



REPLY TO
ATTENTION OF

1383

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
NORTH DAKOTA REGULATORY OFFICE
1513 SOUTH 12TH STREET
BISMARCK ND 58504-6640
August 27, 2009

RECEIVED

AUG 31 2009

McFARLAND, P.C.

North Dakota Regulatory Office

[NWO-2009-02088-BIS]

EL - 17951

Thomas F. McFarland, P.C.
208 South LaSalle Street, Suite 1890
Chicago, Illinois 60604-1112

Dear Mr. McFarland:

This is in response to your letter received on August 24, 2009, requesting Department of the Army (DA), United States Army Corps of Engineers (Corps) comments on the **Dakota Northern Railroad, Inc., STB Docket No. AB-1041X, Abandonment Exemption in Walsh and Pembina Counties, North Dakota**. The proposed project is located on and along the Dakota Northern Railroad line between Milepost 42.1 near Grafton, North Dakota and Milepost 60.2 near Glasston, North Dakota in Walsh and Pembina Counties.

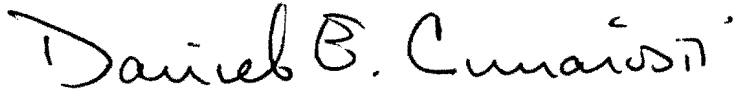
Corps Regulatory Offices administer Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. Section 10 of the Rivers and Harbors Act regulates work in or affecting navigable waters. This would include work over, through, or under Section 10 water. Section 10 waters in North Dakota include the Missouri River, Yellowstone River, James River south of Jamestown, North Dakota, Bois de Sioux River, Red River of the North, and the Upper Des Lacs Lake. Section 404 of the Clean Water Act regulates the discharge of dredge or fill material (temporarily or permanently) in waters of the United States. Waters of the United States may include, but are not limited to, rivers, streams, ditches, coulees, lakes, ponds, and their adjacent wetlands. Fill material includes, but is not limited to, rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mines or other excavation activities and materials used to create any structure or infrastructure in waters of the United States.

Based on the information provided, there are not any Section 10 waters within the proposed project area. However, there does appear to be waters of the United States that would be covered under Section 404 of the Clean Water Act. If this project would require a Section 404 permit, please complete and submit the enclosed Department of the Army permit application (ENG Form 4345) to the U.S. Army Corps of Engineers, North Dakota Regulatory Office, 1513 South 12th Street, Bismarck, North Dakota 58504. If you are unsure if a permit is required, you may submit an application; include a project location map, description of work, and construction methodology.

Customer Survey. The Omaha District, North Dakota Regulatory Office is committed to providing quality and timely service to your customers. In an effort to improve customer service, please take a moment to complete our Customer Service Survey found on our website at <http://per2.nwp.usace.army.mil/survey.html>. If you do not have Internet access, you can call and request a paper copy of the survey that you can complete and return to us by mail or fax.

If we can be of further assistance or should you have any questions regarding our program, please do not hesitate to contact this office by letter or phone at (701) 255-0015.

Sincerely,

A handwritten signature in black ink that reads "Daniel E. Cimarosti". The signature is written in a cursive style with a large, stylized 'D' and 'C'.

Daniel E. Cimarosti
Regulatory Program Manager
North Dakota

Enclosure
ENG Form 4345

Instructions for Preparing a
Department of the Army Permit Application

Blocks 1 through 4. To be completed by Corps of Engineers.

Block 5. Applicant's Name. Enter the name of the responsible party or parties. If the responsible party is an agency, company, corporation, or other organization, indicate the responsible officer and title. If more than one party is associated with the application, please attach a sheet with the necessary information marked Block 5.

Block 6. Address of Applicant. Please provide the full address of the party or parties responsible for the application. If more space is needed, attach an extra sheet of paper marked Block 6.

Block 7. Applicant Telephone Number(s). Please provide the number where you can usually be reached during normal business hours.

Blocks 8 through 11. To be completed, if you choose to have an agent.

Block 8. Authorized Agent's Name and Title. Indicate name of individual or agency, designated by you, to represent you in this process. An agent can be an attorney, builder, contractor, engineer, or any other person or organization. Note: An agent is not required.

Blocks 9 and 10. Agent's Address and Telephone Number. Please provide the complete mailing address of the agent, along with the telephone number where he / she can be reached during normal business hours.

Block 11. Statement of Authorization. To be completed by applicant, if an agent is to be employed.

Block 12. Proposed Project Name or Title. Please provide name identifying the proposed project, *e.g.*, Landmark Plaza, Burned Hills Subdivision, or Edsall Commercial Center.

Block 13. Name of Waterbody. Please provide the name of any stream, lake, marsh, or other waterway to be directly impacted by the activity. If it is a minor (no name) stream, identify the waterbody the minor stream enters.

Block 14. Proposed Project Street Address. If the proposed project is located at a site having a street address (not a box number), please enter it here.

Block 15. Location of Proposed Project. Enter the county and state where the proposed project is located. If more space is required, please attach a sheet with the necessary information marked Block 15.

Block 16. Other Location Descriptions. If available, provide the Section, Township, and Range of the site and / or the latitude and longitude. You may also provide description of the proposed project location, such as lot numbers, tract numbers, or you may choose to locate the proposed project site from a known point (such as the right descending bank of Smith Creek, one mile downstream from the Highway 14 bridge). If a large river or stream, include the river mile of the proposed project site if known.

Block 17. Directions to the Site. Provide directions to the site from a known location or landmark. Include highway and street numbers as well as names. Also provide distances from known locations and any other information that would assist in locating the site.

Block 18. Nature of Activity. Describe the overall activity or project. Give appropriate dimensions of structures such as wingwalls, dikes (identify the materials to be used in construction, as well as the methods by which the work is to be done), or excavations (length, width, and height). Indicate whether discharge of dredged or fill material is involved. Also, identify any structure to be constructed on a fill, piles, or float-supported platforms.

The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to do. If more space is needed, attach an extra sheet of paper marked Block 18.

Block 19. Proposed Project Purpose. Describe the purpose and need for the proposed project. What will it be used for and why? Also include a brief description of any related activities to be developed as the result of the proposed project. Give the approximate dates you plan to both begin and complete all work.

Block 20. Reasons for Discharge. If the activity involves the discharge of dredged and/or fill material into a wetland or other waterbody, including the temporary placement of material, explain the specific purpose of the placement of the material (such as erosion control).

Block 21. Types of Material Being Discharged and the Amount of Each Type in Cubic Yards. Describe the material to be discharged and amount of each material to be discharged within Corps jurisdiction. Please be sure this description will agree with your illustrations. Discharge material includes: rock, sand, clay, concrete, etc.

Block 22. Surface Areas of Wetlands or Other Waters Filled. Describe the area to be filled at each location. Specifically identify the surface areas, or part thereof, to be filled. Also include the means by which the discharge is to be done (backhoe, dragline, etc.). If dredged material is to be discharged on an upland site, identify the site and the steps to be taken (if necessary) to prevent runoff from the dredged material back into a waterbody. If more space is needed, attach an extra sheet of paper marked Block 22.

Block 23. Is Any Portion of the Work Already Complete? Provide any background on any part of the proposed project already completed. Describe the area already developed, structures completed, any dredged or fill material already discharged, the type of material, volume in cubic yards, acres filled, if a wetland or other waterbody (in acres or square feet). If the work was done under an existing Corps permit, identify the authorization, if possible.

Block 24. Names and Addresses of Adjoining Property Owners, Lessees, etc., Whose Property Adjoins the Project Site. List complete names and full mailing addresses of the adjacent property owners (public and private) lessees, etc., whose property adjoins the waterbody or aquatic site where the work is being proposed so that they may be notified of the proposed activity (usually by public notice). If more space is needed, attach an extra sheet of paper marked Block 24.

Information regarding adjacent landowners is usually available through the office of the tax assessor in the county or counties where the project is to be developed.

Block 25. Information about Approvals or Denials by Other Agencies. You may need the approval of other federal, state, or local agencies for your project. Identify any applications you have submitted and the status, if any (approved or denied) of each application. You need not have obtained all other permits before applying for a Corps permit.

Block 26. Signature of Applicant or Agent. The application must be signed by the owner or other authorized party (agent). This signature shall be an affirmation that the party applying for the permit possesses the requisite property rights to undertake the activity applied for (including compliance with special conditions, mitigation, etc.).

DRAWINGS AND ILLUSTRATIONS

General Information.

Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map, a Plan View or a Typical Cross-Section Map. Identify each illustration with a figure or attachment number.

Please submit one original, or good quality copy, of all drawings on 8½ x 11 inch plain white paper (tracing paper or film may be substituted). Use the fewest number of sheets necessary for your drawings or illustrations.

Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view, or cross-section). **While illustrations need not be professional (many small, private project illustrations are prepared by hand), they should be clear, accurate, and contain all necessary information.**

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT
(33 CFR 325)

OMB APPROVAL NO. 0710-0003
Expires December 31, 2004

The public reporting burden for this collection of information is estimated to average 10 hours per response, although the majority of applications should require 5 hours or less. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters Service Directorate of Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302; and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003), Washington, DC 20503. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies. Submission of requested information is voluntary, however, if information is not provided, the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO. <i>NW0-2009-02088-RIS</i>	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETED
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(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME	8. AUTHORIZED AGENT'S NAME AND TITLE (<i>an agent is not required</i>)
6. APPLICANT'S ADDRESS	9. AGENT'S ADDRESS
7. APPLICANT'S PHONE NUMBERS WITH AREA CODE a. Residence b. Business	10. AGENT'S PHONE NUMBERS WITH AREA CODE a. Residence b. Business

11. STATEMENT OF AUTHORIZATION

I hereby authorize _____ to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

APPLICANT'S SIGNATURE	DATE
NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY	

12. PROJECT NAME OR TITLE (*see instructions*)

13. NAME OF WATERBODY, IF KNOWN (<i>if applicable</i>)	14. PROJECT STREET ADDRESS (<i>if applicable</i>)
15. LOCATION OF PROJECT COUNTY STATE	

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (*see instructions*)

17. DIRECTIONS TO THE SITE

18. Nature of Activity (Description of project, include all features)

19. Project Purpose (Describe the reason or purpose of the project, see instructions)

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)

23. Is Any Portion of the Work Already Complete? Yes _____ No _____ IF YES, DESCRIBE THE COMPLETED WORK

24. Addresses of Adjoining Property Owners, Lessees, etc., Whose Property Adjoins the Waterbody (if more than can be entered here, please attach a supplemental list).

25. List of Other Certifications or Approvals/Denials Received from other Federal, State, or Local Agencies for Work Described in This Application

AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED

*Would include but is not restricted to zoning, building and flood plain permits

26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT

DATE

SIGNATURE OF AGENT

DATE

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up any trick scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry; shall be fined not more than \$10,000 or imprisoned not more than five years or both.