DEPARTMENT OF THE ARMY
KANSAS CITY DISTRICT, CORPS OF ENGINEERS
635 FEDERAL BUILDING
601 E 12TH STREET
KANSAS CITY MO 64106-2824

REPLY TO
ATTENTION OF

MAR 3 1 2011

Regulatory Branch
(NWK-2011-362)

Mr. Steve Engemann
Hermann Sand & Gravel, Inc.
RR 3 Box 261
Hermann, Missouri 65041-9803

Dear Mr. Engemann:

This letter is in response to your application, received on March 19, 2008, to reauthorize your Missouri River commercial dredging operation previously authorized by Department of the Army (DA) permit No. 2001-1430. As requested by your application, this letter includes a new proffered DA permit No. 2011-362, in duplicate, and extends your old DA permit No. 2001-1430.

When executed, the permit will authorize you to extract up to 240,000 tons of sand and gravel per year from the Missouri River with a mobile, floating, hydraulic dredge plant. A maximum of 120,000 tons can be dredged in the Jefferson City segment (river miles 129.9 to 249.9) and a maximum of 120,000 tons in the portion of the St. Charles segment regulated by the Kansas City District (river miles 50.0 to 129.9). Water and dredged materials will be passed through onboard screens allowing the desired material to be loaded onto barges and undesired material and water to be discharged back into the river at the dredging location. Filled barges will be transported to existing offloading facilities where a crane or front end loader will unload the material for stockpiling and commercial sale. The permits will be subject to all the special conditions that follow and will expire on December 31, 2015. The 2011 tonnage limits will retroactively apply to all dredging since the beginning of 2011. These tonnage limits are of sand when it is offloaded from the barge with a moisture content of approximately 10%.

A copy of the water quality certification issued for your work, by the Missouri Department of Natural Resources, has been attached to the enclosed DA permit. As stated in general condition "5" of the enclosed permit document, the conditions presented in the state's water quality certification are incorporated into the special conditions of the permit by reference.

This letter contains a proffered permit for your commercial dredging permit application. If you object to this decision, you may request an administrative appeal under the U.S. Army Corps of Engineers regulations at 33 Code of Federal Regulations (C.F.R). Part 331. Enclosed you will find a Notification of Administrative Appeal Options and Process (NAP) and Request for Appeal (RFA) form. If you request reconsideration of this decision you must submit a completed RFA form to the Northwestern Division Office at the following address:

Division Engineer
ATTN: David W. Gesl
Administrative Appeals Review Officer
U.S. Army Corps of Engineers
P.O. Box 2870
Portland, OR 97208-2870
Telephone: 503-808-3825

In order for an RFA to be accepted, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by May 31, 2011.

It is not necessary to submit an RFA form to the Division Office if you do not object to the provisions of your proffered permit. If you wish to accept the permit in its present form, please sign the original and duplicate copy of the enclosed permit document. Each copy of the permit document should be signed on page 3 above the word "Permittee," dated, and returned within 30 days from the date of this letter. Also, the application fee of $100 should be paid by check made payable to USAED-KC and remitted with the permit document. A preaddressed envelope is enclosed for your convenience. Upon receipt of the properly signed documents and the application fee, the permit will be executed and returned to you for your files. Your signature on the standard permit means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.

On December 28, 2010, DA permit No. 2001-1430 was extended through March 31, 2011 to allow continued dredging during the additional three months needed to complete the Missouri River Commercial Dredging Final EIS (Final EIS) and Record of Decision. We have determined that is in the public interest to extend DA permit No. 2001-1430 allow you to continue dredging until the Administrative Appeal process described in the previous paragraph is complete for proffered DA permit No. 2011-362, or until it is accepted and executed. This permit extension has been reviewed in accordance with 33 C.F. R. Part 325.7, and with Section 10 of the Rivers and Harbors Act of 1899 (33 United States Code Section (U.S.C.) 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344). It has been determined that the extension and modification of DA permit No. 2001-1430 to include all the limits and permit conditions identified in the Record of Decision will be within the scope of the Final EIS and will comply with the Section 404(b)(1) Guidelines (40 C.F.R. Part 230). Therefore, DA permit No. 2001-1430 will be modified effective April 1, 2011, to limit your annual extraction of sand and gravel from the Missouri River to 240,000 tons per year subject to all the general and special conditions attached to proffered DA permit No. 2011-362. DA permit No. 2001-1430 will expire in 60 days, unless an appeal of proffered DA permit 2011-362 is accepted by the Northwestern Division, U.S. Army Corps of Engineers, in which case DA permit No. 2001-1430 will expire 30 days after the final appeal decision.

If you do not agree that the terms and conditions of the modification of DA permit No. 2001-1430 are acceptable and correct, you must notify and may request a meeting with the District Commander by April 10, 2011, or be legally bound by the terms and conditions thereof. This is a legal document. We request that you attach this letter of modification to your copy of DA permit No. 2001-1430 in order to reflect all work authorized under the permit.

Special condition "b" requires you to implement a Dredge Monitoring Plan (DMP) approved by the Regulatory Branch of the Kansas City District. If a DMP has not been previously approved by the Regulatory Branch of the Kansas City District, you must provide within 30 days of execution of the permit a DMP for each individual dredge plant to the Regulatory Branch of the Kansas City District for approval. The DMP must show how you will monitor, record, and report the cutter-head position, cutter-head operating status, extraction tonnage, and the presence of any hard substrates, mussel shells, or unusual concentration of gravel.

Special condition "c" requires all applicants receiving authorization to commercially dredge the Missouri River to collectively have a hydrographic survey completed between June and September of 2014 and submitted to the Regulatory Branch of the Kansas City District, USACE by November 1, 2014. Water surface profiles will also be prepared and evaluated annually by the Kansas City District. The Regulatory Branches of the Kansas City and St. Louis Districts will meet with you and the other authorized dredgers and state and federal agencies in the fall of each year to discuss the condition and trend of the river as shown by the most recent water surface profiles or surveys. As stated in item 5 under "Further Information" on page 3 of all permits, this office may reevaluate its decision on this permit any time significant new information surfaces which this office did not consider in reaching the original public interest decision. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. 325.7

We are interested in your thoughts and opinions concerning your experience with the Kansas City District Regulatory Program. We have placed an automated version of our Customer Service Survey form at: http://per2.nwp.usace.army.mil/survey.html. At your request, we will mail you a paper copy that you may complete and return to us by mail or fax.

A copy of this letter has been sent to Mr. David Shorr. If you have any questions concerning this matter, please contact Mr. Cody S. Wheeler at 816-389-3739 (FAX 816-389-2032).

Sincerely,

Anthony J. Hofmann
Colonel, Corps of Engineers
District Commander

Enclosures

# DEPARTMENT OF THE ARMY PERMIT

**Permittee:** Hermann Sand and Gravel, Inc.

**Permit No.:** 2011-362

**Issuing Office:** U.S. Army Engineer District, Kansas City

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below, and with the plans and drawings attached hereto which are incorporated in and made a part of this permit.

**Project Description**: You are authorized to extract up to 240,000 tons of sand and gravel per year from the Missouri River with a mobile, floating, hydraulic dredge plant. A maximum of 120,000 tons can be dredged in the Jefferson City segment (river miles 129.9 to 249.9) and a maximum of 120,000 tons in the portion of the St. Charles segment regulated by the Kansas City District (river miles 50.0 to 129.9). Water and dredged materials will be passed through onboard screens allowing the desired material to be loaded into barges and undesired material and water to be discharged back into the river at the dredging location. Filled barges will be transported to existing offloading facilities where a crane or front end loader will unload the material for stockpiling and commercial sale. The 2011 tonnage limits retroactively apply to all dredging since the beginning of 2011. These tonnage limits are of sand when it is offloaded from the barge with a moisture content of approximately 10%.

**Permit Drawings**: Please use the location maps from the 2007 permit decision, and the electronic authorized dredging zone shape files with any modifications sent to you in subsequent permit extensions. We will send you updated maps and/or electronic shape files with the execution of the permit or sooner if possible. The maps and electronic shape files are just a visual representation of where you can or cannot dredge. The legal and authoritative source regarding where you can or cannot dredge, is contained in the project description, project location, and special conditions of this permit.

**Project Location:** You may dredge in the following general reaches of Missouri River (this may or may not exclude all the resource protection zones): river miles 56.00-56.85, 61.25-66.00, 70.00-80.00, 80.50-89.75, 93.55-101.70, 109.00-115.20, 115.95-118.40, 146.00-157.00, and 158.45-164.00

**Permit Conditions**:

General Conditions:

1. The time limit for completing the work authorized ends on 31 December 2015. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

See continuation sheets, pages 4 - 8, of this document.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

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

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

_____ _____

(PERMITTEE) (DATE)

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

_____ _____

(DISTRICT ENGINEER) (DATE)
ANTHONY J. HOFMANN, COLONEL
BY: Mark D. Frazier
Chief, Regulatory Branch
Operations Division

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

_____ _____

(TRANSFEREE) (DATE)

**Special Conditions:**

**a.** You understand and agree 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, you will be required, upon due notice from the U.S. Army Corps of Engineers (USACE), 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.** You must implement a Dredge Monitoring Plan (DMP) approved by the Regulatory Branch of the Kansas City District, USACE. If a DMP has not been previously approved by the Regulatory Branch, USACE, Kansas City District, you must provide within 30 days of execution of the permit a DMP for each individual dredge plant to the Regulatory Branch of the USACE, Kansas City District for approval. The DMP must show how you will monitor, record, and report the cutter-head position, cutter-head operating status, extraction tonnage, and the presence of any hard substrates, mussel shells, or unusual concentration of gravel in an impartial, unbiased, reliable, and accurate manner. The DMP must include the specifications of the process and the Dredge Monitoring System (DMS) including sensors, hardware, software, communications devices the permittee will use to: gather data; perform quality control on those data; calibrate, test, and repair sensors when they fail; and transfer the data to the Regulatory Branch of the Kansas City District, USACE. The DMS must include automated differential Global Positioning System (DGPS) equipment (or other comparable system) operating with a minimum accuracy level of 1-3 meters horizontal Circular Error Probable with horizontal positions tied into the UTM Zone 15 NAD 83 (feet) coordinate system recorded to the nearest foot. The DMS must always be on, recording cutter-head position and operating status every 5 minutes, 24-hours a day, 365 days a year, even when the dredge is not operating. The data logged each month must be submitted by email to cody.s.wheeler@usace.army.mil at the Regulatory Branch of the Kansas City District, USACE by the 7th day of the following month. If you do not receive an email confirmation that the report was received, you must contact the Regulatory Branch of the Kansas City District, USACE at 816-389-3990 for revised instructions for filing the monthly report. The extracted material must be measured by one of the methods described in the attached Standard Operating Procedure for Hydrographic Surveying and Dredge Monitoring. If the tonnage is measured by scale at the off-loading facility, the DMP should also describe how the operation will record the date, time, river mile, coordinates, and approximate tonnage of each barge loaded in one location. If a barge is partially filled at one anchor setting then completed at a new anchor setting, the tonnage should be estimated separately for each location. This information must be provided monthly by email on the attached Missouri River Commercial Dredging Location/Volume Report spreadsheet to cody.s.wheeler@usace.army.mil at the Regulatory Branch of the Kansas City District, USACE by the 7th day of the following month. If you do not receive an email confirmation that the report was received, you must contact the Regulatory Branch of the Kansas City District, USACE at 816-389-3990 for revised instructions for filing the monthly report. Faulty sensors or other components identified in the DMP must be repaired within 96 hours. The DMS must not be inoperable more than 5 percent of the time. You must install an approved DMS and have it inspected by the Regulatory Branch of the Kansas City District, USACE within 120 days of execution of the permit or you must cease dredging operations until it is installed and inspected or you submit a justification of the delay and an installation schedule and get an extension of this deadline in writing from the Regulatory Branch of the Kansas City District, USACE.

**c.** The USACE periodically surveys the river as part of the management and operation of the Bank Stabilization and Navigation Project. If, for any reason, the USACE has not surveyed the river in the fourth year (2014) of the five-year permit cycle, the authorized dredging companies must have the lower 498 miles of the LOMR surveyed during the summer months in accordance with the Standard Operating Procedures for Hydrographic Surveying and Dredge Monitoring. The survey shall be completed between June and September of 2014 and submitted to the Regulatory Branch of the Kansas City District, USACE by November 1, 2014.

**d.** If any part of the authorized work is performed by a contractor, before starting work you must discuss the terms and conditions of this permit with the contractor and must give a copy of this entire permit to the contractor. After the initial 120 days of this permit, any contracted dredges or barges must also be equipped with and operate in accordance with an approved DMP as required in Special Condition "b". The DMP and system must be approved by the Regulatory Branch of the Kansas City District, USACE prior to starting work.

**e.** Until the dredges and barges are equipped with the DMS required by Special Condition "b", you must, for each dredge operated, record Global Positioning System (GPS) coordinates, tons of material removed, and the presence of any hard substrates or unusual concentration of gravel daily. If the dredge moves more than 100 feet in any one day then the amount of material removed from each location must be recorded separately. The operators may use hand-held GPS devices or automatically recording devices, but with which ever system used, must identify the device make/model and recording location. This information must be recorded on the attached Missouri River Commercial Dredging Location/Volume Report in an electronic spreadsheet. You must furnish a copy of the completed monthly report by email to cody.s.wheeler@usace.army.mil at the Regulatory Branch of the Kansas City District, USACE by the 7th day of the following month. If you do not receive an email confirmation that the report was received, you must contact the Regulatory Branch of the Kansas City District, USACE at 816-389-3990 for revised instructions for filing the monthly report.

**f.** No more than 300,000 tons of material shall be extracted within one year from each five-mile reach of the Missouri River between river miles 15 to 20, 25 to 35, 90 to 100, 140 to 150, 355 to 395, and 445 to 455. When the dredge report database of the Regulatory Branch of the Kansas City District, USACE indicates that extraction in a five-mile reach has reached 300,000 tons, all dredgers authorized to operate within that reach will be notified that it is closed to further dredging for the remainder of the calendar year unless a waiver is requested and received in writing from the Regulatory Branch of the Kansas City District, USACE.

**g.** Up to 10% of your authorized annual tonnage for each segment may be carried over each year to be extracted within that segment the following year. Annual tonnage with carryover may never exceed 110% of annual authorized tonnage of each segment. At the end of each year you must notify the Regulatory Branch of the Kansas City District, USACE in your annual tonnage report of any unextracted tonnage that you intend to carryover.

**h.** In permit conditions that specify a linear distance exclusion zone adjacent to a river feature, "dredging" refers to the operation of hydraulic cutter-head suction dredging. The exclusion zone distances will apply to and be measured from the end of the cutter head, rather than from a general point on the dredge.

**i.** You must confine dredging to between the Rectified Channel Lines (RCL) with the following restrictions. Dredging must be conducted in such a manner to preserve the structural integrity of the landmass landward of the RCL. This must be accomplished by maintaining an adequate "no dredging

or discharging" zone riverward of the RCL so that material will stabilize into the dredging area at its natural angle of repose. This slope will vary depending upon river location and the type of material being dredged, but it is your responsibility to ensure that this shallow water interface landward of the RCL be maintained.

**j.** You must not dredge within 500 feet of any levee centerline, pipeline or submerged utility crossing, bridge pier or abutment; nor within 200 feet of any dike, revetment, or other structure built or authorized by the U.S. Government; nor within 100 feet of any normal bank line or island, without special authorization. When dredging is performed adjacent to river stabilization structures, the dredging may be conducted only in the present streambed of the river at the authorized locations. This condition represents only the minimum distances away from structures and natural features that you can conduct dredging and does not relieve you from liability for damage arising from dredging. You must be satisfied that dredging to these limits will not cause damage to public and private property.

**k.** You must not conduct dredging operations in a zone extending 4,000 feet upstream and 500 feet downstream from any municipal drinking water intake structures located along either bank of the river unless you obtain an exemption to this condition in writing from the Regulatory Branch of the Kansas City District, USACE.

**l.** You must not conduct dredging operations in a zone extending 1,000 feet upstream and 1,000 feet downstream from any municipal drinking water horizontal collector wells located along either bank of the river unless you obtain an exemption to this condition in writing from the Regulatory Branch of the Kansas City District, USACE.

**m.** You must not conduct dredging operations in a zone extending 500 feet upstream and 500 feet downstream from any other water intake structures other than those used for municipal drinking water unless you obtain an exemption to this condition in writing from the Regulatory Branch of the Kansas City District, USACE.

**n.** You may discharge back into the Missouri River material spilled off the conveyer belts and unusable material separated out in the on-shore sand washing and handling facility. To subtract that tonnage from your annual extraction limit, you must follow a plan approved in writing by the Regulatory Branch of the Kansas City District, USACE. This plan must show where and how the material will be discharged and how the amount of dredged material discharged back into the river will be measured and reported to the Regulatory Branch of the Kansas City District, USACE. The total extraction tonnage will equal the tonnage extracted and barged to shore minus that amount intentionally returned to the Missouri River.

**o.** You may return unwanted dredged material and river water (but not garbage)extracted from the Missouri River back to the Missouri River. You must not dispose of waste materials, water, or garbage below the ordinary high water mark of any other water body, in a wetland area, or at any location where the materials could be introduced into the water body or an adjacent wetland as a result of runoff, flooding, wind, or other natural forces.

**p.** You must comply with all U.S. Coast Guard, State of Missouri, State of Kansas (river mile 367 to 490), and USACE regulations concerning the prevention of navigation obstructions in navigable waters of the United States.

**q.** You must conduct operations in the Missouri River such that there will be no unreasonable interference with navigation by the existence or use of the activity authorized herein.

**r.** To avoid impacting endangered species and cultural resources, you must confine dredging to the specified reaches listed on page 1 of the permit document. If you desire to expand or relocate your dredging operation outside the specified reaches, you must submit a request to the Regulatory Branch of the Kansas City District, USACE identifying the proposed new limits, in river miles and the location of the unloading facility to be employed.. Approval of the requests, if granted, will be provided in writing with modified reaches identified on the Missouri River Hydrographic Survey. Copies of the relocation requests must be furnished to the following agencies:

1. U.S. Fish and Wildlife Service, Columbia Field Office
2. Missouri Department of Natural Resources, Water Pollution Control Program
3. Missouri Department of Natural Resources, State Historic Preservation Office
4. Kansas Department of Health and Environment, Bureau of Water (for operations extending upstream of river mile 367)
5. Kansas State Historical Society, State Historic Preservation Office (for operations extending upstream of river mile 367)
6. Corps of Engineers, Kansas City District, Hydrologic Engineering Branch

**s.** You must not conduct dredging operations within the reaches identified in the following table as Pallid Sturgeon habitat features.

| **Missouri River Miles (including 0.25 mile buffer)** | | **Pallid Sturgeon Habitat Feature** |
|---|---|---|
| Downstream | Upstream | |
| 44.25 | 44.85 | RDB Centaur Chute |
| 49.15 | 50.05 | RDB Centaur Chute |
| 56.85 | 59.05 | LDB Chute/Island |
| 58.55 | 61.25 | RDB Chute/Island |
| 89.75 | 91.10 | RDB Island |
| 89.90 | 91.45 | LDB Loutre Slough |
| 91.20 | 93.55 | LDB Lunch Island |
| 103.00 | 104.95 | Both Gasconade Confluence and Dike Field |
| 105.20 | 106.25 | RDB Dike Field |
| 115.20 | 115.95 | RDB Island |
| 118.40 | 119.15 | RDB Dike Field |
| 119.35 | 119.85 | RDB St. Aubert Island/Chute |
| 124.35 | 124.95 | RDB St. Aubert Island/Chute |
| 126.05 | 126.90 | LDB Dike Field |
| 127.50 | 130.20 | Both Osage River Confluence and Dike Field |
| 157.00 | 158.45 | LDB Island |
| 176.40 | 178.35 | LDB Island/RDB Tadpole Island Chute |
| 180.15 | 180.65 | RDB Tadpole Island Chute |
| 184.75 | 185.65 | RDB Chute |
| 186.90 | 188.20 | RDB Chute and Dike Field |
| 193.40 | 195.75 | RDB Dike Field/Island |
| 202.10 | 202.75 | RDB Lamine River Confluence |
| 210.00 | 219.65 | Lisbon/Jameson Complex |
| 226.95 | 227.55 | LDB Little Chariton Confluence |

| | | |
|---|---|---|
| 238.40 | 239.10 | LDB Chariton River Confluence |
| 249.65 | 250.30 | LDB Grand River Confluence |
| 269.85 | 271.35 | RDB Shallow/Island |
| 280.40 | 282.05 | RDB Island |
| 297.90 | 299.05 | RDB Island |
| 300.00 | 301.05 | LDB Island |
| 367.00 | 367.75 | RDB Kansas River Confluence |
| 390.85 | 391.45 | LDB Platte River Confluence |
| 456.75 | 457.25 | LDB Worthwine Chute |
| 458.75 | 459.25 | LDB Worthwine Chute |
| 462.65 | 463.25 | LDB Nodaway River Confluence |
| 478.55 | 479.15 | RDB Wolf Creek Confluence |
| 494.55 | 495.20 | RDB Big Nemaha River Confluence |

**t.** You must discharge only suitable dredged material that is free from toxic pollutants in other than trace quantities.

**u.** You must investigate for water supply intakes or other activities which may be affected by suspended solids and turbidity increases caused by work in the watercourse and give sufficient notice to the owners of affected activities to allow preparation for any changes in water quality. You must furnish the Regulatory Branch of the Kansas City District, USACE with a copy of any written notification provided in accordance with this condition.

**v.** You must employ measures to prevent dredged materials stored or disposed of on shore from running off or eroding into wetlands or tributaries to the Missouri River.

**w.** You must employ measures to prevent or control spilled fuels or lubricants from entering the waters of the United States.

**x.** You must store all construction materials, equipment, and/or petroleum products that are part of the on-shore operation, when not in use, above anticipated high water levels.

STATE OF MISSOURI
Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director
DEPARTMENT OF NATURAL RESOURCES
www.dnr.mo.gov

MAR 23 2011

Mr. Steve Engemann
Hermann Sand & Gravel, Inc.
Route 3, Box 261
Hermann, MO 65041

Dear Mr. Engemann:

Please replace the Clean Water Act Section 401 Water Quality Certification (certification) dated March 17, 2011, with the enclosed certification.

If you have any questions, please feel free to contact me by phone at (573) 751-7023, by e-mail at carrie.schulte@dnr.mo.gov or by mail at Missouri Department of Natural Resources, Water Protection Program, NPDES Permits and Engineering Section, P.O. Box 176, Jefferson City, MO 65102-0176. Thank you for working with the Department to protect our environment.

Sincerely,

WATER PROTECTION PROGRAM

Carrie M. Schulte

Carrie M. Schulte, Chief
401 Water Quality Certification and Stormwater Unit

CMS/pc

Enclosure

c: Mr. Cody Wheeler, Army Corps of Engineers, Kansas City District
Mr. Charles Frerker, Army Corps of Engineers, St. Louis District
Ms. Dorothy Franklin, Kansas City Regional Office
Mr. Jimmy Coles, Kansas City Regional Office
Ms. Donna Riebeling, St. Louis Regional Office
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STATE OF MISSOURI
Jeremiah W. (Jay) Nixon, Governor • Sara Parker Pauley, Director
DEPARTMENT OF NATURAL RESOURCES
www.dnr.mo.gov

MAR 23 2011

Mr. Steve Engemann
Hermann Sand & Gravel, Inc.
Route 3, Box 261
Hermann, MO 65041

Various Counties
Permit Number 2011-362
CEK006763

Dear Mr. Engemann:

The Missouri Department of Natural Resources' Water Protection Program (Department) is in receipt of the U.S. Army Corps of Engineers' (Corps) letter dated February 17, 2011, requesting that your Clean Water Act Section 401 Water Quality Certification (certification) be issued for the Corps' Permit Number 2011-362. The Department understands that Hermann Sand & Gravel, Inc. will abide by the certification and the Corps issued Clean Water Act Section 404 Permit (permit) for commercial dredging operations in the Missouri River.

This letter also serves as an extension of the certification issued for Permit Number 2001-1430 for an additional 60 days, unless an appeal of proffered Department of the Army Permit 2001-1430 is accepted by the Corps' Northwestern Division, in which case the 2001 certification would expire 30 days after the final appeal decision.

This office certifies that the ongoing activities apparently will not cause the general or numeric criteria to be exceeded nor impair beneficial uses established in Water Quality Standards, 10 CSR 20-7.031, provided the following condition is met:

- The U.S. Army Corps of Engineers permit decision and all conditions are followed as authorized by the Corps under Section 404 of the Clean Water Act (33 USC 1344). The implementing regulation for this Act is found at 33 CFR 320-330.

Missouri Clean Water Law, Chapter 644.052.9 RSMo, gives the Department the authority to collect a fee for the issuance of a certification. As of January 1, 2011, this authority has expired, which means the Department no longer has statutory authority to collect water permit fees. This includes the certification fee. Please do not send a payment to the Department.

If you were affected by this decision, you may appeal to have the matter heard by the Administrative Hearing Commission (commission). To appeal, you must file a petition with the commission within thirty (30) days after the date this decision was mailed or the date it was delivered, whichever date was earlier. If any such petition is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed. If it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the commission.

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Water Quality Standards must be met during any operations authorized by these permits. If you have any questions, please contact Ms. Carrie M. Schulte by phone at (573) 751-7023, by e-mail at carrie.schulte@dnr.mo.gov or by mail at Missouri Department of Natural Resources, Water Protection Program, NPDES Permits and Engineering Section, P.O. Box 176, Jefferson City, MO 65102-0176. Thank you for working with the Department to protect our environment.

Sincerely,

WATER PROTECTION PROGRAM

Refaat Mefrakis, P.E., Chief
NPDES Permits and Engineering Section

RM:csp

c: Mr. Cody Wheeler, Army Corps of Engineers, Kansas City District
Mr. Charles Frerker, Army Corps of Engineers, St. Louis District
Ms. Dorothy Franklin, Kansas City Regional Office
Mr. Jimmy Coles, Kansas City Regional Office
Ms. Donna Riebeling, St. Louis Regional Office
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# NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

| Applicant: Hermann Sand & Gravel, Inc. | | File Number: 2011-362 | Date: Mar. 31, 2011 |
|---|---|---|---|
| Attached is: | | | See Section below |
| | A. INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission) | | A |
| XX | B. PROFFERED PERMIT (Standard Permit or Letter of Permission) | | B |
| | C. PERMIT DENIAL | | C |
| | D. APPROVED JURISDICTIONAL DETERMINATION | | D |
| | E. PRELIMINARY JURISDICTIONAL DETERMINATION | | E |

SECTION I - The following identifies your rights and options regarding a modification, reconsideration, or administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or request modification of the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- REQUEST MODIFICATION: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the District Engineer. Your objections must be received by the District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept the approved JD, appeal the approved JD, or submit new information and request reconsideration of the approved JD.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer (address on page 2). This form must be received by the Division Engineer within 60 days of the date of this notice.
- RECONSIDERATION BASED ON NEW INFORMATION: You may submit new information to the District Engineer for reconsideration of an approved JD. You must submit the information within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II – Fill out this section and return this form to the appropriate office only if submitting a request for modification or reconsideration to the District Engineer, or if submitting a request for Administrative Appeal to the Division Engineer. All such submittals must be made within 60 days of the date of this notice.

Submit the following requests to the District Engineer

A. Modification of an INITIAL PROFFERED PERMIT (Item A).
D. Reconsideration of an APPROVED JURISDICTIONAL DETERMINATION based on NEW INFORMATION (Item D RECONSIDERATION).

Submit the following requests to the Division Engineer

B. Administrative Appeal of a PROFFERED PERMIT (Item B).
C. Administrative Appeal of a PERMIT DENIAL (Item C).
D. Administrative Appeal of an APPROVED JURISDICTIONAL DETERMINATION (Item D APPEAL) (for reasons other than reconsideration of an approved JD based on new information).

(Note: Preliminary Jurisdictional Determinations (Item E) are not appealable. If you have concerns regarding a preliminary Jurisdictional Determination, you can request an approved Jurisdictional Determination).

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

SUBMITTAL OF NEW OR ADDITIONAL INFORMATION: The District Engineer may accept and consider new information if you request a modification to an initial proffered permit (Part A), or a reconsideration of an approved JD (Part D). An administrative appeal to the Division Engineer is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the administrative record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

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| If you have questions regarding this decision and/or the appeal process you may contact:<br>DISTRICT ENGINEER<br>**Attn: Mark D. Frazier**<br>**Chief, Regulatory Branch**<br>**U.S. Army Engineer District, Kansas City**<br>**601 E. 12th Street, Suite 402**<br>**Kansas City, MO 64106-2896**<br>**Telephone: 816-389-3990**<br>(Use this address for submittals to the District Engineer) | If you wish to submit an appeal or have questions regarding the appeal process you may contact:<br>DIVISION ENGINEER<br>**Attn: David W. Gesl**<br>**Administrative Appeals Review Officer**<br>**U.S. Army Engineer Division, Northwestern Division**<br>**P.O. Box 2870**<br>**Portland, OR 97208-2870**<br>**Telephone: 503-808-3825** |

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

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| _____<br>Signature of appellant or agent. | Date: | Telephone number: |