmental laws and rules. In addition, the owner/operator shall comply with all local burning, fire, zoning, and other applicable ordinances, codes, rules and regulations.
- Q. **Permit Issuance:** This permit is issued in reliance upon the accuracy and completeness of the information set forth in the application. Notwithstanding the tentative nature of this information, the conditions of this permit herein become, upon the effective date of this permit, enforceable by the Department pursuant to any remedies it now has, or may in the future have, under the North Dakota Air Pollution Control Law, NDCC Chapter 23-25. Each and every condition of this permit is a material part thereof, and is not severable.
- R. **Odor Restrictions:** The owner/operator shall not discharge into the ambient air any objectionable odorous air contaminant which is in excess of the limits established in NDAC 33-15-16.

The owner/operator shall not discharge into the ambient air hydrogen sulfide (H<sub>2</sub>S) in concentrations that would be objectionable on land owned or leased by the complainant or in areas normally accessed by the general public. For the purpose

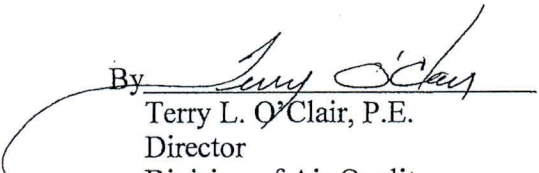
of complaint resolution, two samples with concentrations greater than 0.05 parts per million (50 parts per billion) sampled at least 15 minutes apart within a two-hour period and measured in accordance with Section 33-15-16-04 constitute a violation.

- S. **Sampling and Testing:** The Department may require the owner/operator to conduct tests to determine the emission rate of air contaminants from the source. The Department may observe the testing and may specify testing methods to be used. A signed copy of the test results shall be furnished to the Department within 60 days of the test date. The basis for this condition is NDAC 33-15-01-12 which is hereby incorporated into this permit by reference. To facilitate preparing for and conducting such tests, and to facilitate reporting the test results to the Department, the owner/operator shall follow the procedures and formats in the Department's Emission Testing Guideline.

FOR THE NORTH DAKOTA  
DEPARTMENT OF HEALTH

Date 2/25/14

By

  
Terry L. O'Clair, P.E.  
Director  
Division of Air Quality



**NORTH DAKOTA**  
DEPARTMENT of HEALTH

ENVIRONMENTAL HEALTH SECTION  
Gold Seal Center, 918 E. Divide Ave.  
Bismarck, ND 58501-1947  
701.328.5200 (fax)  
www.ndhealth.gov



June 19, 2014

Ms. Rhonda O'Leary  
Enbridge (U.S.), Inc.  
1320 Grand Avenue  
Superior, WI 54880

Re: Air Pollution Control  
Permit to Construct

Dear Ms. O'Leary:

Pursuant to the Air Pollution Control Rules of the State of North Dakota, the Department of Health has completed final review of your application to obtain a Permit to Construct for modification of the existing Berthold Station in Ward County, North Dakota.

Based on the results of the documents reviewed, this Department hereby issues the enclosed North Dakota Air Pollution Control Permit to Construct No. PTC14020. A public comment period was held regarding this project from May 16, 2014 to June 16, 2014 and no comments were received by the Department.

Please advise the Department within 15 days after completing the project to allow for an inspection by the Department.

In addition, within 12 months after startup of the second vapor combustor unit, a permit application for a Title V Permit to Operate must be submitted to the Department.

Note that the above-referenced permit addresses only air quality requirements applicable to your facility. Other divisions (Water Quality, Waste Management and Municipal Facilities) within the Environmental Health Section may have additional requirements. Contact information for the various divisions is listed at the bottom of this letter.

If you have any questions regarding air quality, please contact me at (701)328-5188.

Sincerely,

Craig D. Thorstenson  
Environmental Engineer  
Division of Air Quality

CDT:saj

Enc:

xc/enc: Mike Owens, EPA (email)



**AIR POLLUTION CONTROL  
PERMIT TO CONSTRUCT**

Pursuant to Chapter 23-25 of the North Dakota Century Code, and the Air Pollution Control Rules of the State of North Dakota (Article 33-15 of the North Dakota Administrative Code), and in reliance on statements and representations heretofore made by the owner designated below, a Permit to Construct is hereby issued authorizing such owner to construct and initially operate the source unit(s) at the location designated below. This Permit to Construct is subject to all applicable rules and orders now or hereafter in effect of the North Dakota Department of Health and to any conditions specified below:

**I. General Information:**

- A. **Permit to Construct Number:** PTC14020
- B. **Source:**
  - 1. **Name:** Enbridge (U.S.), Inc.  
Berthold Station
  - 2. **Location:** Sec. 20, T156N, R86W, Ward County, North Dakota
  - 3. **Source Type:** Crude Oil Terminal
  - 4. **Equipment at the Facility:**

<b>Emission Unit Description</b>	<b>Emission Unit (EU)</b>	<b>Emission Point (EP)</b>	<b>Air Pollution Control Equipment</b>
One 80,000-barrel (3,360,000 gallon) crude oil storage tank (1996) (Subpart Kb)	9800	1	Submerged Fill Pipe (SFP) & External Floating Roof (EFR)
One 64,000-barrel (2,688,000 gallon) crude oil storage tank (2012) (Subpart Kb)	9801	2	SFP & EFR
One 64,000-barrel (2,688,000 gallon) crude oil storage tank (2012) (Subpart Kb)	9802	3	SFP & EFR
Two 150,000-barrel (6,300,000 gallon) crude oil storage tanks (2012) (Subpart Kb)	9803 & 9804	4 & 5	SFP & EFR

Emission Unit Description	Emission Unit (EU)	Emission Point (EP)	Air Pollution Control Equipment
Three 400-barrel (16,800 gallon) vertical fixed roof crude oil storage tanks (2012)	T-1600, T-1610 & T-1620	6, 7 & 8	SFP
Crude oil rail loading	P01	9a	Vapor Combustor Unit (VCU)
		9b	VCU*
One diesel fuel-fired fire pump engine rated at approximately 245 hp	FP01	10	None
Piping components (fugitive emissions)	F01	N/A	None
One 150,000 barrel (6,300,000 gallon) crude oil storage tank (2012)(Subpart Kb)	9805	11	SFP & EFR
One 252,772 barrel (10,616,424 gallon) crude oil storage tank (2014)(Subpart Kb)*	9812	12	SFP & EFR

\* New equipment.

C. **Owner/Operator (Permit Applicant):**

1. Name: Enbridge (U.S.), Inc.
2. Address: 1320 Grand Avenue  
Superior, WI 54880
3. Application Date: March 31, 2014

II. **Conditions:** This Permit to Construct allows the construction and initial operation of the above-mentioned new or modified equipment at the source. The source may be operated under this Permit to Construct until a Permit to Operate is issued unless this permit is suspended or revoked. The source is subject to all applicable rules, regulations, and orders now or hereafter in effect of the North Dakota Department of Health and to the conditions specified below.

A. **Emission Limits:** Emission limits from the operation of the source unit(s) identified in Item I.B of this Permit to Construct (hereafter referred to as "permit") are as follows. Source units not listed are subject to the applicable emission limits specified in the North Dakota Air Pollution Control Rules.

Emission Unit Description	EU	EP	Pollutant / Parameter	Emission Limit
Crude oil rail loading	P01	9a	Opacity VOC	20%(40%*)
		9b		99.6% Control Efficiency**

\* Allowable for one six-minute period per hour. The opacity limit is applicable to each emission point.

\*\* Applicable to each VCU.

**B. Vapor Collection System and Vapor Combustor Unit (VCU) Monitoring:**

1. The vapor combustors must be equipped and operated with an automatic ignitor or a continuous burning pilot which must be maintained in good working order as outlined in NDAC 33-15-07-02.
2. The presence of a flame shall be monitored using a thermocouple, UV flame scanners or any other equivalent device approved by the Department.
3. Prior to startup of the second VCU, the permittee shall install, calibrate, operate and maintain a device to continuously monitor the operating temperature of each VCU.
4. After installation of the device to monitor the VCU operating temperature, the permittee shall observe and record the operating temperature of each VCU at least once per day when the emission unit is operated.
5. The loading of crude oil at the facility shall only be made into railcars or trucks equipped with vapor collection equipment that is compatible with the vapor collection system.
6. The vapor collection system shall be connected during each loading.
7. During the initial test to demonstrate compliance with the VOC control efficiency requirement, the permittee shall establish a minimum VCU operating temperature. Operating at or above this temperature shall be considered an indication that the VOC control efficiency is at or above the level measured during the performance test. After installation of the device to monitor the VCU operating temperature and prior to conducting the initial performance test and establishing a minimum VCU operating temperature, each VCU shall be operated at a minimum temperature of 600 °F when crude oil is being loaded into a railcar except during brief periods of normal process start-up/shutdown as demonstrated during performance testing to not be detrimental to overall control efficiency of the VCU.

**C. Emissions Testing:**

1. Initial Testing: Within 180 days after initial startup after installation of the second VCU, the permittee shall conduct emissions tests at those emission points directed by the Department using an independent testing firm, to determine the compliance status of the facility with respect to the emission limits specified in Condition II.A.1. Emissions testing shall be conducted for the pollutant(s) listed below in accordance with EPA Reference Methods listed in 40 CFR 60, Appendix A. Test methods other than those listed below may be used upon approval by the Department.

<b>Emission Unit</b>	<b>EP</b>	<b>Pollutant/ Parameter</b>
Crude oil rail loading	9a	VOC*
Crude oil rail loading	9b	VOC*

- \* Inlet/outlet testing of each VCU to determine control efficiency.

A signed copy of the test results shall be furnished to the Department within 60 days of the test date. The basis for this condition is NDAC 33-15-01-12 which is hereby incorporated into this permit by reference. To facilitate preparing for and conducting such tests, and to facilitate reporting the test results to the Department, the owner/operator shall follow the procedures and formats in the Department's Emission Testing Guideline.

2. Notification: The permittee shall notify the Department using the form in the Emission Testing Guideline, or its equivalent, at least 30 calendar days in advance of any tests of emissions of air contaminants required by the Department. If the permittee is unable to conduct the performance test on the scheduled date, the permittee shall notify the Department at least five days prior to the scheduled test date and coordinate a new test date with the Department.
3. Sampling Ports/Access: Sampling ports shall be provided downstream of all emission control devices and in a flue, conduit, duct, stack or chimney arranged to conduct emissions to the ambient air.

The ports shall be located to allow for reliable sampling and shall be adequate for test methods applicable to the facility. Safe sampling platforms and safe access to the platforms shall be provided. Plans and specifications showing the size and location of the ports, platform and utilities shall be submitted to the Department for review and approval.

4. Other Testing:
  - a. The Department may require the permittee to have tests conducted to determine the emission of air contaminants from any source, whenever the Department has reason to believe that an emission of a contaminant not addressed by the permit applicant is occurring, or the emission of a contaminant in excess of that allowed by this permit is occurring. The Department may specify testing methods to be used in accordance with good professional practice. The Department may observe the testing. All tests shall be conducted by reputable, qualified personnel. A signed copy of the test results shall be furnished to the Department within 60 days of the test date.

All tests shall be made and the results calculated in accordance with test procedures approved by the Department. All tests shall be made under the direction of persons qualified by training or experience in the field of air pollution control as approved by the Department.

- b. The Department may conduct tests of emissions of air contaminants from any source. Upon request of the Department, the permittee shall provide necessary holes in stacks or ducts and such other safe

and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the emission of air contaminants.

5. Additional Testing:

- a. In addition to the initial VOC emissions test required under Condition II.C.1 of this permit, the permittee shall conduct an emissions test to determine the VOC control efficiency of each VCU no sooner than 1 year after startup of the second VCU and within 2 years of startup of the second VCU.
- b. In addition to the VOC emissions test required under Condition II.C.5.a of this permit, the permittee shall conduct an emissions test to determine the VOC control efficiency of each VCU no sooner than 2 years after startup of the second VCU and within 3 years of startup of the second VCU. The testing required by this condition shall be conducted at least 180 days after the testing required under Condition II.C.5.a of this permit.

D. **New Source Performance Standards (NSPS) for Storage Tank(s):** The owner/operator shall operate the floating roof storage tanks (EU 9800, 9801, 9802, 9803, 9804, 9805 and 9812) in accordance with the following applicable requirement(s):

- 40 CFR Part 60, Subpart Kb - Standards of Performance for Volatile Organic Liquid Storage Vessels (including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction or Modification Commenced after July 23, 1984, as incorporated by reference into NDAC Chapter 33-15-12.

E. **Title V Permit to Operate:** Within one year after startup of the second VCU, the owner/operator shall submit a permit application for a Title V Permit to Operate for the facility.

F. **Startup Notice:** A notification of the actual date of initial startup of the second VCU shall be submitted to the Department within 15 days after the date of initial startup.

G. **Storage Tanks:** All tanks shall be equipped with a submerged fill pipe in accordance with NDAC 33-15-07-01.3.

H. **Odor Restrictions:** The owner/operator shall not discharge into the ambient air any objectionable odorous air contaminant which is in excess of the limits established in NDAC 33-15-16.

The owner/operator may not discharge into the ambient air hydrogen sulfide (H<sub>2</sub>S) in concentrations that would be objectionable on land owned or leased by the

complainant or in areas normally accessed by the general public. For the purpose of complaint resolution, two samples with concentrations greater than 0.05 parts per million (50 parts per billion) sampled at least 15 minutes apart within a two-hour period and measured in accordance with Section 33-15-16-04 constitute a violation.

- I. **Organic Compounds Emissions:** The facility shall comply with the applicable requirements of NDAC 33-15-07, Control of Organic Compounds Emissions.
- J. **Fugitive Emissions:** The release of fugitive emissions shall comply with the applicable requirements in NDAC 33-15-17.
- K. **Sampling and Testing:** The Department may require the owner/operator to conduct tests to determine the emission rate of air contaminants from the source. The Department may observe the testing and may specify testing methods to be used. A signed copy of the test results shall be furnished to the Department within 60 days of the test date. The basis for this condition is NDAC 33-15-01-12 which is hereby incorporated into this permit by reference. To facilitate preparing for and conducting such tests, and to facilitate reporting the test results to the Department, the owner/operator shall follow the procedures and formats in the Department's Emission Testing Guideline.
- L. **Annual Emission Inventory/Annual Production Reports:** The owner/operator shall submit an annual emission inventory report or an annual production report, upon request, on forms supplied or approved by the Department.
- M. **Source Operations:** Operations at the installation shall be in accordance with statements, representations, procedures, and supporting data contained in the initial application, and any supplemental information or renewal application(s) submitted thereafter. Any operations not listed in this permit are subject to all applicable North Dakota Air Pollution Control Rules.
- N. **Alterations, Modifications or Changes:** Any alteration, repairing, expansion or change in the method of operation of the source which results in the emission of an additional type or greater amount of air contaminants or which results in an increase in the ambient concentration of any air contaminant, must be reviewed and approved by the Department prior to the start of such alteration, repairing, expansion or change in the method of operation.
- O. **Recordkeeping:** The owner/operator shall maintain any compliance monitoring records required by the permit or applicable requirements. The owner/operator shall retain records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report or application. Support information may include all calibration and maintenance records and all original strip-chart recordings/computer printouts for continuous monitoring instrumentation, and copies of all reports required by this permit.

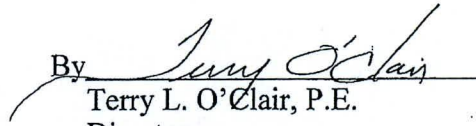
- P. **Air Pollution from Internal Combustion Engines:** The permittee shall comply with all applicable requirements of NDAC 33-15-08-01 – Internal Combustion Engine Emissions Restricted.
- Q. **Malfunction Notification:** The owner/operator shall notify the Department of any malfunction which can be expected to last longer than twenty-four hours and can cause the emission of air contaminants in violation of applicable rules and regulations.
- R. **Operation of Air Pollution Control Equipment:** The owner/operator shall maintain and operate all air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.
- S. **Nuisance or Danger:** This permit shall in no way authorize the maintenance of a nuisance or a danger to public health or safety.
- T. **Permit Invalidation:** This permit shall become invalid if construction is not commenced within eighteen months after issuance of such permit, if construction is discontinued for a period of eighteen months or more; or if construction is not completed within a reasonable time.
- U. **Transfer of Permit to Construct:** The holder of this permit to construct may not transfer such permit without prior approval from the Department.
- V. **Right of Entry:** Any duly authorized officer, employee or agent of the North Dakota State Department of Health and Consolidated Laboratories may enter and inspect any property, premise or place at which the source listed in Item 3 of this permit is located at any time for the purpose of ascertaining the state of compliance with the North Dakota Air Pollution Control Rules. The Department shall have the right to access and copy any records required by the Department's rules and to inspect monitoring equipment located on the premises.
- W. **Other Regulations:** The owner/operator of the source unit(s) described in Item I.B. of this permit shall comply with all State and Federal environmental laws and rules. In addition, the owner/operator shall comply with all local burning, fire, zoning, and other applicable ordinances, codes, rules, and regulations.
- X. **Permit Issuance:** This permit is issued in reliance upon the accuracy and completeness of the information set forth in the application. The conditions of this permit herein become, upon the effective date of this permit, enforceable by the Department pursuant to any remedies it now has, or may in the future have, under the North Dakota Air Pollution Control Law, NDCC Chapter 23-25. Each and every condition of this permit is a material part thereof, and is not severable.
- Y. **Construction:** Construction of the above described facility shall be in accordance with information provided in the permit application as well as any plans, specifications and supporting data submitted to the Department. The Department shall be notified ten days in advance of any significant deviations from the

specifications furnished. The issuance of this Permit to Construct may be suspended or revoked if the Department determines that a significant deviation from the plans and specifications furnished has been or is to be made.

Any violation of a condition issued as part of this permit to construct as well as any construction which proceeds in variance with any information submitted in the application, is regarded as a violation of construction authority and is subject to enforcement action.

FOR THE NORTH DAKOTA  
DEPARTMENT OF HEALTH

Date 6/19/14

By   
Terry L. O'Clair, P.E.  
Director  
Division of Air Quality

**North Dakota Department of Health - North Dakota  
Pollution Discharge Elimination System (NDPDES)  
General Permit NDR10-0000**



June 27, 2014

Dallas Grossman  
Stormwater Program Coordinator  
North Dakota Department of Health  
Division of Water Quality, 4<sup>th</sup> Floor  
918 East Divide Avenue  
Bismarck, North Dakota 58501-1947

RE: North Dakota Pipeline Company LLC dba NDPL LLC (NDPL)  
Beaver Lodge Station – Williams County, ND  
Application for Stormwater Coverage under NDPDES General Permit (NDR10-0000)

Dear Mr. Grossman:

North Dakota Pipeline Company LLC dba NDPL LLC (“NDPL”) is continuing expansion of its existing Beaver Lodge Station, located in Williams County, North Dakota. Beaver Lodge Station is located approximately 7 miles south of the city of Tioga, in Section 32, Township 156 North, Range 95 West, and Section 5, Township 155 North, Range 95 West (see enclosed figures).

To date, NDPL has pursued separate construction stormwater permits at its North Dakota facilities specific to the scope and areas of disturbance for a particular project. However, projects with overlapping boundaries can result in multiple permits that must remain open due to final stabilization not being met for one project while construction continues on a different project that is covered under a separate construction stormwater permit.

On May 13, 2014 NDPL and Merjent, Inc. (“Merjent”) held a conference call with your office to discuss the feasibility of establishing consolidated “facility-wide” stormwater permits that would cover any construction work within that facility’s fee-owned property boundary, rather than separate permits for each project or activity. Based on that call, you indicated that you approved this approach under the following conditions:

- Any existing permits at the facility should be closed prior to issuing the new permit;
- The facility Stormwater Pollution Prevention Plan (“SWPPP”) must be kept up-to-date and contain information on all project work occurring within the facility boundaries;
- Following issuance of the new facility permits, NDPL will provide notification and a copy of the SWPPP for any project work within the facility boundary that involves more than 50 acres of ground disturbance; and
- A separate permit would be required for any work occurring outside of the facility boundary.

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Work at Beaver Lodge Station associated with NDPL's Beaver Lodge Loop Project was previously authorized under NDPDES Permit NDR103714. Based on recent site visits, Beaver Lodge Station has reached final stabilization and NDPL will be submitting a Notice of Termination for this project under separate cover.

The only project currently slated to occur within the facility boundary of Beaver Lodge Station is the Sandpiper Pipeline Project ("Sandpiper"), which involves less than 50 acres of ground disturbance. NDPL has developed a facility-wide SWPPP for the station, which will be made available to the North Dakota Department of Health ("NDDH") upon request. As directed by your office, additional project work at the station will be authorized under the new facility-wide permit, and NDPL will update its facility SWPPP to reflect all project work occurring within the facility boundaries. NDPL will also provide notification and a copy of the SWPPP to NDDH for any single project involving more than 50 acres of ground disturbance.

On behalf of NDPL, Merjent is submitting the enclosed application to obtain coverage under NDPDES General Permit (NDR10-0000) for stormwater discharges associated with construction activity. NDPL understands permit coverage will become effective 7 days after the application is submitted unless otherwise notified by NDDH. All terms and conditions of the general permit will be followed and a Notice of Termination will be submitted when final stabilization of all project areas has been achieved.

If you have any questions or require further information regarding this submittal, please contact me (612-746-1618 or [phartzheim@merjent.com](mailto:phartzheim@merjent.com)) or Aisha Beaty of NDPL (715-398-4562 or [aisha.beaty@enbridge.com](mailto:aisha.beaty@enbridge.com)).

Sincerely,  
Merjent, Inc.



Paul Hartzheim, M.S.  
Senior Environmental Analyst

Enclosures: Application (Notice of Intent) to Obtain Coverage under NDPDES General Permit for Stormwater Discharges Associated with Construction Activity (NDR10-0000)  
Site Location Maps (Aerial and Topographic)

Cc: Aisha Beaty, NDPL  
Andrew Orthober, NDPL  
Derek Senn, NDPL  
Paul Meneghini, NDPL  
Bob Steede, NDPL  
Bill Regan, Merjent  
Dallas Grossman, NDDH (via email)



**APPLICATION (NOTICE OF INTENT) TO OBTAIN  
OVERAGE UNDER NDPDES GENERAL PERMIT  
FOR STORMWATER DISCHARGES ASSOCIATED  
WITH CONSTRUCTION ACTIVITY (NDR10-0000)**  
NORTH DAKOTA DEPARTMENT OF HEALTH  
DIVISION OF WATER QUALITY  
SFN 19145 (12/13)

FOR DEPT. USE ONLY

Application No.
Date Received

**GENERAL INFORMATION**

1. Name of Owner of Construction Project North Dakota Pipeline Company LLC dba NDPL LLC (NDPL)	2. Contact First Name Bob	3. Contact Last Name Steede	4. Contact Phone No. (701) 857-0832	
5. Contact E-mail Address robert.steede@enbridge.com				
6. Mailing Address 2505 16th Street SW	7. City Minot		8. State/Province ND	9. Zip Code 58701
10. Name of Operator Working at Site To Be Determined	11. Contact First Name	12. Contact Last Name	13. Contact Phone No.	
14. Contact E-mail Address				
15. Mailing Address	16. City		17. State/Province	18. Zip Code

**PROJECT INFORMATION**

19. Name of Construction Project Beaver Lodge Station				
20. Brief Description of Construction Activity Construction of new tankage, piping, and other facility infrastructure as part of NDPL's expansion of Beaver Lodge Station - currently only Sandpiper Pipeline Project is proposed.				
21. Project Start Date 07/07/2014	22. Estimated Completion Date 12/31/2017	23. Estimated Total Area of Site (acres) 138	24. Estimated Area of Disturbance (acres) 28.2	
Project Location	25. Physical Address 10351 60th Street NW		26. City Tioga, ND 58852	
	27. Township 156N/155N	28. Range 95W	29. Section 32/5	30. Quarter Section (ABCD Format) See enclosed maps
	32. Latitude (Decimal Degrees) 48.28345		31. County Williams	
33. Longitude (Decimal Degrees) -102.91837		34. Name of Municipal Storm Sewer System or Description of Receiving Water Unnamed tributaries of Dry Fork Creek		

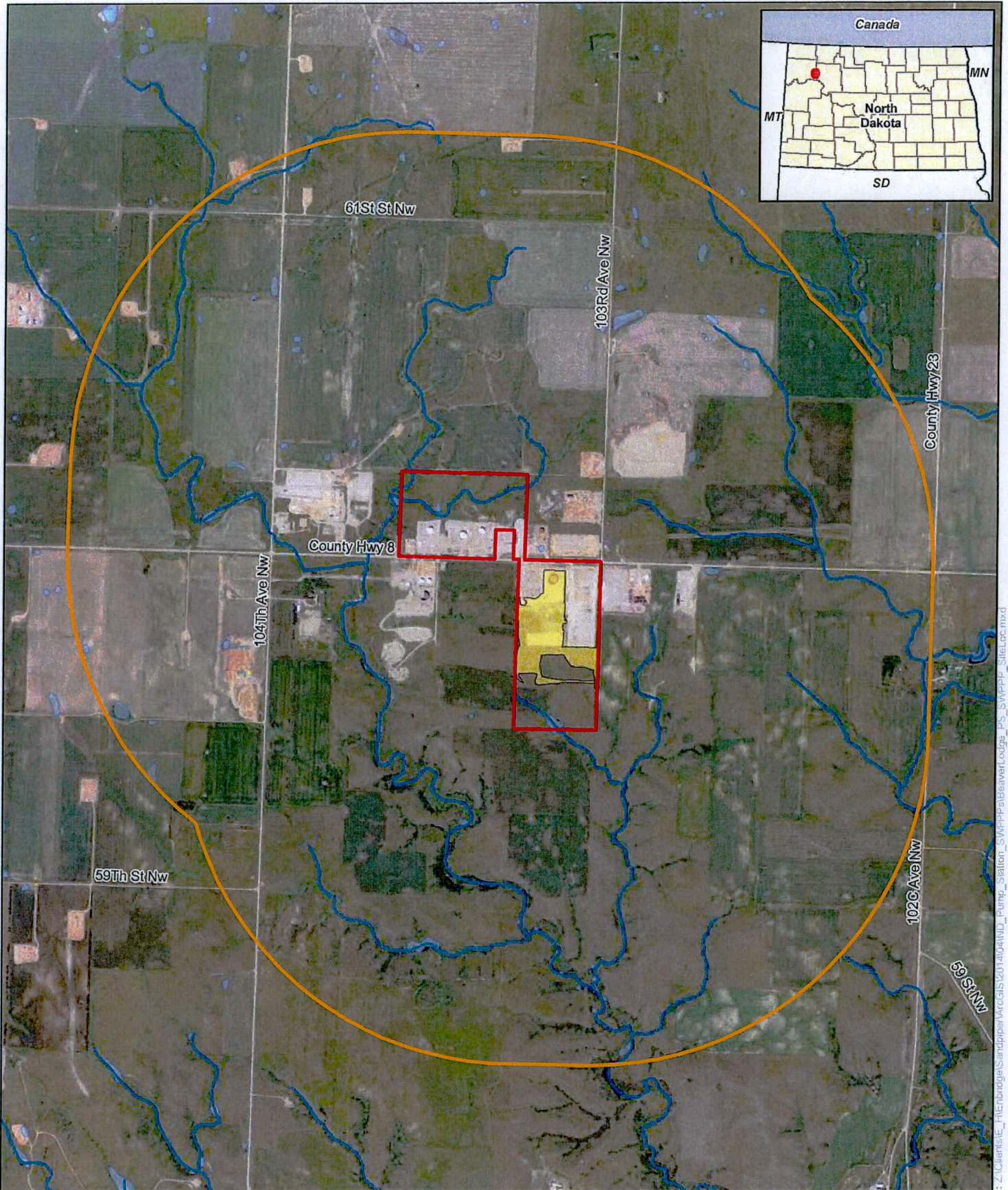
35. A SWPPP must be prepared and available for review at the time of application. A copy of the SWPPP must be submitted with this application if the project is 50 or more acres or is within 2000 feet of, and flows to a water body listed as impaired under section 303(d) of the Federal Clean Water Act due to sediment, suspended solids or turbidity. See Part I.D.2 of NDR10-0000 for more detail.

\*\*A facility wide SWPPP has been prepared for Beaver Lodge Station, and is available upon request

<b>RETURN COMPLETED APPLICATION TO:</b>  North Dakota Department of Health Division of Water Quality, 4 <sup>th</sup> Floor 918 East Divide Avenue Bismarck, ND 58501-1947  Telephone: (701) 328-5210 Fax: (701) 328-5200	I certify under penalty of law that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.	
	36. Printed Name of Owner(s) Bob Steede	37. Title Director, North Dakota Region
	38. Signature of Owner(s) 	39. Date 6/26/14
	40. Printed Name of Operator(s) To Be Determined	41. Title
	42. Signature of Operator(s)	43. Date







0 1,000 2,000 Feet  
 1 inch = 2,000 feet

**ENBRIDGE**

**Beaver Lodge Station  
 Site Location Map  
 Williams County, North Dakota**

- One Mile Radius
- Project Location
- Sandpiper Construction Workspace
- Waterbody
- NWM Wetland

Date: 10/24/2014  
 Source: Z:\Client\15\_Helenburg\Sandpiper\ArcGIS\2014\04\10\10\_Pump\_Station\_Sandpiper\atlas\atlas\_lodge\_PCS\_Sandpiper\_SiteLoc.mxd



800 Washington Avenue North ■ Suite 315 ■ Minneapolis, Minnesota ■ 55401

June 27, 2014

Dallas Grossman  
Stormwater Program Coordinator  
North Dakota Department of Health  
Division of Water Quality, 4<sup>th</sup> Floor  
918 East Divide Avenue  
Bismarck, North Dakota 58501-1947

RE: North Dakota Pipeline Company LLC dba NDPL LLC (NDPL)  
Stanley Station – Mountrail County, ND  
Application for Stormwater Coverage under NDPDES General Permit (NDR10-0000)

Dear Mr. Grossman:

North Dakota Pipeline Company LLC dba NDPL LLC (“NDPL”) is continuing expansion of its existing Stanley Station, located in Mountrail County, North Dakota. Stanley Station is located approximately one mile southeast of the city of Stanley in Section 27, Township 156 North, Range 91 West (see enclosed figures).

To date, NDPL has pursued separate construction stormwater permits at its North Dakota facilities specific to the scope and areas of disturbance for a particular project. However, projects with overlapping boundaries can result in multiple permits that must remain open due to final stabilization not being met for one project while construction continues on a different project that is covered under a separate construction stormwater permit.

On May 13, 2014 NDPL and Merjent, Inc. (“Merjent”) held a conference call with your office to discuss the feasibility of establishing consolidated “facility-wide” stormwater permits that would cover any construction work within that facility’s fee owned property boundary, rather than separate permits for each project or activity. Based on that call, you indicated that you approved this approach under the following conditions:

- Any existing permits at the facility should be closed prior to issuing the new permit;
- The facility Stormwater Pollution Prevention Plan (“SWPPP”) must be kept up-to-date and contain information on all project work occurring within the facility boundaries;
- Following issuance of the new facility permits, NDPL will provide notification and a copy of the SWPPP for any project work within the facility boundary that involves more than 50 acres of ground disturbance; and
- A separate permit would be required for any work occurring outside of the facility boundary.

Work at Stanley Station associated with NDPL’s Beaver Lodge Loop Project (BLLP) and Stanley Satellite Manifold Project was previously authorized under NDPDES Permits NDR103714 and NDR106137,

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respectively. Based on recent site visits, work associated with BLLP is complete and NDPL will be submitting a Notice of Termination for these projects under separate cover. Construction associated with the Stanley Satellite Manifold Project is complete, and the project is currently in restoration phase. In conjunction with this application, NDPL requests that remaining work associated with this project be authorized under the new facility-wide permit. NDPL will be submitting a Notice of Termination for the Stanley Satellite Manifold Project under separate cover.

The only new project currently slated to occur within the facility boundary of Stanley Station is the Sandpiper Pipeline Project ("Sandpiper"), which involves less than 50 acres of ground disturbance. NDPL has developed a facility-wide SWPPP for the station, which will be made available to the North Dakota Department of Health ("NDDH") upon request. As directed by your office, additional project work at the station will be authorized under the new facility-wide permit, and NDPL will update its facility SWPPP to reflect all project work occurring within the facility boundaries. NDPL will also provide notification and a copy of the SWPPP to NDDH for any single project involving more than 50 acres of ground disturbance.

On behalf of NDPL, Merjent is submitting the enclosed application to obtain coverage under NDPDES General Permit (NDR10-0000) for stormwater discharges associated with construction activity. NDPL understands permit coverage will become effective 7 days after the application is submitted unless otherwise notified by NDDH. All terms and conditions of the general permit will be followed and a Notice of Termination will be submitted when final stabilization of all project areas has been achieved.

If you have any questions or require further information regarding this submittal, please contact me (612-746-1618 or [phartzheim@merjent.com](mailto:phartzheim@merjent.com)) or Aisha Beaty of NDPL (715-398-4562 or [aisha.beaty@enbridge.com](mailto:aisha.beaty@enbridge.com)).

Sincerely,  
Merjent, Inc.



Paul Hartzheim, M.S.  
Senior Environmental Analyst

Enclosures: Application (Notice of Intent) to Obtain Coverage under NDPDES General Permit for Stormwater Discharges Associated with Construction Activity (NDR10-0000)  
Site Location Maps (Aerial and Topographic)

Cc: Aisha Beaty, NDPL  
Andrew Orthober, NDPL  
Derek Senn, NDPL  
Paul Meneghini, NDPL  
Bob Steede, NDPL  
Bill Regan, Merjent  
Dallas Grossman, NDDH (via email)



**APPLICATION (NOTICE OF INTENT) TO OBTAIN  
OVERAGE UNDER NDPDES GENERAL PERMIT  
FOR STORMWATER DISCHARGES ASSOCIATED  
WITH CONSTRUCTION ACTIVITY (NDR10-0000)**  
NORTH DAKOTA DEPARTMENT OF HEALTH  
DIVISION OF WATER QUALITY  
SFN 19145 (12/13)

FOR DEPT. USE ONLY

Application No.
Date Received

**GENERAL INFORMATION**

1. Name of Owner of Construction Project North Dakota Pipeline Company LLC dba NDPL LLC (NDPL)	2. Contact First Name Bob	3. Contact Last Name Steede	4. Contact Phone No. (701) 857-0832	
5. Contact E-mail Address robert.steede@enbridge.com				
6. Mailing Address 2505 16th Street SW	7. City Minot	8. State/Province ND	9. Zip Code 58701	
10. Name of Operator Working at Site To Be Determined	11. Contact First Name	12. Contact Last Name	13. Contact Phone No.	
14. Contact E-mail Address				
15. Mailing Address	16. City	17. State/Province	18. Zip Code	

**PROJECT INFORMATION**

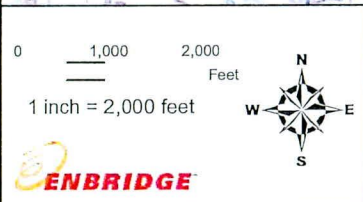
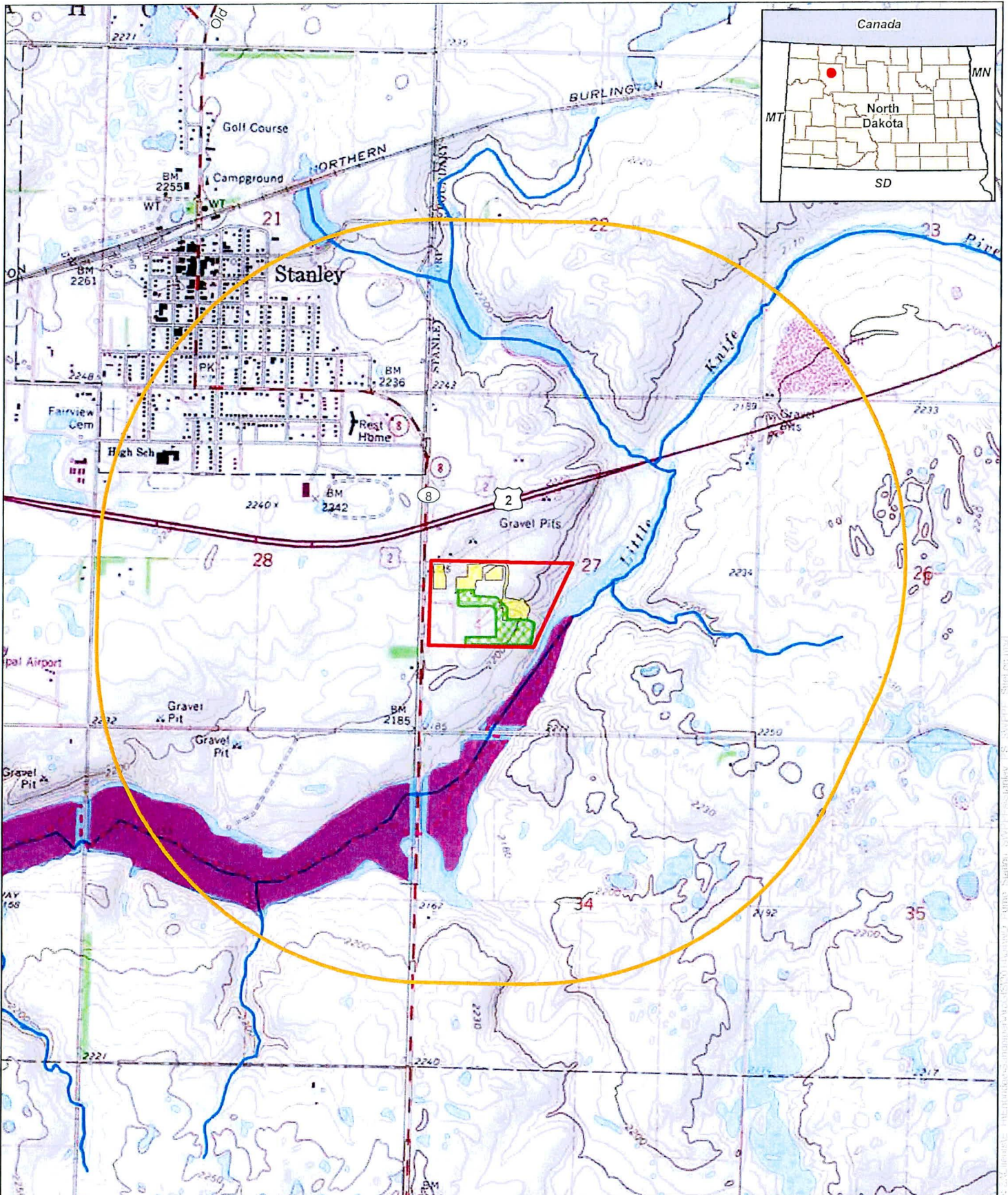
19. Name of Construction Project Stanley Station				
20. Brief Description of Construction Activity Construction of new tankage, piping, and other facility infrastructure as part of NDPL's expansion of Stanley Station. Currently, only the Sandpiper Pipeline Project is proposed. The existing Stanley Station Satellite Manifold Project (NDPDES Permit NDR106137) is in final restoration phase. Work associated with the Satellite Manifold Project has been included in the facility-wide SWPPP and a Notice of Termination will be submitted.				
21. Project Start Date 07/07/2014	22. Estimated Completion Date 12/31/2017	23. Estimated Total Area of Site (acres) 61	24. Estimated Area of Disturbance (acres) 23	
Project Location	25. Physical Address 6150 Highway 8		26. City Stanley, ND 58784	
	OR	27. Township 156	28. Range 91	29. Section 27
		30. Quarter Section (ABCD Format) See enclosed maps		31. County Mountrail
	32. Latitude (Decimal Degrees) 48.30376		33. Longitude (Decimal Degrees) -102.37047	
Receiving Waters	34. Name of Municipal Storm Sewer System or Description of Receiving Water Little Knife River			

35. A SWPPP must be prepared and available for review at the time of application. A copy of the SWPPP must be submitted with this application if the project is 50 or more acres or is within 2000 feet of, and flows to a water body listed as impaired under section 303(d) of the Federal Clean Water Act due to sediment, suspended solids or turbidity. See Part I.D.2 of NDR10-0000 for more detail.

\*\*A facility wide SWPPP has been prepared for Stanley Station, and is available upon request. The Little Knife River is listed as impaired with respect to nutrients, eutrophication biological indicators, and fecal coliform.

<b>RETURN COMPLETED APPLICATION TO:</b>  North Dakota Department of Health Division of Water Quality, 4 <sup>th</sup> Floor 918 East Divide Avenue Bismarck, ND 58501-1947  Telephone: (701) 328-5210 Fax: (701) 328-5200	I certify under penalty of law that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.	
	36. Printed Name of Owner(s) Bob Steede	37. Title Director, North Dakota Region
	38. Signature of Operator(s) 	39. Date 6/26/14
	40. Printed Name of Operator(s) To Be Determined	41. Title
	42. Signature of Operator(s)	43. Date



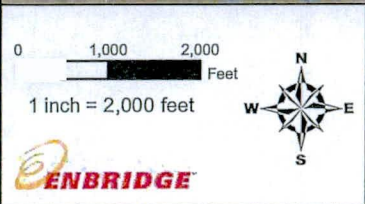
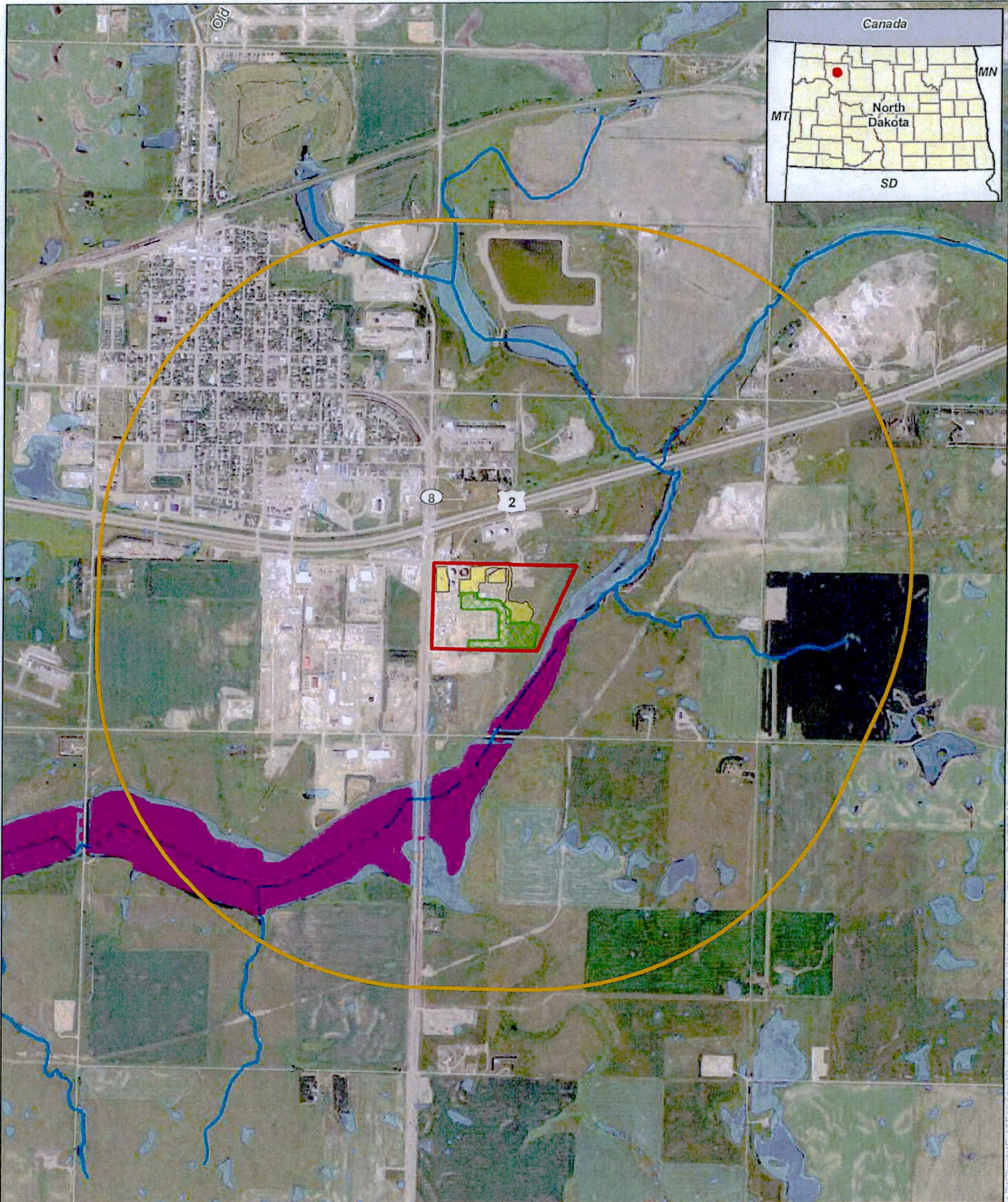


**Stanley Station  
Site Location Map  
Mountrail County, North Dakota**

- One Mile Radius
- Project Location
- Sandpiper Construction Workspace
- Stanley Satellite Manifold Workspace
- Waterbody
- NWI Wetland
- Impaired Waterbody
- Impaired Lake



Map data © OpenStreetMap contributors, Imagery © Mapbox, © ENBRIDGE 2017



**Stanley Station  
Site Location Map  
Mountrail County, North Dakota**

- One Mile Radius
- Project Location
- Sandpiper Construction Workspace
- Stanley Satellite Manifold Workspace
- Waterbody
- NWI Wetland
- Impaired Waterbody
- Impaired Lake

source: Z:\Clients\SE\_H\Enbridge\Sandpiper\ArcGIS\2014\QIND\_Pump\_Station\_SWPPP\Stanley\_PS\_SWPPP\_SiteLoc.mxd  
Date: (6/24/2014)





June 27, 2014

Dallas Grossman  
Stormwater Program Coordinator  
North Dakota Department of Health  
Division of Water Quality, 4<sup>th</sup> Floor  
918 East Divide Avenue  
Bismarck, North Dakota 58501-1947

RE: North Dakota Pipeline Company LLC dba NDPL LLC (NDPL)  
Berthold Station – Ward County, ND  
Application for Stormwater Coverage under NDPDES General Permit (NDR10-0000)

Dear Mr. Grossman:

North Dakota Pipeline Company LLC dba NDPL LLC (“NDPL”) is continuing expansion of its existing Berthold Station, located in Ward County, North Dakota. Berthold Station is located approximately one mile northwest of the city of Berthold in Sections 20 and 21, Township 156 North, Range 86 West (see enclosed figures).

To date, NDPL has pursued separate construction stormwater permits at its North Dakota facilities specific to the scope and areas of disturbance for a particular project. However, projects with overlapping boundaries can result in multiple permits that must remain open due to final stabilization not being met for one project while construction continues on a different project that is covered under a separate construction stormwater permit.

On May 13, 2014 NDPL and Merjent, Inc. (“Merjent”) held a conference call with your office to discuss the feasibility of establishing consolidated “facility-wide” stormwater permits that would cover any construction work within that facility’s fee owned property boundary, rather than separate permits for each project or activity. Based on that call, you indicated that you approved this approach under the following conditions:

- Any existing permits at the facility should be closed prior to issuing the new permit;
- The facility Stormwater Pollution Prevention Plan (“SWPPP”) must be kept up-to-date and contain information on all project work occurring within the facility boundaries;
- Following issuance of the new facility permits, NDPL will provide notification and a copy of the SWPPP for any project work within the facility boundary that involves more than 50 acres of ground disturbance; and
- A separate permit would be required for any work occurring outside of the facility boundary.

Work at Berthold Station associated with NDPL's Bakken Pipeline Project US and Berthold Station Expansion Project was previously authorized under NDPDES Permits NDR103724 and NDR104403, respectively. Based on recent site visits, Berthold Station has reached final stabilization and NDPL will be submitting a Notice of Termination for these projects under separate cover.

The only project currently slated to occur within the facility boundary of Berthold Station is the Sandpiper Pipeline Project ("Sandpiper"), which involves less than 50 acres of ground disturbance. NDPL has developed a facility-wide SWPPP for the station, which will be made available to the North Dakota Department of Health ("NDDH") upon request. As directed by your office, additional project work at the station will be authorized under the new facility-wide permit, and NDPL will update its facility SWPPP to reflect all project work occurring within the facility boundaries. NDPL will also provide notification and a copy of the SWPPP to NDDH for any single project involving more than 50 acres of ground disturbance.

On behalf of NDPL, Merjent is submitting the enclosed application to obtain coverage under NDPDES General Permit (NDR10-0000) for stormwater discharges associated with construction activity. NDPL understands permit coverage will become effective 7 days after the application is submitted unless otherwise notified by NDDH. All terms and conditions of the general permit will be followed and a Notice of Termination will be submitted when final stabilization of all project areas has been achieved.

If you have any questions or require further information regarding this submittal, please contact me (612-746-1618 or [phartzheim@merjent.com](mailto:phartzheim@merjent.com)) or Aisha Beaty of NDPL (715-398-4562 or [aisha.beaty@enbridge.com](mailto:aisha.beaty@enbridge.com)).

Sincerely,  
Merjent, Inc.



Paul Hartzheim, M.S.  
Senior Environmental Analyst

Enclosures: Application (Notice of Intent) to Obtain Coverage under NDPDES General Permit for Stormwater Discharges Associated with Construction Activity (NDR10-0000)  
Site Location Maps (Aerial and Topographic)

Cc: Aisha Beaty, NDPL  
Andrew Orthober, NDPL  
Derek Senn, NDPL  
Paul Meneghini, NDPL  
Bob Steede, NDPL  
Bill Regan, Merjent  
Dallas Grossman, NDDH (via email)



**APPLICATION (NOTICE OF INTENT) TO OBTAIN  
OVERAGE UNDER NDPDES GENERAL PERMIT  
FOR STORMWATER DISCHARGES ASSOCIATED  
WITH CONSTRUCTION ACTIVITY (NDR10-0000)**  
NORTH DAKOTA DEPARTMENT OF HEALTH  
DIVISION OF WATER QUALITY  
SFN 19145 (12/13)

FOR DEPT. USE ONLY

Application No.
Date Received

**GENERAL INFORMATION**

1. Name of Owner of Construction Project North Dakota Pipeline Company LLC dba NDPL LLC (NDPL)	2. Contact First Name Bob	3. Contact Last Name Steede	4. Contact Phone No. (701) 857-0832	
5. Contact E-mail Address robert.steede@enbridge.com				
6. Mailing Address 2505 16th Street SW	7. City Minot	8. State/Province ND	9. Zip Code 58701	
10. Name of Operator Working at Site To Be Determined	11. Contact First Name	12. Contact Last Name	13. Contact Phone No.	
14. Contact E-mail Address				
15. Mailing Address	16. City	17. State/Province	18. Zip Code	

**PROJECT INFORMATION**

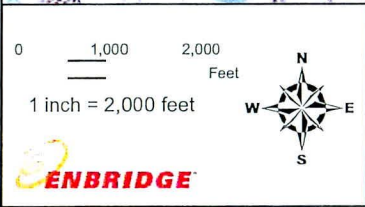
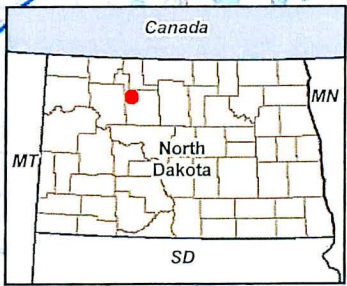
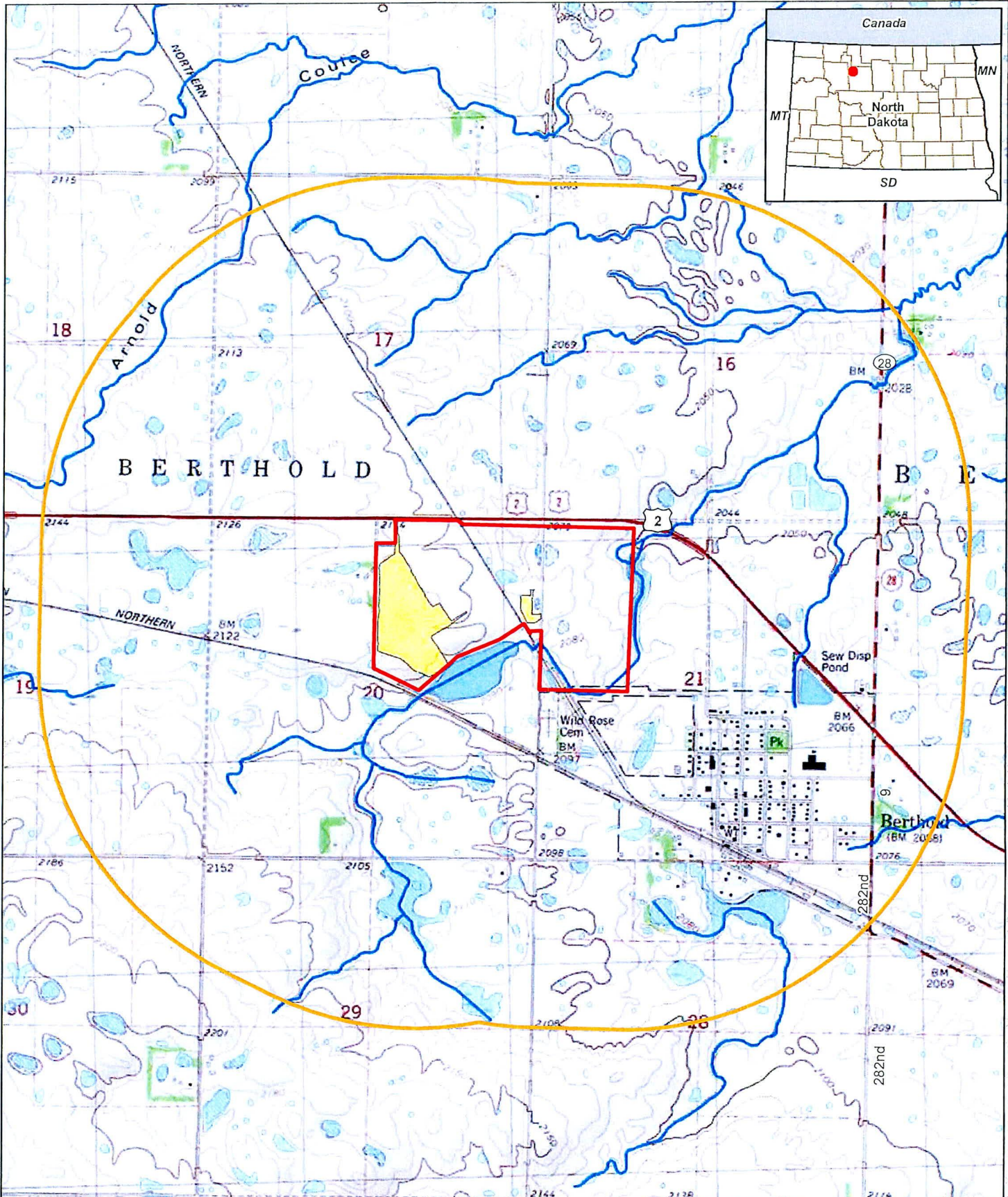
19. Name of Construction Project Berthold Station				
20. Brief Description of Construction Activity Construction of new tankage, piping, and other facility infrastructure as part of NDPL's expansion of Berthold Station - currently, only Sandpiper Pipeline Project is proposed.				
21. Project Start Date 07/07/2014	22. Estimated Completion Date 12/31/2017	23. Estimated Total Area of Site (acres) 198	24. Estimated Area of Disturbance (acres) 34	
Project Location	25. Physical Address 8501 296th Street NW		26. City Berthold, ND 58718	
	27. Township 156	28. Range 86	29. Section 20/21	30. Quarter Section (ABCD Format) see enclosed maps
	32. Latitude (Decimal Degrees) 48.32557		33. Longitude (Decimal Degrees) -101.75253	
Receiving Waters	34. Name of Municipal Storm Sewer System or Description of Receiving Water Unnamed onsite wetlands; unnamed intermittent tributary to Arnold Coulee			

35. A SWPPP must be prepared and available for review at the time of application. A copy of the SWPPP must be submitted with this application if the project is 50 or more acres or is within 2000 feet of, and flows to a water body listed as impaired under section 303(d) of the Federal Clean Water Act due to sediment, suspended solids or turbidity. See Part I.D.2 of NDR10-0000 for more detail.

\*\*A facility wide SWPPP has been prepared for Berthold Station, and is available upon request

<b>RETURN COMPLETED APPLICATION TO:</b>  North Dakota Department of Health Division of Water Quality, 4 <sup>th</sup> Floor 918 East Divide Avenue Bismarck, ND 58501-1947  Telephone: (701) 328-5210 Fax: (701) 328-5200	I certify under penalty of law that I have personally examined and am familiar with the information submitted herein. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment.	
	36. Printed Name of Owner(s) Bob Steede	37. Title Director, North Dakota Region
	38. Signature of Owner(s) 	39. Date 6/26/14
	40. Printed Name of Operator(s) To Be Determined	41. Title
	42. Signature of Operator(s)	43. Date





**Berthold Station  
Site Location Map  
Ward County, North Dakota**

- One Mile Radius
- Project Location
- Sandpiper Construction Workspace
- Waterbody
- NWI Wetland



**North Dakota State Historic Preservation Office  
Concurrence**



**STATE  
HISTORICAL  
SOCIETY  
OF NORTH DAKOTA**

Jack Dalrymple  
Governor of North Dakota

June 24, 2014

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A. Ruric Todd III  
Jamestown - Vice  
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Margaret Puetz  
Bismarck - Secretary

Albert I. Berger  
Grand Forks

Gerold Gerntholz  
Valley City

Diane K. Larson  
Bismarck

Chester E. Nelson, Jr.  
Bismarck

Sara Otte Coleman  
Director  
Tourism Division

Kelly Schmidt  
State Treasurer

Alvin A. Jaeger  
Secretary of State

Mark Zimmerman  
Director  
Parks and Recreation  
Department

Grant Levi  
Director  
Department of  
Transportation

Merlan E. Paaverud, Jr.  
Director

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American Alliance  
of Museums since 1986

Sara Ploetz  
Environmental Analyst II  
North Dakota Pipeline Company LLC  
1409 Hammond Avenue, Second Floor  
Superior, Wisconsin 54880

ND SHPO Ref: 13-0691g PSC/COE Sandpiper Pipeline Project:  
Sandpiper Pipeline (Enbridge) -Beaver Lodge Expansion, Williams County, North  
Dakota, and Evaluation of Sites 32WI1434 and 32WI1435

Dear Sara:

We have received and reviewed: "Sandpiper Pipeline Project (Enbridge): Evaluative  
Testing for Sites 32WI1434 and 32WI1435 in Williams County, North Dakota," by  
Jennifer Wulffen and Jennifer L. Harty (MAC, May 2014) and find it acceptable. If  
consulted by a federal agency we would concur with a "No Historic Properties Affected"  
determination provided the project is of the nature stated and it takes place in the  
locations mapped and plotted in the project documentation. Also, if consulted, we  
concur that sites 32WI1434 and 32WI1435 are not significant and are not eligible for  
listing in the National Register of Historic Places.

Thank you for the opportunity to review the report and to further consultation on the  
project. Please include the ND SHPO reference number listed above in any further  
correspondence for this specific project. If you have any questions, please contact either  
Paul Picha at (701) 328-3574 or [ppicha@nd.gov](mailto:ppicha@nd.gov) or Susan Quinnell at (701) 328-3576 or  
[squinnell@nd.gov](mailto:squinnell@nd.gov)

Sincerely,

Merlan E. Paaverud, Jr.  
State Historic Preservation Officer (North Dakota)  
and

Director, State Historical Society of North Dakota  
Michael Madson, Merjent  
c: Jennifer L. Harty, Metcalf Archaeological Consultants, Inc.  
c: Jason Renschler, Bismarck-Regulatory, COE



**STATE  
HISTORICAL  
SOCIETY  
OF NORTH DAKOTA**

Jack Dalrymple  
*Governor of North Dakota*

May 20, 2014  
Revised

**North Dakota  
State Historical Board**

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*New Town - President*

A. Rurie Todd III  
*Jamestown - Vice  
President*

Margaret Puetz  
*Bismarck - Secretary*

Albert I. Berger  
*Grand Forks*

Gereld Gerntholz  
*Valley City*

Diane K. Larson  
*Bismarck*

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*Bismarck*

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*Director  
Parks and Recreation  
Department*

Grant Levi  
*Director  
Department of  
Transportation*

Merlan E. Paaverud, Jr.  
*Director*

*Accredited by the  
American Alliance  
of Museums since 1986*

Michael Madson  
Cultural Resources Specialist  
Merjent  
Tractor Works Building  
800 Washington Avenue North  
Suite 315  
Minneapolis, MN 55401

Sara Ploetz  
Environmental Analyst II  
North Dakota Pipeline Company LLC  
1409 Hammond Avenue, Second Floor  
Superior, Wisconsin 54880

ND SHPO Ref: 13-0691e PSC/COE Merjent-Enbridge Sandpiper Pipeline Project;  
Proposed Expansion of Existing Enbridge Facilities: ([1] Beaver Lodge, [2] Stanley,  
and [3] Berthold)

Dear Mike and Sara:

We have received and reviewed: NDSHPO Ref: 13-0691e Merjent-Enbridge Pipeline Project: "Proposed Expansion of Existing Enbridge Facilities: ([1] Beaver Lodge, [2] Stanley, and [3] Berthold)," and find the proposals acceptable as outlined in the May 13 letter correspondence provided that at: [1] Beaver Lodge: sites 32W11434, 32W11435, and 32W1138 are avoided as stipulated, [2] Stanley: site 32MZ773 is avoided by construction workspace design as indicated, and [3] Berthold: site 32WD1627 is avoided by construction workspace design as indicated. If consulted by a federal agency we would concur with a "No Historic Properties Affected" determination provided the projects are of the nature stated, the above stipulations are followed, and each takes place in the locations as mapped in the project correspondence. Thank you for the opportunity to review the report and to further consultation on the project. Please include the ND SHPO reference number listed above in any further correspondence for this specific project. If you have any questions, please contact either Paul Picha at (701) 328-3574 or [ppicha@nd.gov](mailto:ppicha@nd.gov) or Susan Quinnell at (701) 328-3576 or [squinnell@nd.gov](mailto:squinnell@nd.gov)

Sincerely,

Merlan E. Paaverud, Jr.  
State Historic Preservation Officer (North Dakota)  
and  
Director, State Historical Society of North Dakota

**U.S. Fish and Wildlife Service Concurrence with  
Technical Memorandum**



## United States Department of the Interior



FISH AND WILDLIFE SERVICE  
North Dakota Ecological Services Field Office  
3425 Miriam Avenue  
Bismarck, North Dakota 58501  
(701) 250-4481, ndfieldoffice@fws.gov

**JUL 08 2014**

In reply, please reference TAILS #2013-CPA-0264

Enbridge Energy Partners, LLC  
Major Projects, Environmental Department  
Attn: Jennifer Griggs  
1409 Hammond Avenue  
Superior, Wisconsin 54880

Dear Ms. Griggs:

This is in response to a request from Enbridge Energy Partners, LLC (Enbridge) for planning assistance regarding a proposed 24-inch diameter oil pipeline and related facilities from the existing Beaver Lodge Station to the existing Berthold Station in North Dakota (Project). This Project is a segment of the larger Sandpiper Pipeline (a larger expansion effort between Tioga, ND and Superior, WI) that has independent utility and therefore is being constructed in advance of the other portions of the Sandpiper Pipeline, under separate environmental review. The Project consists of two primary elements: facility construction and mainline construction.

- 1) **Facilities:** Three facilities will be constructed adjacent to the existing Beaver Lodge, Stanley, and Berthold facilities.
  - a. Beaver Lodge—two new tanks, leak detection meters, pumps, sumps, manifolds, utility buildings, and fencing.
  - b. Stanley—two new tanks, leak detection meters, pumps, sumps, manifolds, pig launcher and receiver, electrical substation, and fire water pond.
  - c. Berthold—one new tank, maintenance building, leak detection meters, pumps, sumps, manifolds, and utility buildings.
- 2) **Mainline:** The mainline is approximately 57 miles long and will be generally constructed along Enbridge's existing Beaver Lodge Loop pipeline, offset 25 feet. The construction is anticipated to start approximately September 1, 2014.

This letter provides technical assistance from the U.S. Fish and Wildlife Service (Service) to Enbridge for planning purposes and incorporates commitments made by Enbridge in a letter dated May 23, 2014 and several e-mail correspondence (from Jennifer Griggs to David Larson on May 30, 2014; from Jennifer Griggs to Carol Aron on June 5 and June 10-26, 2014 (see enclosures)). The Service offers the following comments under the authority of and in accordance with the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), the Endangered

Species Act (ESA) (16 U.S.C. 1531 *et seq.*), and the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d, 54 Stat. 250).

### **Threatened and Endangered Species**

It is our understanding that the U.S. Army Corps of Engineers (Corps) has determined that they have jurisdiction on the proposed project. Therefore, we assume the Corps will be the lead federal agency. The implementing regulations for the ESA direct federal agencies to consider the action area for a proposed action. Action area is defined as: "All areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action," (50 CFR §402.2). Note that this definition includes an area beyond the jurisdiction of the Corps, in this case to include the impacts of the entire 57-mile route. ESA regulations require federal agencies to analyze interrelated and interdependent actions together with the effects of the federal action (50 CFR §402.2, definitions "effects of the action"). The Service believes construction of the pipeline in areas of outside of the Corps jurisdiction would be interdependent with the issuance of a Nationwide Permit pursuant to the Clean Water Act because the Project has no independent utility separate from the Corps jurisdiction. Because of the interrelated or interdependent activities that may cause additional effects to federally-listed resources, we expect to the Corps will request to consult with the Service if they determine that any part of the 57-mile project "may affect" listed species.

The May 23 letter and email communications mentioned above described the potential project impacts on the endangered gray wolf (*Canis lupus*) and whooping crane (*Grus americana*); threatened piping plover (*Charadrius melodus*); and proposed northern long-eared bat (*Myotis septentrionalis*); Dakota skipper (*Hesperia dacotae*); and rufa red knot (*Calidris canutus rufa*). Enbridge proposes measures to avoid impacts on listed and proposed species. If suitable habitat for these species is present, Enbridge has committed to monitor for the presence of whooping cranes, piping plovers, red knots, Dakota skippers, and northern long-eared bats following protocols described in the letter and in the June 10-June 26 e-mail string. If individuals are observed, steps as described in the May 23 letter and June 10-June 26 e-mail string will be taken to avoid impacts. In addition, best management practices will be implemented as described in the May 23 letter to ensure that the proposed project does not result in erosion or sedimentation of wetlands, and all contours, hydrology, and vegetative cover will be restored after construction. With these commitments in place, we anticipate that significant impacts to federally-listed species would be avoided.

### **Bald and Golden Eagles**

Enbridge completed a survey for bald (*Haliaeetus leucocephalus*) and golden (*Aquila chrysaetos*) eagles along the proposed pipeline route. No nests were found. Enbridge has committed to additional surveys for bald and golden eagle nests prior to construction in future years if work is delayed or protracted. If nests are found, Enbridge has proposed to take steps as described in the May 23 letter to ensure that nesting bald and golden eagles are not disturbed. With these commitments in place, we anticipate that significant impacts on bald or golden eagles would be avoided.

### **Migratory Bird Treaty Act**

The MBTA prohibits the taking, killing, possession, and transportation, (among other actions) of migratory birds, their eggs, parts, and nests, except when specifically permitted by regulations. While the MBTA has no provision for allowing incidental take, the Service realizes that some birds may be killed during project construction and operation even if all known reasonable and effective measures to protect birds are used. The Service's Office of Law Enforcement carries out its mission to protect migratory birds through investigations and enforcement, as well as by fostering relationships with individuals, companies, and agencies that have taken effective steps to avoid take of migratory birds, and by encouraging others to implement measures to avoid take of migratory birds. It is not possible to absolve individuals, companies, or agencies from liability even if they implement bird mortality avoidance or other similar protective measures. However, the Office of Law Enforcement focuses its resources on investigating and prosecuting individuals, companies, and agencies that take migratory birds without identifying and implementing all reasonable, prudent, and effective measures to avoid that take. Individuals, companies, or agencies are encouraged to work closely with Service biologists to identify available protective measures when developing project plans and/or avian protection plans, and to implement those measures prior to/during construction or similar activities.

Enbridge has committed to measures to avoid impacts on migratory birds including timing restrictions, clearing the pipeline route of habitat prior to the start of the construction season, or surveying habitat to identify and avoid (0.1 mile skip distance) active nests. Additionally, Enbridge had committed to mitigate for temporary and permanent losses of grasslands, forested habitat, and wetlands (both non-jurisdictional and jurisdictional pursuant to the Clean Water Act as per an e-mail from Jennifer Griggs to David Larson sent on May 30, 2014) for both listed species and migratory birds.

Thank you for the opportunity to comment on this project proposal. If you require further information, please have your staff contact Carol Aron of my staff at (701) 250-4481 or at the letterhead address.

Sincerely,



Kevin Shelley  
Acting Assistant Field Supervisor  
North Dakota Field Office

Enclosures

cc: U.S. Army Corps of Engineers, Bismarck, ND  
Attn: D. Cimarosti



May 23, 2014

Kevin Shelley  
Acting Assistant Field Supervisor  
U.S. Fish and Wildlife Service  
North Dakota Field Office  
3425 Miriam Avenue  
Bismarck, North Dakota 58501-7926

Re: U.S. Fish and Wildlife Service - Technical Assistance Request  
Beaver Lodge to Berthold Segment (Sandpiper Pipeline), NDPL, LLC

Mr. Shelley,

North Dakota Pipeline Company, LLC (NDPL), a subsidiary of Enbridge Energy Partners, LP, is planning to construct a new 24-inch diameter oil pipeline and related facilities from its existing Beaver Lodge Station to its existing Berthold Station ("the Project"). The 57-mile Project corridor generally runs from west to east and will cross Williams (4.4 mi), Mountrail (44.6 mi), and Ward (8 mi) counties, North Dakota (Figure 1). This Project is a small segment of the larger Sandpiper Pipeline (a larger expansion effort between Tioga, ND and Superior, WI) that has independent utility<sup>1</sup> and therefore is being constructed in advance of the other portions of the Sandpiper Pipeline, under separate environmental review. The Project consists of two primary elements: facility construction and mainline construction:

- 1) **Facilities:** Three facilities will be constructed adjacent to the existing Beaver Lodge, Stanley, and Berthold facilities, with ground-disturbing work scheduled to start in mid-June, 2014.
  - a. Beaver Lodge—2 new tanks, leak detection meters, pumps, sumps, manifolds, utility buildings, and fencing.
  - b. Stanley—2 new tanks, leak detection meters, pumps, sumps, manifolds, pig launcher and receiver, electrical substation, and fire water pond.
  - c. Berthold—1 new tank, maintenance building, leak detection meters, pumps, sumps, manifolds, and utility buildings.
- 2) **Mainline:** The mainline is approximately 57 miles long and will be generally constructed along NDPL's existing Beaver Lodge Loop pipeline, offset 25 feet. The construction schedule for the mainline construction is more flexible, but will not start before September 1, 2014.

---

<sup>1</sup> Independent utility of this Project is based on the following: 1) up to 25,000 barrels a day of oil injected into the pipeline at Beaver Lodge or Stanley facilities will be delivered at Berthold to other pipelines or to an existing rail loading facility, and 2) this Project will be constructed whether or not the remaining proposed pipeline along the Sandpiper corridor is completed as NDPL has commercial drivers for these deliveries at Berthold.



The Project is eligible for coverage under the U.S. Army Corps of Engineers (USACE) Nationwide Permit 12 (NWP 12), Utility Line Activities, for crossings of USACE jurisdictional wetlands and buffers. NWP 12 includes several general conditions, including General Condition 18, prohibiting any activity that is “likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation...or which will directly or indirectly destroy or adversely modify the critical habitat of such species”. In addition, NWP 12 specifies that the activity cannot be authorized if it “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. The USACE is responsible for federal review of USACE jurisdictional areas (see Figure 1 and attached .kmz files), and, if the USACE determines the Project “may affect” any federally listed species or their habitat, the USACE will initiate consultation directly with FWS.

Through this letter, NDPL is requesting technical assistance from the U.S. Fish & Wildlife Service on proposed conservation measures to protect species. The following sections summarize the proposed Project impacts and discuss proposed conservation measures, as applicable, for each species. The Project impacts are primarily related to construction, although future operations and maintenance activities are also addressed at the end of this letter. NDPL proposes to apply the same conservation measures to both USACE jurisdictional areas and non-USACE jurisdictional areas, and will provide the same proposed conservation measures to the USACE in support of the NWP12 permit.

A summary of federally protected (or proposed) species and the presence of potential suitable habitat within the environmental survey corridor for facilities and mainline construction identified for this segment is provided in Table 1. No critical habitat is located within the environmental survey corridor. Following Table 1, potential effects to all federally listed and proposed species, migratory birds, and bald eagles are addressed. For any species that may be affected by the Project, NDPL has proposed conservation measures in an effort to avoid adversely affecting any protected species.

TABLE 1. Summary of Federally Protected Species, Protective Legislation, ESA Status, and Potential Suitable Habitat Present

Species				Proposed Activity / Potential Habitat Present	
Scientific Name	Common Name	Legislation	ESA Status	Facilities	Mainline
<i>Canis lupus</i>	Gray wolf	ESA	E	X	X
<i>Grus americana</i>	Whooping crane	ESA, MBTA	E	X	X
<i>Charadrius melodus</i>	Piping plover	ESA, MBTA	T	X	X
<i>Hesperia dacotae</i>	Dakota skipper	ESA	PT	-	X
<i>Myotis septentrionalis</i>	Northern long-eared bat	ESA	PE	-	X
<i>Calidris canutus rufa</i>	Rufa red knot	ESA, MBTA	PT	-	X
-	Migratory birds	MBTA	-	X	X



<i>Haliaeetus leucocephalus</i>	Bald eagle	BGEPA, MBTA	-	-	X
<i>Aquila chrysaetos</i> *	Golden eagle	BGEPA, MBTA	-	-	-

ESA = Endangered Species Act, MBTA = Migratory Bird Treaty Act, BGEPA = Bald and Golden Eagle Protection Act

(E) = Endangered, (T) = Threatened, (PE or PT) = Proposed for listing as endangered or threatened (anticipated listing November, 2014)

\* No golden eagle nests were documented during aerial surveys conducted in March, 2014, and none are expected in future surveys based on the distribution of golden eagles in North Dakota.

### GRAY WOLF (*CANIS LUPUS*)

The gray wolf is listed in Williams, Mountrail, and Ward counties. According to the North Dakota Department of Agriculture, there is not a permanent breeding population of the wolves in North Dakota. Wolves can be found almost anywhere in the state, but prefer more wooded areas such as the Turtle Mountains. Wolves outside the Turtle Mountains are most likely transitory individuals from Minnesota or Manitoba, and will be able to avoid pipeline construction activity. This Project is not expected to result in adverse impacts on this species.

### WHOOING CRANE (*GRUS AMERICANA*)

The whooping crane is listed in Williams, Mountrail, and Ward counties. The Project is within a 200-mile migration pathway of the self-sustaining Aransas-Wood Buffalo National Park (AWBP) population that winters along the Gulf Coast of Texas and nests in northern Canada<sup>2</sup>. Although the Project will not affect whooping crane nesting, it is possible that the whooping crane may fly over the Project area or utilize wetlands or river corridors within the Project area as stopover habitat for a few days. Because the whooping crane could be affected by proposed Project activities, the following conservation measures will be employed by NDPL during construction activities to avoid adverse impacts on this species:

1. Environmental inspectors and Project crew leadership will be trained to look for whooping cranes during spring and fall migration seasons, and to report any potential sightings immediately to NDPL. If whooping cranes are observed within a one-mile radius of the Project area during construction, all work on the right-of-way that is within a one-mile radius will cease and FWS will be notified. Construction will be restarted only after the birds leave the area and FWS has been notified.
2. Construction best management practices (BMPs) for erosion and sediment control will be employed per federal, state, and local requirements, to minimize impacts to wetlands and

<sup>2</sup> U.S. Fish & Wildlife Service, 2007. International Recovery Plan, Whooping Crane (*Grus americana*), 3<sup>rd</sup> Revision, accessed at [http://ecos.fws.gov/docs/recovery\\_plan/070604\\_v4.pdf](http://ecos.fws.gov/docs/recovery_plan/070604_v4.pdf) on March 13, 2014.



drainages during construction. All contours, hydrology, and vegetative cover will be restored after construction, according to the Environmental Protection Plan for the Project.

3. As described in the Voluntary Compensatory Mitigation section below, NDPL has agreed to minimize impacts from habitat loss through mitigation.

### PIPING PLOVER (*CHARADRIUS MELODUS*)

The piping plover is listed in Williams, Mountrail, and Ward counties. NDPL contracted with Merjent, Inc. and subcontractor West, Inc. to conduct surveys for piping plover habitat in 2013. West will continue to conduct surveys for piping plover habitat and will also survey for individuals along the Project corridor in 2014 and 2015 as described below.

Suitable habitat for the piping plover was defined as wetlands 1 hectare or greater with exposed beach and gravel, sand, or cobble substrate. Currently, we estimate that as many as 59 wetland areas may be suitable for piping plovers within the 57-mile environmental survey corridor; of these 59 wetlands, 38 are 2 hectares or greater. Presence and availability of suitable habitat for the species is largely dependent on water levels that vary across years. Thus, the results of habitat assessments may not be representative of the habitat unless they are conducted during the year of construction. The following conservation measures will be employed by NDPL during construction activities to avoid adverse impacts to this species:

1. NDPL will avoid construction within 0.5 mile of Designated Critical Habitat during piping plover nesting season (April 1-September 1).
2. NDPL will avoid construction within potential suitable nesting habitat during piping plover nesting season (April 1-September 1) to the greatest extent feasible.
3. In areas where construction during the nesting season is unavoidable, surveys will be conducted in suitable nesting habitat within the environmental survey corridor for presence/absence of piping plovers. Where potentially suitable wetlands extend beyond the environmental survey boundary, surveyors will visually assess these portions of the wetland from the environmental survey corridor. Surveys will be conducted at least twice to determine whether piping plovers may be present; once within 1 week prior to the start of construction and once the morning of construction. If the results are negative, construction will proceed as planned. If results are positive in any area, NDPL will contact the USFWS, avoid the wetland(s) where piping plovers have been observed and a 0.5-mile buffer where piping plover are present. NDPL will re-survey areas where plovers have been observed and notify FWS when the piping plovers have left the area prior to proceeding with construction in those areas. The surveys will be conducted without disturbing the birds to the extent practicable. Due to the risk of stepping on nests or keeping adults away from nesting and/or brood-rearing activities, surveyors will not attempt to find nests.
4. Construction best management practices (BMPs) for erosion and sediment control will be employed per federal, state, and local requirements, to minimize impacts to wetlands and



drainages during construction. All contours, hydrology, and vegetative cover will be restored after construction, according to the Environmental Protection Plan for the Project.

5. Although no critical habitat occurs within the environmental survey corridor, the pipeline crosses two streams that drain to piping plover critical habitat unit 2, Mountrail #8. The crossings are less than 0.2 miles from the habitat unit. To provide additional protection from outside force damage, NDPL has designed the minimum depth of cover within 0.5 miles of the critical habitat to be 48", 12" deeper than the 36" minimum depth of cover required by PHMSA (49 CFR 192.327). Based on the proximity of the crossings, NDPL has reviewed its spill response procedures to ensure a spill would be responded to quickly and with adequate resources at this location. The attached Pipeline Integrity and Spill Response Memo provide an overview of NDPL's release detection and response procedures. The following measures are in place to protect the critical habitat at this location:
  - a. This location is within the 30 minute response time zone, based on response from the manned station in Stanley (5.6 miles, 10 minutes travel time). The Stanley facility currently has absorbent boom and a spill response trailer on hand, and access to four Oil Spill Response Organizations (OSROs). One of the OSROs has a less than 1 hour response time to this location, and the other three OSROs have a 1-2 hour response time. With the planned addition of the Sandpiper pipeline, an additional spill response trailer and 2 more OSROs will be added to this location by the end of 2014.
  - b. Because NDPL/Enbridge has an existing pipeline in this area, the piping plover critical habitat is already identified as an Environmentally Sensitive Area (ESA)/High Consequence Area (HCA) within the Integrated Contingency Plan (ICP). See attached HCA Map.
  - c. Any spill within an ESA/HCA triggers immediate notifications to North Dakota Game & Fish and USFWS.
  - d. Any spill within an ESA/HCA triggers immediate notification to Enbridge Environment, and a ICS 232 Resources At Risk Environmental Assessment must be completed within 1-2 hours. Enbridge Environment would review the site and identify specific resource concerns (i.e. piping plovers, nesting season, etc.). If wildlife may be affected by the spill, the Focus Wildlife Response Team (contractors) will be mobilized to the site.
  - e. Shoreline protection would be prioritized for any spill in this area. Because natural drainages are present, blocking dams may be installed on any drainage that oil could reach. Blocking dams are constructed with soil, sandbags, or other available material, and lined with plastic to stop the downgradient movement of oil.
  - f. Once the initial spill response is complete, NDPL would then focus final cleanup and restoration. If the spill was significant, NDPL would work with federal agencies through the Natural Resources Damage Assessment (NRDA) process.
6. As described in the Voluntary Compensatory Mitigation section below, NDPL has agreed to minimize impacts from habitat loss through mitigation.



## DAKOTA SKIPPER (*HESPERIA DACOTAE*)

The Dakota skipper is currently proposed as a threatened species in Mountrail and Ward counties. NDPL is assuming the species will be listed in early November, 2014. No critical habitat for the Dakota skipper has been proposed within Mountrail or Ward counties. NDPL contracted with Merjent, Inc. and subcontractor West, Inc. to conduct Dakota skipper suitable habitat surveys along the Project corridor in 2013. Suitable habitat for the Dakota skipper was defined as grasslands or discrete areas within grasslands that were untilled, predominantly native, and that had appropriate larval food and nectar plant species present. Results of the 2013 surveys documented 24 areas of suitable habitat within the 57-mile environmental survey corridor.

Although 98% of the corridor was surveyed in 2013, 3 areas were not surveyed due to the lack of access/landowner permission and minor changes to the Project corridor. Additional surveys will be conducted in 2014 and 2015 for any areas that could not be surveyed in 2013. The following conservation measures will be employed by NDPL during construction activities to avoid adverse impacts to this species:

1. Avoid disturbance within suitable habitat by re-routing around suitable habitat, minimizing temporary workspace to avoid suitable habitat, and/or boring/drilling beneath suitable habitat. Rerouting and reducing workspace has already been utilized to avoid 19 of the 24 areas of potentially suitable habitat.
2. If a potential habitat site cannot be avoided (5 sites at present), conduct surveys for individuals (using an approved USFWS survey protocol) during the flight season (late June to mid-July, 2014). Conduct surveys until (1) at least three surveys of the entire survey area have been conducted during the flight period with at least two non-survey days between each survey or (2) a Dakota skipper is identified. If survey areas are identified as unsuitable for the species by an USFWS approved Dakota skipper surveyor, no additional surveys are necessary.
  - a. If individuals are present, the site will be avoided by designing a reroute around the site or boring beneath the site. If a travel lane through occupied habitat is necessary, the North Dakota and Twin Cities field offices will be contacted as early as possible for consultation. Timber mats may be installed to minimize soil disturbance and compaction outside of the vegetative growing season (first frost through April or early May), but will need to be discussed on a case-by-case basis to determine the potential of Take for the species. The area will be re-vegetated using FWS-approved seed mixes, as necessary.
  - b. If no individuals are present, minimize site disturbance by using a neck-down to the minimum necessary construction width (25' minimum neckdown) and proceed with standard open-cut construction techniques. Where possible, minimize additional ground disturbance to the minimal amount as possible.
3. If herbicide application is needed to control invasive species during NDPL's restoration and maintenance activities, only individual invasive plants (i.e., Canada thistle) will be spot-sprayed in native prairie and/or areas where Dakota skippers may be present. No general application of herbicides by NDPL or its contractors will be permitted in these areas because they have the



- potential to kill all forbs. Note: this conservation measure does not restrict pesticide/herbicide application by private landowners on the pipeline right-of-way.
4. NDPL will not use aerial application of herbicides for maintenance of the permanent right-of-way or adjacent forested areas.
  5. As described in the Voluntary Compensatory Mitigation section below, NDPL has agreed to minimize impacts from habitat loss through mitigation.

### NORTHERN LONG-EARED BAT (*MYOTIS SEPTENTRIONALIS*)

The northern long-eared bat is currently proposed as an endangered species in Williams, Mountrail, and Ward counties. NDPL is assuming the species will be listed in early November, 2014. FWS has developed and released interim guidance for this species<sup>3</sup>, based on the Indiana bat (*Myotis sodalis*) protocols, although it is expected that the understanding of the northern long-eared bat and appropriate conservation measures will evolve over the next few years.

There is little known about the distribution of northern long-eared bats in North Dakota, but they have been found in the Turtle Mountains, the Missouri River Valley, and the Badlands<sup>4</sup>. The northern long-eared bat winter habitat (hibernacula) includes underground caves and mines, which are not present within the Project footprint, and will not be affected by the Project. Summer roosting habitat, typically utilized from mid-May to mid-August, includes live and dead trees 3" diameter at breast height (dbh) or larger, generally found within forests or woodlots or forested landscape feature (e.g., woody wetlands, forested riparian areas, shelterbelts, single trees within 1,000 ft of other forested features).. Because trees 3" dbh and larger are present within the proposed mainline construction activities, it is possible that this Project could affect the summer roosting habitat of this species.

To determine whether northern long-eared bats are present within the Project area, surveys will be conducted between May 15-August 15, 2014. Acoustic surveys will be conducted at 4 locations to determine presence/probable absence per the Northern Long-Eared Bat Interim Conference and Planning Guidance. The proposed survey protocol was submitted to FWS for review in early April, 2014, and concurrence was received prior to the start of surveys. If the northern long-eared bat is detected through acoustic surveys, all trees 3" diameter at breast height (dbh) and greater within 3 miles of the detection will be considered occupied habitat. Habitat will be summarized by acres of forest rather than individual trees. If acoustic survey results confirm presence of northern long-eared bats, mist netting and telemetry surveys will be conducted prior to August 15, 2014 to locate maternity roost trees within

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<sup>3</sup> U.S. Fish & Wildlife Service, 2014. <sup>3</sup> Gilliam, Erin, and Paul Barnhart, 2011. Distribution and Habitat Use of the Bats of North Dakota, Final Report. Department of Biological Sciences, North Dakota State University.

<sup>3</sup> U.S. Fish & Wildlife Service, 2014. Northern Long-Eared Bat Interim Conference and Planning Guidance, USFWS Regions 2, 3, 4, 5 & 6. Accessed at <http://www.fws.gov/midwest/endangered/mammals/nlba/pdf/NLEBinterimGuidance6Jan2014.pdf> on March 13, 2014.

<sup>4</sup> Gilliam, Erin, and Paul Barnhart, 2011. Distribution and Habitat Use of the Bats of North Dakota, Final Report. Department of Biological Sciences, North Dakota State University.



the environmental survey boundary. If acoustic surveys are delayed due to weather, mist net surveys may be employed to avoid delays associated with interpreting the acoustic survey results. If surveys determine northern long-eared bats are present within the Project area, the following conservation measures will be employed by NDPL to avoid adverse impacts to this species:

1. After listing, NDPL will re-route the project footprint, bore, narrow the construction workspace, or employ another measure to avoid cutting any maternity roost trees used by the species or trees within a 100-foot buffer of any maternity roost tree.
2. Clearing of trees 3" dbh or greater within northern long-eared bat habitat will be limited to October 1-April 1 or will take place after surveys have shown that the habitat is not occupied.
3. Within a northern long-eared bat home range (defined as within a 1.5 mile radius of a documented maternity roost tree or 3 miles or a maternity mist-net capture), no more than 5% of suitable habitat will be removed.
4. During construction, trees, limbs, brush, and debris will not be burned in the right-of-way within 500 feet of known habitat.
5. To minimize potential impacts on foraging bats during construction, NDPL will limit clearing and heavy equipment operation activities within 300 feet of documented roost trees identified during the 2014 field surveys to one-half hour after dawn to one-half hour before dusk from April 1 to October 1. This timing restriction will allow time for bats to return to roost trees at dawn and time for bats to emerge from roosts at dusk.
6. NDPL will not use aerial application of herbicides for maintenance of the permanent right-of-way or adjacent forested areas.
7. As described in the Voluntary Compensatory Mitigation section below, NDPL has agreed to minimize impacts from habitat loss through mitigation.

#### RUFA RED KNOT (*CALIDRIS CANUTUS RUFA*)

The rufa red knot is currently proposed as a threatened species in North Dakota. The rufa red knot is a long-distance migrant shorebird that may fly over the Project area or utilize wetlands or river corridors within the Project area as stopover habitat for a few days. Because the rufa red knot could be affected by proposed Project activities, the following conservation measures will be employed by NDPL during construction activities to avoid adverse impacts to the species:

1. Environmental inspectors and Project leadership will be trained to look for the rufa red knot during its migration seasons, and to report any potential sightings immediately to NDPL. If the rufa red knot are observed within one mile of the Project area during construction, all work on the right-of-way that is within a one-mile radius will cease, and FWS will be notified. Construction will be restarted only after the birds leave the area, and FWS has been notified.
2. Construction BMPs for erosion and sediment control will be employed per federal, state, and local requirements, to minimize impacts to wetlands and drainages during construction. All contours and vegetative cover will be restored after construction, according to the Environmental Protection Plan for the Project.



3. As described in the Voluntary Compensatory Mitigation section below, NDPL has agreed to minimize impacts from habitat loss through mitigation.

### BALD EAGLES (*HALIAEETUS LEUCOCEPHALUS*)

The eagle nesting season occurs between February 1 and July 15 in North Dakota. Most bald eagles nest in secluded forested landscape or along wooded streams and lakes. Generally, the combination of a large tree (such as a cottonwood), a food supply, and water within reasonable flying distance provide suitable eagle nesting habitat. However, some nests have been identified in a single tree or shelterbelt completely surrounded by cropland. Aerial surveys were conducted for active and inactive eagle nests within 0.5 mile of the Project in mid-March 2014. No bald eagle nests were identified. Although golden eagle nests were included in the survey plan, no golden eagle nests were identified in 2014, and none are expected in the Project area given the location of the Project and distribution of golden eagles in North Dakota. To avoid impacts on adult eagles, chicks, eggs, and active and inactive nests, NDPL will implement the following conservation measures:

1. Conduct aerial surveys for active and inactive eagle nests within 0.5-mile of the Project between mid-March and mid-April in each year the project is being constructed.
2. Implementing a 0.25 mile no-disturbance buffer around active bald eagle nests and a 0.50 mile no-disturbance buffer around active golden eagle nests.
3. Avoid removal of trees with active or inactive eagle nests by micro-routing, narrowing the construction workspace, or boring/drilling.
4. If trees with active or inactive eagle nests cannot be avoided, NDPL will seek a nest take permit from FWS.
5. As described in the Voluntary Compensatory Mitigation section below, NDPL has agreed to minimize impacts from habitat loss through mitigation.

### MIGRATORY BIRDS

The migratory bird breeding season is April 1 to July 15 for the majority of migratory birds in North Dakota. To avoid impacts on migratory birds, NDPL will implement one of the following conservation measures:

1. Initiate construction after July 15 (end of breeding season).
2. If construction occurs during the migratory bird breeding season (April 1 – July 15), implement one of the following:
  - Remove habitat from within the workspace boundaries prior to April 1st or immediately after the snow has melted by (a) scraping the ground free of vegetation using a bulldozer or other equipment or (b) discing the ground to discourage re-growth of vegetation; this activity would be in accordance with the Environmental Protection Plan (see attached; emphasis on erosion and invasives control); or



- Conduct nest surveys within the workspace boundaries immediately prior to (within 5 days) of clearing/construction and buffer (20 feet) and avoid active nests (i.e., minimum 0.1 mile construction skips) until after the chicks fledge.
3. As described in the Voluntary Compensatory Mitigation section below, NDPL has agreed to minimize impacts from habitat loss through mitigation.

## OPERATIONS AND MAINTENANCE ACTIVITIES

This letter is not intended to request any authorization to take federally protected species either during construction activities, operations and maintenance activities, or spill response activities. Although the conservation measures described in this letter will also apply to future operations and maintenance activities, we understand that future operations and maintenance activities that may affect federally protected species may require consultation with FWS prior to starting such activities. To address the potential for spills, the attached memorandum summarizes Enbridge's integrity program, spill response program, and the statistical likelihood of a spill occurring.

## VOLUNTARY COMPENSATORY MITIGATION

NDPL has agreed to mitigate for all temporary and permanent losses of grasslands, forested habitat, and non-USACE-jurisdictional wetlands for both listed species and migratory birds. The compensatory mitigation and ratios will be based on a habitat equivalency analysis conducted by FWS in collaboration with NDPL. The compensatory mitigation will be formalized through a Memorandum of Understanding (MOU) between NDPL and FWS. The MOU will establish a project-specific conservation fund that will be administered through a third party, who will report progress to FWS and NDPL. The MOU will be in place by September 30, 2014.

## SUMMARY

Based on the implementation of conservation measures, NDPL believes this Project will not result in take of any listed species, bald and golden eagles, or migratory birds. We request that the Service review this information and provide technical assistance on whether or not any significant impacts are likely to occur if this Project is implemented as described.



Thank you for your assistance in reviewing this Project. If you have any questions or need additional information, please contact Jennifer Griggs at 715-398-4665 or Jennifer.Griggs@enbridge.com.

Sincerely,

Jennifer Griggs  
Sr. Environmental Analyst

CC: Karen Herrington, FWS

Att: Figure 1 (Project Map)  
PDF Map Set  
HCA Map near Piping Plover Critical Habitat  
Shapefiles: Construction Workspace  
Environmental Survey Corridor  
Dakota Skipper Potential Habitat  
Grassland – Native and Non-native  
Wetlands  
Memorandum: Pipeline Integrity and Spill Response  
Environmental Protection Plan REV Oct 2013

**From:** Jennifer Griggs  
**To:** "[Larson, David](#)"  
**Cc:** [Jeff Gosse](#); [Karen Herrington](#)  
**Subject:** RE: Enbridge mitigation ratios for non-USACE mitigated wetland impacts  
**Date:** Friday, May 30, 2014 9:05:00 AM

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Hi David,

Enbridge agrees that as long as we're not already paying mitigation through the USACE process for any particular area, we can include this area in the FWS mitigation and HEA analysis—including COE-jurisdictional wetlands in ND. The USACE mitigation ratio standards are based on permanent impacts (permanent fill and permanent conversion of wetland type) and the location of the mitigation site in relation to the impacted watershed. Temporary losses to wetland function are also assigned mitigation ratios on a case by case basis. Enbridge can calculate acreages based on whatever category types are defined, so I would recommend focusing on wetland type (PFO, PSS), then whether the impacts are temporary (soils, hydrology, vegetation restored post-construction) or permanent (soils, hydrology restored, but permanent conversion from PSS/PFO to PEM). Each USACE district treats this differently—Tulsa and Oklahoma do not require mitigation for temporary impacts and do not recognize wetland type conversion as a permanent impact, whereas St. Paul, Rock Island, St. Louis, and Kansas City do. Of those that require mitigation, each have different interpretations of temporary and permanent impacts, including many that do not require any mitigation for non-shrub/forested wetland types (since wetlands will be fully restored within a few years), and each apply different mitigation ratios.

We could also call out special wetland types, such as the alkali wetlands, and provide a higher mitigation ratio (if the temporary loss of wetland function may negatively impact BCCs). Enbridge would rely on FWS to review the land cover maps and identify where special classes like this occur. Enbridge would also want mitigation ratios to consider real impacts and the surrounding landscape—for instance—if we treat alkali wetlands specially, is a BCC really negatively affected with the pipeline project disturbing a small part of a large alkali wetland or wetland complex, or would the BCC naturally avoid construction disturbance and readily use the restored area after construction is complete? Would the BCC be affected any differently than a non-alkali wetland crossing? Do any BCCs actually benefit from temporary or permanent impacts to wetlands i.e. killdeer in WI like to nest in the ROW immediately after the trench is backfilled but prior to vegetation being restored.

In the recent past, Enbridge has either developed our own wetland banks or purchased credits from a wetland mitigation bank to fulfil USACE requirements—this would be a very different process than the FWS process (using a 3<sup>rd</sup> party fiduciary to manage voluntary compensatory mitigation funds). Because the ratios are not straightforward, and the "wetland mitigation" process is very different from the FWS voluntary compensatory mitigation process, it seems like it would be most prudent to treat wetland types as just another cover class, with use whatever mitigation ratios are deemed appropriate through the HEA analysis. This may be informed by USACE ratios, but would not follow the USACE wetland mitigation process.

I apologize for not having an easy answer. Enbridge can develop a proposed wetland mitigation ratio table based on wetland type and permanent vs. temporary impacts, although you may want to take

the lead on this like the other cover classes. Please let me know if you would like us to start working on this, or if we should stand by.

Thanks,

*Please note—I will be out of the office on vacation June 27-July 4.*

**Jennifer Griggs**

Sr. Environmental Analyst, Major Projects (US)

**ENBRIDGE**

TEL: 715-398-4665 | Cell: 218-343-0206  
1409 Hammond Avenue, Superior, WI 54880  
[www.enbridgeUS.com](http://www.enbridgeUS.com)

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**From:** Larson, David [[mailto:david\\_larson@fws.gov](mailto:david_larson@fws.gov)]

**Sent:** Tuesday, May 27, 2014 2:42 PM

**To:** Jennifer Griggs

**Cc:** Jeff Gosse; Karen Herrington

**Subject:**

Jennifer,

We will need a little time to discuss this internally. However, I would think that if the Omaha ACOE is not mitigating for wetlands, then we probably would since this is still an impact to habitat. As far as different ratios for different impacts to wetlands go, we will need to talk to Bob Russel and a couple other folks to determine if some impacts are more severe than others. Would you have acres of the different categories as described in point 2 of your email? Finally, since you have worked with the Corps on numerous occasions, do you know if they do a standard ratio, or do they generally have categories dependent upon the type of impacts to wetlands? We seem to run into a brick wall any time we try to converse with the Corps.

Thanks,

David

--

**David Larson**

**U.S. Fish&Wildlife Service**

**Assistant Regional Energy Coordinator**

**5600 American Blvd. West, Suite 990**

**Bloomington, MN 55437-1458**

**Office: 612-713-5336**

**Cell: 612-718-7138**

**FAX: 612-713-5292**

Hi David,

When we met on May 15, you indicated that FWS would like to duplicate the USACE process for wetland mitigation for non-USACE-jurisdictional wetlands. Because USACE-St Paul District will be assuming jurisdiction over all affected wetlands within MN and WI through the Preliminary JD process, the only non-USACE-jurisdictional wetlands are located in ND. We have received word that USACE-Omaha District does not intend to require wetland mitigation for impacts to USACE-jurisdictional wetlands in ND.

With that in mind—

- 1) Does FWS have an alternative approach to establishing mitigation ratios for temporary losses of wetland function associated with non-jurisdictional wetlands?
- 2) What categories of wetland impacts should be considered—temporary impacts (restored after construction), wetland type conversion impacts (i.e. forested to wet meadow), and permanent impacts (permanently filled/developed)?
- 3) Does FWS concur that mitigation requirements (or lack thereof) for USACE-jurisdictional wetlands is the responsibility of USACE (not FWS)?

*"It's easier to wear slippers than to try and carpet the world" - Al Franken as Stuart Smalley*

**From:** Jennifer Griggs  
**To:** [Carol\\_Aron@fws.gov](mailto:Carol_Aron@fws.gov)  
**Cc:** [Herrington, Karen \(karen\\_herrington@fws.gov\)](mailto:karen_herrington@fws.gov)  
**Subject:** Beaver Lodge to Berthold, MBTA dates  
**Date:** Thursday, June 05, 2014 10:42:00 AM

---

Hi Carol,

I checked with the project team, and if clearing is needed between Feb 1-April 1, we will conduct raptor/owl surveys prior to any clearing activity. We do not anticipate any clearing during this time, but it is always possible that the project schedule gets shifted.

Thanks,

**Jennifer Griggs**

Sr. Environmental Analyst, Major Projects (US)

**ENBRIDGE**

TEL: 715-398-4665 | Cell: 218-343-0206  
1409 Hammond Avenue, Superior, WI 54880  
[www.enbridgeUS.com](http://www.enbridgeUS.com)

Integrity. Safety. Respect.

*Please note—I will be out of the office on vacation June 27-July 4.*

**From:** Jennifer Griggs  
**To:** "[Aron, Carol](#)"  
**Cc:** [Herrington, Karen \(karen\\_herrington@fws.gov\)](#); [Paul Meneghini](#); [ltewinkel@merient.com](#)  
**Subject:** RE: FW: Beaver Lodge to Berthold- Request for Technical Assistance, activities update/request  
**Date:** Thursday, June 26, 2014 1:05:00 PM

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Hi Carol,

NDPL will be closely monitoring withdraw and discharge sites for signs of erosion and water level change. NDPL's intention is to prevent any offsite impacts to wetlands rather than focus on mitigation of damages. Because wetland mitigation is not required in North Dakota for this project, NDPL will be including wetlands in the voluntary compensatory mitigation for MBTA, and if NDPL has unintended impacts to wetlands outside of the corridor, we will work with FWS to determine whether additional areas should be added to the voluntary compensatory mitigation fund.

Due to the high volumes required for hydrostatic testing (in excess of 1 million gallons total) it would not be possible to use tanks. Once the proposed hydrostatic test withdraw and discharge sites are identified by the project engineers, NDPL's environmental staff and consultants review the proposed locations (including checking NDGF's ANS records and relative volume/rates proposed to volume/rates of the waterbody), and if needed, will suggest alternate sites. This internal screening procedure is done to ensure the proposed activities will be in accordance with applicable federal, state, and local regulations, including prohibitions on the transport of ANS and impacting shoreland wetlands. The screening also reduces the risk of additional conditions being placed on the activity, and for the permits to be approved in a timely manner, since the goal of site selection is to choose sites that will have the least impact on the environment. Once the sites are screened internally, environmental staff will prepare and submit the permit applications. In terms of cross-basin transfer, NDPL will commit to not transferring water across the divide of the Missouri/Souris basins for this project.

I hope these answers are acceptable to FWS. I will be out of the office tomorrow, so please copy Leslie and Paul on your response (copied on this email).

Thanks,

**Jennifer Griggs, PMP**

Sr. Environmental Analyst, LP US Environment Projects

**ENBRIDGE**

TEL: 715-398-4665 | Cell: 218-343-0206  
1409 Hammond Avenue, Superior, WI 54880  
[www.enbridgeUS.com](http://www.enbridgeUS.com)

Integrity. Safety. Respect.

*Please note—I will be out of the office on vacation June 27-July 4.*

**From:** Aron, Carol [mailto:carol\_aron@fws.gov]  
**Sent:** Wednesday, June 25, 2014 4:54 PM  
**To:** Jennifer Griggs  
**Cc:** Herrington, Karen (karen\_herrington@fws.gov)

**Subject:** Re: FW: Beaver Lodge to Berthold- Request for Technical Assistance, activities update/request

Sorry, just a couple of clarifications. I'm hoping to get this out Friday.

First, I talked with the State Water Commission and the State Health Department about their requirements for pulling water from wetlands. They said they require that no more than 1/2 of the water in the wetland is pulled, so de-watering should not be an issue. In discussing impacts/mitigation, I am thinking more of the potential for impacts from the equipment causing erosion/devegetation/soil compression when pumping or discharging the water for the hydrostatic testing, not the increase/decrease of the water per se in the wetland. I assume that if impacts occur, NDPL will be monitoring them and will mitigate for the temporary losses if necessary. Let me know.

Would it be possible to discharge the water into a tank to avoid the potential for cross-basin transfer/ANS movement altogether? In talking with some people, it sounds like the volume of water may preclude this, but thought it was worth asking.

Thanks. I'll be out in the field most of the day tomorrow, but should be back in the late afternoon.

Carol Aron  
U.S. Fish and Wildlife Biologist  
3425 Miriam Avenue  
Bismarck, ND 58501  
Telephone: (701) 355-8506  
Fax: (701) 355-8513  
E-mail: [Carol\\_Aron@fws.gov](mailto:Carol_Aron@fws.gov)

"Anyone can love a mountain, but it takes a soul to love the prairie."  
- Variously attributed

On Mon, Jun 23, 2014 at 10:45 AM, Jennifer Griggs <[jennifer.griggs@NDPL.com](mailto:jennifer.griggs@NDPL.com)> wrote:  
Hi Carol,

I hope the following information answers your questions, but please let me know if you have any questions or need additional information.

Q: If they are doing the testing during the breeding/migration season for PIPL or WHCR, can NDPL commit to monitor the same as they are for construction?

A: At this point, it is anticipated that hydrostatic testing will be conducted outside of the PIPL breeding season (likely after September 1, 2015). If hydrostatic testing is conducted during the PIPL nesting season or WHCR migration season, NDPL will implement conservation measures described in the initial consultation letter (including conducting surveys for PIPL individuals, and the spotter/stop work within 1 mile/notify FWS protocol for WHCR) at water withdraw and discharge locations. If PIPL or WHCR are present, NDPL will seek an alternate waterbody, and contact the North Dakota State Water Commission to request a modification to the temporary water permit to utilize the alternate water source. If a suitable alternate waterbody is not available, or if the North Dakota State Water Commission denies the request for a permit modification, the waterbodies that have

PIPL or WHCR present will not be utilized until PIPL or WHCR have left the area.

Q: I'm not exactly sure what a test manifold is - where the water comes out of? If it is in a wetland (and probably often on uplands as well), I would think erosion control would likely always be necessary.

A: The test manifold is the control center for the hydrostatic test. No water is actually exposed to the environment around a test manifold—it is simply a set of valves used to control the pressure and volume of the hydrostatic test. Since no water is exposed to the environment at the manifold, erosion control would not be applicable. Erosion control during hydrostatic testing is focused on the intake and discharge locations. Any erosion/ground disturbance is regulated under Construction General Permit NDR10-0000, enforceable by the North Dakota Department of Health.

Q: Also, can there be a commitment about not dewatering a wetland to pull the water? Or maybe NDPL would track wetlands used & mitigate for those temporary losses as well. Finally, given the large number of isolated wetlands along the route, it doesn't really seem possible to not transfer test waters from one water body to another. Maybe that should be clarified.

A: Water appropriation and discharge is regulated by the North Dakota State Water Commission through a Temporary Water Permit. This includes requirements associated with volumes, rates, locations, and temperature for water withdraw and discharge. Water is typically appropriated from large waterbodies to minimize impacts to hydrology, and a North Dakota State Water Commission hydrologist is responsible for reviewing the temporary water permit application and adding additional conditions if appropriate. If hydrostatic testing occurs during the PIPL nesting season, NDPL will conduct surveys to ensure PIPL are not present prior to withdraw and discharge, so that any temporary fluctuations in water level will not affect PIPL nests. The North Dakota State Water Commission is also responsible for ensuring permitted activities do not inadvertently transfer aquatic nuisance organisms, and may add additional permit conditions related to this (i.e. withdraw/discharge must be from the same waterbody, or water treatment required prior to discharge). Finally, regarding wetland mitigation—any temporary water withdraw/discharge associated with hydrostatic testing will have impacts similar to natural fluctuations in water level, and NDPL does not intend to extend voluntary compensatory mitigation to encompass the entire wetland/waterbody.

Thanks,

**Jennifer Griggs**

Sr. Environmental Analyst, Major Projects (US)

NDPL

TEL: 715-398-4665 | Cell: 218-343-0206  
1409 Hammond Avenue, Superior, WI 54880

[www.NDPLUS.com](http://www.NDPLUS.com)

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*Please note—I will be out of the office on vacation June 27-July 4.*

**From:** Aron, Carol [[mailto:carol\\_aron@fws.gov](mailto:carol_aron@fws.gov)]

**Sent:** Friday, June 20, 2014 4:45 PM

**To:** Jennifer Griggs

**Cc:** Herrington, Karen ([karen\\_herrington@fws.gov](mailto:karen_herrington@fws.gov))

**Subject:** Re: FW: Beaver Lodge to Berthold- Request for Technical Assistance, activities update/request

Thanks Jennifer,

I have some outstanding questions. If they are doing the testing during the breeding/migration season for PIPL or WHCR, can NDPL commit to monitor the same as they are for construction? As with the line as a whole, there may be PIPL nesting in areas that we have never surveyed for. I'm not exactly sure what a test manifold is - where the water comes out of? If it is in a wetland (and probably often on uplands as well), I would think erosion control would likely always be necessary. Also, can there be a commitment about not dewatering a wetland to pull the water? Or maybe NDPL would track wetlands used & mitigate for those temporary losses as well. Finally, given the large number of isolated wetlands along the route, it doesn't really seem possible to not transfer test waters from one water body to another. Maybe that should be clarified.

Thanks

Carol Aron

U.S. Fish and Wildlife Biologist

3425 Miriam Avenue

Bismarck, ND 58501

Telephone: (701) 355-8506

Fax: (701) 355-8513

E-mail: [Carol\\_Aron@fws.gov](mailto:Carol_Aron@fws.gov)

"Anyone can love a mountain, but it takes a soul to love the prairie."

- Variously attributed

On Fri, Jun 20, 2014 at 12:00 PM, Jennifer Griggs <[jennifer.griggs@NDPL.com](mailto:jennifer.griggs@NDPL.com)> wrote:  
Hi Carol,

As of today, the quantity and locations of hydrostatic test water withdraw and discharge have not been finalized. All hydrostatic testing activities will be performed in accordance with the Environmental Protection Plan (EPP, draft attached) to ensure such activities do not impact surface water hydrology or cause erosion. Hydrostatic test water withdraw and discharge sites will not be located within piping plover critical habitat. If hydrostatic testing activities are performed during the piping plover and/or whooping crane nesting season, surveys will be performed prior to water withdraw or discharge. If plovers or whooping cranes are present, an alternative site will be used, or activities will be delayed until plovers have left the area.

Please let me know if you need additional information.

Thanks,

*Please note—I will be out of the office on vacation June 27-July 4.*

**Jennifer Griggs**

Sr. Environmental Analyst, Major Projects (US)

**NDPL**

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1409 Hammond Avenue, Superior, WI 54880  
[www.NDPLUS.com](http://www.NDPLUS.com)

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**From:** Aron, Carol [mailto:[carol\\_aron@fws.gov](mailto:carol_aron@fws.gov)]

**Sent:** Thursday, June 19, 2014 2:45 PM

**To:** Jennifer Griggs

**Cc:** Herrington, Karen ([karen\\_herrington@fws.gov](mailto:karen_herrington@fws.gov))

**Subject:** Re: FW: Beaver Lodge to Berthold- Request for Technical Assistance, activities update/request

Jennifer,

Thanks, this helps. I was reviewing the BA and it occurred to me that we didn't discuss hydrostatic testing at all in relation to plovers or whooping cranes for that matter on the first part of the pipeline. If they take water from plover wetlands, they could impact the water level, or when discharging it, they could affect the wetland, either by changing the hydrology or by causing erosion. Can NDPL make some explicit commitments about this? For example not to use known plover wetlands, to survey first if they are taking water during the time when plovers and/or whooping cranes may be present, and some more specific information about how they will ensure discharge doesn't cause erosion?

Thanks. Feel free to call me if you have questions.

Carol Aron  
U.S. Fish and Wildlife Biologist  
3425 Miriam Avenue  
Bismarck, ND 58501  
Telephone: (701) 355-8506  
Fax: (701) 355-8513  
E-mail: [Carol\\_Aron@fws.gov](mailto:Carol_Aron@fws.gov)

"Anyone can love a mountain, but it takes a soul to love the prairie."  
- Various attributed

On Wed, Jun 18, 2014 at 1:51 PM, Jennifer Griggs <[jennifer.griggs@NDPL.com](mailto:jennifer.griggs@NDPL.com)> wrote:  
Hi Carol,

Based on our phone conversations related to my June 10 email, please see the following clarifications in red text, below. Also, our engineering team shared this link to a document

that summarizes noise levels of many types of construction equipment that you may find useful for reviewing project activities: [http://www.wsdot.wa.gov/NR/rdonlyres/448B609A-A84E-4670-811B-9BC68AAD3000/0/BA\\_ManualChapter7.pdf](http://www.wsdot.wa.gov/NR/rdonlyres/448B609A-A84E-4670-811B-9BC68AAD3000/0/BA_ManualChapter7.pdf). If you have any additional questions or need more supporting information, please let me know!

Thanks,

**Jennifer Griggs**

Sr. Environmental Analyst, Major Projects (US)

NDPL

TEL: 715-398-4665 | Cell: 218-343-0206  
1409 Hammond Avenue, Superior, WI 54880  
[www.NDPLUS.com](http://www.NDPLUS.com)

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*Please note—I will be out of the office on vacation June 27-July 4.*

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**From:** Jennifer Griggs

**Sent:** Tuesday, June 10, 2014 11:27 AM

**To:** [Carol\\_Aron@fws.gov](mailto:Carol_Aron@fws.gov)

**Cc:** Herrington, Karen ([karen\\_herrington@fws.gov](mailto:karen_herrington@fws.gov))

**Subject:** Beaver Lodge to Berthold- Request for Technical Assistance, activities update/request

**Importance:** High

Hi Carol,

The Technical Assistance Request for the Beaver Lodge to Berthold Segment project (dated 05/23/14) stated “NDPL will avoid construction within 0.5 mile of Designated Critical Habitat during piping plover nesting season (April 1-September 1)”. NDPC would like to propose the following “support activities” within the 0.5-mile buffer of piping plover critical habitat during the April 1<sup>st</sup> to September 1<sup>st</sup> nesting season. **These proposed activities only apply to the critical habitat area when no plovers are present within the environmental survey corridor or observed within adjacent wetland areas. If plovers are present, the conservation measures proposed in our initial letter will apply, including a 0.5-mile buffer with no activity and notifying FWS immediately.** I understand that you intend to send a letter response to our 5/23/14 letter by the end of this week, but it seems in the best interest of the project that we clarify whether any of these activities can occur, and whether any additional conservation measures would apply at this time (and whether these details should be included in the FWS response). If you need additional time to review/respond to our 5/23/14 letter based on this email request, it would be acceptable to delay your response letter to 6/20/14.

Proposed “support activities” within the 0.5-mile buffer of piping plover critical habitat during the April 1st to September 1st nesting season:

1. Prior to construction, NDPC employs civil surveyors to accurately mark the construction workspace and identify other utilities in the immediate vicinity of construction (other pipelines, underground communications cables, underground power lines, USAF communication cables, etc.). This is referred to as construction staking and four-way sweeps. This work typically involves foot travel by the surveyors carrying GPS units and line location devices. There generally is very little to no noise associated with these activities. For the work that would be occurring within the 0.5-mile buffer of Piping Plover Critical Habitat during the April 1-September 1 nesting season, NDPC would commit to foot traffic only for these civil surveying tasks taking place within the nesting season. Granting this approval would allow construction within this area to commence in a timely fashion once the nesting season is over and would expedite overall construction within the area. The anticipated timeframe to complete these surveying efforts is approximately 1-2 days.

2. Subsequent to the civil surveying efforts, NDPC would to bring in a hydro-vac truck to visually identify any utilities identified through the sweep. NDPL lines 87 and 82 will need to be potholed at intervals of 328 feet through this area as part of the NDPL ground disturbance policy. This equates to approximately 56 locations in this area in addition to any other utilities discovered during the four-way sweep. A known crossing of a USAF missile cable will require an additional 3 locations. Historical data from previous projects as well as preliminary survey efforts conducted in the summer of 2013 provide strong evidence that the likelihood of discovering any further foreign utilities during the four-way sweep is unlikely. **The hydro-vac truck noise level is approximately 85 dba at a distance of 50ft, or the equivalent of a diesel truck, blender, or snow blower. The noise level reaching the piping plover critical habitat is expected to be significantly less, although it is difficult to estimate this due to the landscape and weather variables.** The likely time this effort would take would be approximately 2-3 days.

3. NDPC would also like to propose the idea of a onetime pass through the area for all off highway construction equipment as to avoid crew move arounds. It is highly inefficient to load up equipment for each crew and move around an area such as this buffer zone, therefore the option to create a travel lane and allow one way travel to off highway vehicles through this area would significantly reduce construction mobilization time and lessen the impacts to the surrounding area. This activity would be sporadic and ongoing throughout the project and would last only a few minutes at a time when a piece of equipment was traveling through. These travel activities are not expected to increase noise beyond existing noise generated from the nearby roads and gravel pit operations. **Only travel of off-highway equipment would be allowed—the majority of construction traffic is associated with street legal vehicles, which would not be permitted to drive through this area during nesting season (with the exception of the hydro-vac truck discussed above). Approximately 70 pieces of equipment working on this construction spread will not be street legal, and would be allowed a one-time, one-way pass through the travel lane during nesting season. Each piece of equipment would take 2-5 minutes to travel through the 0.5-mile critical habitat buffer. Equipment will intermittently pass throughout the life of the (approximately a 5 month window), however, there will likely be high traffic days followed by low to no traffic at all. The corridor will be barricaded and signed when not actively in use for the one-way equipment pass operations. Provisions of this one-way pass will be enforced by the field inspection team, and all field personnel will be trained on the requirements associated with this area.**

Please let me know if you are able to review/comment on these proposed activities prior to sending the response to our 5/23/14 letter. If you prefer, we could discuss this over the phone, and if more details are needed, we can have a project engineer participate.

Thank you,

**Jennifer Griggs**

Sr. Environmental Analyst, Major Projects (US)

NDPL

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1409 Hammond Avenue, Superior, WI 54880  
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**U.S. Army Corps of Engineers - Nationwide #12 Permit  
(Utility Line Activities)**



**DEPARTMENT OF THE ARMY**  
CORPS OF ENGINEERS, OMAHA DISTRICT  
NORTH DAKOTA REGULATORY OFFICE  
1513 SOUTH 12TH STREET  
BISMARCK ND 58504-6640

July 2, 2014

North Dakota Regulatory Office

[NWO-2013-0556-BIS]

Ms. Angela Ronayne  
Merjent, Inc.  
800 Washington Avenue N., Suite 315  
Minneapolis, Minnesota 55401

Dear Ms. Ronayne:

We have reviewed your request for Department of the Army (DA) authorization, on behalf of Enbridge (U.S.), Inc., for the proposed construction of approximately 57-miles of a crude oil pipeline. This project is referenced in your DA application as the Beaver Lodge Station to Berthold segment of the Sandpiper Pipeline Project (BL-B). This project will include open trench cuts through three jurisdictional waterbodies, Dry Fork Creek, an unnamed tributary of White Earth River and the Little Knife River. Once pipeline construction is completed the excavated areas will be backfilled and any disturbed areas restored to pre-project conditions and grades. The projects are located in the S $\frac{1}{2}$  of Section 27, Range 91 West; NE $\frac{1}{4}$  of Section 26, Range 94 West; and S $\frac{1}{2}$  of Section 34, Range 95 West; Township 156 North, Mountrail and Williams Counties, North Dakota.

Based on the information you provided to this office, it has been determined that this project and associated work is authorized by Department of the Army Nationwide Permit No. 12 found in the February 21, 2012 Federal Register (77 FR 10184), Reissuance of Nationwide Permits. Enclosed is a fact sheet that fully describes this Nationwide Permit and lists the General and Water Quality Conditions that must be adhered to for this authorization to remain valid.

This determination is applicable only to the permit program administered by the US Army Corps of Engineers. It does not eliminate the need to obtain other applicable Federal, State, Tribal and local permits as required. Please note that deviations from the original plans and specifications of the project could require additional authorization from this office.

Enbridge is responsible for all work accomplished in accordance with the terms and conditions of this nationwide permit. If a contractor or other authorized representative will be accomplishing the work authorized by this nationwide permit, it is recommended that they be provided a copy of this letter and the attached conditions so that they are aware of the limitations of the nationwide permit. Failure to comply with all the terms and conditions of this authorization may result in an enforcement action.

In compliance with General Condition 30, you are required to submit the following project compliance certification within thirty (30) days of project completion. [Please check all applicable statements.]

- I certify that I have completed the project as permitted.
- I certify that I have completed a modified version of the project.
- I certify that I have completed all required mitigation.

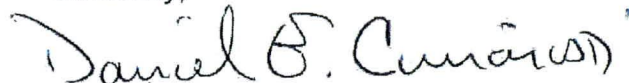
**Permittee's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

This verification will be valid until **March 18, 2017**. If the nationwide permit is modified, suspended, or revoked prior to this date, but is reissued without modification or the activity complies with any subsequent modification, this authorization remains valid until the expiration date. All of the existing nationwide permits are scheduled to be modified, reissued, or revoked prior to March 18, 2017. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice when the nationwide permits are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions.

The Omaha District, North Dakota Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey). If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

If you have any questions concerning this determination, please contact Mr. Jason Renschler of this office by letter or telephone at (701) 255-0015 and reference Nationwide Permit number **NWO-2013-0556-BIS**.

Sincerely,



Daniel E. Cimarosti  
Regulatory Program Manager  
North Dakota

Enclosure  
- Fact Sheet #12

**FACT SHEET  
NATIONWIDE PERMIT 12  
(2012)**

**UTILITY LINE ACTIVITIES.**

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot 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). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as

near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate. (Sections 10 and 404)

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) The activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e. water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 31.)

**Note 1:** Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

**Note 2:** Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

**Note 3:** Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

**Note 4:** For overhead utility lines authorized by this NWP, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

## **Nationwide Permit General Conditions**

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer.

**1. Navigation.** (a) No activity may cause more than a minimal adverse effect on navigation.

(b) 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 United States.

(c) 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 of Engineers, 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.

**2. Aquatic Life Movements.** No 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. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

**3. 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 turbidity) of an important spawning area are not authorized.

**4. Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

**5. Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

**6. 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).

**7. Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

**8. Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

**9. Management of Water Flows.** To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

**10. Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**11. Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

**12. Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

**13. Removal of Temporary Fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

**15. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

**16. Wild and Scenic Rivers.** No activity may occur in a component 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. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

**17. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**18. Endangered Species.** (a) No activity is authorized under any NWP which is 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 activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilize the designated critical habitat that might be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWPs.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.noaa.gov/fisheries.html> respectively.

**19. Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

**20. Historic Properties.** (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address section 106 compliance for the NWP activity, or whether additional section 106 consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may 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. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties on which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR §800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those

tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**21. Discovery of Previously Unknown Remains and Artifacts.** If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

**22. Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**23. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

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

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or

parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

**24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

**25. Water Quality.** Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

**27. Regional and Case-By-Case Conditions.** The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide 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 nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

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(Transferee)

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(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- (b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

**31. Pre-Construction Notification—(a) Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must 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. The request must specify the information needed to make the PCN complete. As a general rule, district engineers 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 district engineer 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 district engineer. The prospective permittee shall not begin the activity until either: (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or (2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition

20 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an

individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) *Contents of Pre-Construction Notification:* The PCN must be in writing and include the following information: (1) Name, address and telephone numbers of the prospective permittee; (2) Location of the proposed project; (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans); (4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate; (5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan. (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act. (c) *Form of Pre-Construction Notification:* The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used. (d) *Agency Coordination:* (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. (2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction

notification and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5. (3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act. (4) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of preconstruction notifications to expedite agency coordination.

#### **Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

**2012 Nationwide Permits  
Regional Conditions  
Omaha District  
State of North Dakota**

The following Nationwide Permit regional conditions will be used in the State of North Dakota. Regional conditions are placed on Nationwide Permits to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resources concerns.

**Wetlands Classified as Peatlands – Revoked for Use**

All Nationwide Permits, with the exception of 3, 5, 20, 32, 38 and 45, are revoked for use in peatlands in North Dakota.

Peatlands are saturated and inundated wetlands where conditions inhibit organic matter decomposition and allow for the accumulation of peat. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Peatlands can be primarily classified into ombrotrophic bogs and minerotrophic fens; the latter subdivided into poor, moderate-rich, and extreme-rich fens, each with distinctive indicator species, community physiognomy, acidity, alkalinity, and base cation content.

**Wetlands Classified as Peatlands – Pre-construction Notification Requirement**

For Nationwide Permits 3, 5, 20, 32, 38, and 45 permittees must notify the Corps in accordance with General Condition 31 (Notification) prior to initiating any regulated activity impacting peatlands in North Dakota.

**Waters Adjacent to Natural Springs – Pre-construction Notification Requirement**

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 31 (Notification) for regulated activities located within 100 feet of the water source in natural spring areas in North Dakota. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

**Missouri River, including Lake Sakakawea and Lake Oahe within the State of North Dakota – Pre-construction Notification Requirement**

For all Nationwide Permits permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity in the Missouri River, including Lake Sakakawea and Lake Oahe, within the State of North Dakota.

### **Borrow Site Identification – All Nationwide Permits**

The permittee is responsible for ensuring that the Corps is notified of the location of any borrow site that will be used in conjunction with the construction of the authorized activity so that the Corps may evaluate the site for potential impacts to aquatic resources, historic properties, and endangered species. For projects where there is another lead Federal agency, the permittee shall provide the Corps documentation indicating that the lead Federal agency has complied with the National Historic Preservation Act and Endangered Species Act for the borrow site. The permittee shall not initiate work at the borrow site in conjunction with the authorized activity until approval is received from the Corps.

### **Counter-sinking Culverts and Associated Riprap – All Nationwide Permits**

That culverts and riprap proposed to be installed within waters of the United States listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota shall be installed one foot below the natural streambed. The 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at: <http://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>.

## **REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS**

### **Nationwide Permit 7 – Outfall Structures and Associated Intake Structures and Nationwide Permit 12 – Utility Line Activities**

**Intake Structures** - Intake screens with a maximum mesh opening of 1/4-inch must be provided, inspected annually, and maintained. Wire, Johnson-like, screens must have a maximum distance between wires of 1/8-inch. Water velocity at the intake screen shall not exceed 1/2-foot per second.

Pumping plant sound levels will not exceed 75 dB at 50 feet.

Intakes located in Lake Sakakawea, above river mile 1519, are subject to the following conditions:

- The intakes shall be floating.
- At the beginning of the pumping season, the intake shall be placed over water with a minimum depth of 20 feet.
- If the 20-foot depth is not attainable, then the intake shall be located over the deepest water available.
- If the water depth falls below six feet, the intake shall be moved to deeper water or the maximum intake velocity shall be limited to 1/4 foot per second.

Intakes located in Lake Sakakawea, below river mile 1519, and in the Missouri River below Garrison Dam are subject to the following conditions:

- The intakes shall be submerged.
- At the beginning of the pumping season, the intake will be placed at least 20 vertical feet below the existing water level.
- The intake shall be elevated 2 to 4 feet off the bottom of the river or reservoir bed.
- If the 20-foot depth is not attainable, then the intake velocity shall be limited to 1/4-foot per second with the intake placed at the maximum practicable attainable depth.

### **Nationwide Permit 11 – Temporary Recreational Structures - Boat Docks**

- a. 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 of Engineers, 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.
- b. No boat dock shall be located on a sandbar or barren sand feature located in or along the banks of the Missouri River.
- c. The farthest point riverward on the dock located on the Missouri River proper shall not exceed a total length of 30 feet from the ordinary high water line found along the high bank out into the River. Information Note: Issuance of this permit does not supersede authorization required by the North Dakota State Engineer's Office.
- d. Any boat dock located on the Missouri River shall be anchored to the top of the high bank.
- e. Any boat dock located within an excavated bay or marina off the main river channel may be anchored to the bay or marina bottom with spuds.

### **Nationwide Permit 13 - Bank Stabilization**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota.

### **Nationwide Permit 23 - Approved Categorical Exclusions**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota. In addition to information required by General Condition 31, permittees must identify the approved categorical exclusion that applies and provide documentation that the project fits the categorical exclusion.

### **Nationwide Permit 27 - Aquatic Habitat Restoration, Establishment and Enhancement Activities**

Permittees must notify the Corps in accordance with General Condition No. 31 (Notification) prior to initiating any regulated activity within the State of North Dakota.

## **GENERAL CONDITIONS (REGIONAL ADDITIONS)**

### **General Condition 3- Spawning Areas**

No regulated activity within waters of the United States listed as Class III or higher on the 1978 Stream Evaluation Map for the State of North Dakota or on the North Dakota Game and Fish Department's website as a North Dakota Public Fishing Water shall occur between 15 April and 1 June. No regulated activity within the Red River of the North shall occur between 15 April and 1 July. North Dakota Public Fishing Waters can be accessed at: <http://gf.nd.gov/fishing/nd-fish-wat.html>. The 1978 Stream Evaluation Map for the State of North Dakota can be accessed on the North Dakota Regulatory Office's website at: <http://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>.

### **General Condition 6 – Suitable Material**

Permittees are reminded that General Condition No. 6 prohibits the use of unsuitable material. In addition, organic debris, some building waste, and materials excessive in fines are not suitable material. Specific verbiage on prohibited materials can be accessed on the North Dakota Regulatory Office's website at: <http://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>.

### **General Condition 9 - Management of Water Flows**

Permittees are reminded that water flow management addressed in General Condition 9 is applicable to all aspects of a permitted project, including temporary features.

### **General Condition 31 – Pre-construction Notification**

Prospective permittees should be aware that a **field delineation** may be required for applications where notification is required in accordance with General Condition 31 and/or mitigation may be required. The Corps 1987 Wetland Delineation Manual and applicable Regional Supplements to the Manual can be accessed on the North Dakota Regulatory Office's website at: <http://www.nwo.usace.army.mil/html/od-rnd/ndhome.htm>.

**U.S. Army Corps of Engineers  
North Dakota Regulatory Office  
1513 South 12th Street  
Bismarck, North Dakota 58504  
Telephone (701) 255-0015 Fax (701) 255-4917**

**IMPORTANT INSTRUCTIONS FOR OUR PERMIT CUSTOMERS**

Notice of the Reissuance of Nationwide Permits was published in the Federal Register [77 FR 10184] on February 21, 2012. The Nationwide Permits went into effect on March 19, 2012. Project compliance certification is required by General Condition 30. The following instructions are provided to clarify the information contained within the nationwide permit authorization letter and attachments.<sup>1</sup>

**STEP 1**

Review the permit authorization and be sure you understand the terms and conditions for the authorization to remain valid. If you do not understand, or have any questions, please do not hesitate to contact this office at the above address.

**STEP 2**

Complete your project in accordance with the permit terms and conditions. [Remember that any deviation from the original plans and specifications of your project could require additional authorization from this office.]

**STEP 3**

Within thirty (30) days of project completion, please complete the permit compliance certification contained within your permit authorization letter. A photocopy of the first page (marked with a colored COPY stamp) has been provided for this purpose. Mark the applicable statements, sign and date where indicated, and forward the COPY to this office at the above address.

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<sup>1</sup>There is no charge associated with any aspect of this nationwide authorization or the follow-up compliance certification.

# COPY

In compliance with General Condition 30, you are required to submit the following project compliance certification within thirty (30) days of project completion. [Please check all applicable statements.]

- I certify that I have completed the project as permitted.
- I certify that I have completed a modified version of the project.
- I certify that I have completed all required mitigation.

**Permittee's Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

This verification will be valid until **March 18, 2017**. If the nationwide permit is modified, suspended, or revoked prior to this date, but is reissued without modification or the activity complies with any subsequent modification, this authorization remains valid until the expiration date. All of the existing nationwide permits are scheduled to be modified, reissued, or revoked prior to March 18, 2017. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice when the nationwide permits are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation to complete the activity under the present terms and conditions.

The Omaha District, North Dakota Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at [http://corpsmapu.usace.army.mil/cm\\_apex/f?p=regulatory\\_survey](http://corpsmapu.usace.army.mil/cm_apex/f?p=regulatory_survey). If you do not have Internet access, you may call and request a paper copy of the survey that you can complete and return to us by mail or fax.

If you have any questions concerning this determination, please contact Mr. Jason Renschler of this office by letter or telephone at (701) 255-0015 and reference Nationwide Permit number **NWO-2013-0556-BIS**.

Sincerely,

Daniel E. Cimarosti  
Regulatory Program Manager  
North Dakota

Enclosure  
- Fact Sheet #12