

Original Copy



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary
Gloria L. McCutcheon, Regional Director

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Telephone 262-884-2300
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August 21, 2006

IP-SE-2006-410203, 204, 549-561

Milwaukee Metropolitan Sewerage District
260 Seeboth Street
Milwaukee, WI 53204

Dear Mr. Dave Fowler:

We have reviewed your application for a permit to remove concrete and rehabilitate Indian Creek, located in the Village of Fox Point, Milwaukee County. You will be pleased to know your application is approved with a few limitations.

I am attaching a copy of your permit which lists the conditions which must be followed. A copy of the permit must be posted for reference at the project site. Please read your permit conditions carefully so that you are fully aware of what is expected of you.

Please note you are required to submit photographs of the completed project within 7 days after you've finished construction. This helps both of us to document the completion of the project and compliance with the permit conditions.

Your next step will be to notify me of the date on which you plan to start construction and again after your project is complete.

If you have any questions about your permit, please call me at 262-884-2356.

Sincerely,

Jennifer Jerich
Water Management Specialist

cc: Rebecca Gruber, Project Manager, (262)547-4171, Waukesha, WI, U.S. Army Corps of Engineers
Village of Fox Point
Milwaukee County Clerk
Friends of Milwaukee Rivers
Sharon Gayan - DNR
Conservation Warden
Ted Fine – courtesy copy

STATE OF WISCONSIN Dredging PERMIT
DEPARTMENT OF NATURAL RESOURCES

IP-SE-2006-410203MW, 240-549-561

Village of Fox Point Milwaukee Metropolitan Sewerage District is hereby granted under Section 30.20, 30.12(1), 30.123 Wisconsin Statutes, a permit to remove materials from the bed of Indian Creek, a permit to place a structures on the bed of Indian Creek, install utilities on the bed of Indian Creek, replace culverts on tributaries to Indian Creek, replace bridges over Indian Creek and to install fords on Indian Creek, Village of Fox Point, Milwaukee County, also described as the NW¼-SE¼ S8, T8N, R22E, subject to the following conditions:

PERMIT

1. You must notify Jennifer Jerich at phone 262-884-2356 before starting construction and again not more than 5 days after the project is complete.
2. You must complete the project as described on or before December 31, 2009. If you will not complete the project by this date, you must submit a written request for an extension prior to the expiration date of the permit. Your request must identify the requested extension date and the reason for the extension. A permit extension may be granted, for good cause, by the Department. You may not begin or continue construction after the original permit expiration date unless the Department grants a new permit or permit extension in writing. Please note that you can only receive one two (2) year extension.
3. This permit does not authorize any work other than what you specifically describe in your application and plans dated April 2006 and as amended by the contract amendment dated May 15, 2006 and as modified by the conditions of this permit. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department. For the purposes of this permit approved plans shall mean the plans dated April 2006 in the contract documents, the contract amendment dated May 15, 2006 and the project narrative dated May 8, 2006.
4. You are responsible for obtaining any permit or approval that may be required for your project by local zoning ordinances or by the U.S. Army Corps of Engineers before starting your project.
5. Upon reasonable notice, you shall allow access to your project site during reasonable hours to any Department employee who is investigating the project's construction, operation, maintenance or permit compliance.
6. The Department may modify or revoke this permit if the project is not completed according to the terms of the permit, or if the Department determines the activity is detrimental to the public interest.
7. You must post a copy of this permit at a conspicuous location on the project site, visible from the road at both ends of the project, for at least five days prior to construction, and remaining at least five days after construction. You must also have a copy of the permit and approved plan available at the project site at all times until the project is complete.
8. You shall also post a copy of the permit on the Milwaukee Metropolitan Sewerage District website and at Village of Fox Point village hall for the duration of the project.

9. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.
10. You must submit a series of photographs to the Department, within one week of completion of work on the site. The photographs must be taken from different vantage points and depict all work authorized by this permit.
11. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 30.292, Wis. Stats., for any violations of Chapter 30, Wisconsin Statutes or this permit.
12. All dredge material and other excavated materials shall be disposed of in compliance with all solid waste regulations including Chapter NR 500 and 600 series Wisconsin Administrative Codes.
13. This permit has not been reviewed for compliance with all state regulations and does not authorize or approve any other portions of the project. It is your responsibility to ensure compliance with all state regulations including but not limited to floodplain zoning, solid waste, remediation and redevelopment and shoreland zoning.
14. For the purpose of this permit the low flow channel shall end at the rocks that will line the bank of the low flow channel. The terrace shall be the area from the rocks on the bank of the low flow channel to the toe of the top slope. The top slope extends from the terrace to the road or yards at current grade.

Erosion Control:

15. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters and as specified in the plans and procedures that are part of or approved pursuant to this permit. All erosion control measures must meet or exceed the approved Stormwater Construction Technical Standards found on the Department's Runoff Management Website
<http://dnr.wi.gov/org/water/wm/nps/stormwater/techstds.htm#Construction> developed by the Department under Wis. Admin. Code Ch. NR 151.31.
16. **You shall submit at least 30 days prior to start of construction a complete specific erosion control plan. The erosion control plan submitted in the Revised May 8, 2006 project description is a general erosion control plan and does not include specific exact project sequencing, erosion control and staging. You shall not begin work until the Department approves in writing the specific erosion control plan.**
17. **You shall hold a pre-construction meeting. You shall provide 15 day notice to the Department and plan the date such that both Jennifer Jerich and Susan Eichelkraut can attend.**
18. **You shall not open more of the waterway below the Ordinary High Water Mark (current and proposed OHWM location) than can be completed in one working day.** You shall stage work such that the area disturbed can be stabilized and/or completed by the end of each working day. If circumstances occur that the work can not be done during that working day you shall complete stabilize all areas below the OHWM (current and

proposed OHWM location) prior to leaving the site at the end of the working day. Stabilized or complete specifically means sufficient to handle high flow events.

19. **You shall supply a project sequencing plan that includes the timeline for installation of vegetation pods and other native plantings. These plants shall be installed during appropriate time of year to result in the best possible germination of seed.**
20. Once work begins below the OHWM you shall not stop work unless weather requires a break. If work is stopped you shall ensure that the channel is sufficiently stabilized to handle flood events/high flow.
21. It is your responsibility to ensure compliance with Chapter NR216 Wisconsin Administrative Code.
22. Appropriate erosion control measures must be in-place and effective during every phase of this project.
23. Erosion control measures must be in place at the end of each working day.
24. Erosion control measures must be inspected, and any necessary repairs or maintenance performed, after every rainfall exceeding 1/2 inch and at least once per week.
25. Site stabilization between October 1 and April 15 requires sodding or seeding and mulching (with a non-toxic tackifier). If vegetation is not sufficient to completely stabilize the site as of October 1 of any year a non-toxic tackifier must be used according to manufacturer recommendations for reapplication until there is sufficient vegetation growth.
26. The de-watering plan must be approved by the Department in writing before any on-site de-watering may take place. No dewatering plan has been submitted. You shall supply a bypass/dewatering plan that is capable of bypassing all flow around each segment of open construction.
27. This permit has been issued with the understanding that any construction equipment used is the right size to do the job, and can be brought to and removed from the project's site without unreasonable harm to vegetative cover or fish or wildlife habitat.
28. You are not allowed to do construction during periods of high water levels. You shall not begin a new segment if the forecast predicts rain sufficient to result in high water levels.
29. You may not remove vegetative cover below the OHWM before grading commences on each segment on each day.
30. You must maintain a log of the erosion control inspections, repairs made, and rain events. This must be made available to Department personal upon request and must remain on the project site at all times work is being performed.
31. You must not deposit or store any of the graded materials in any wetland or below the ordinary high water mark of any waterway. All graded materials must be placed out of the floodway of any stream.

- 32. You must supply a copy of this permit to every contractor associated with this project. You shall provide written documentation prior to starting work below the OHWM that each contractor has received, read and fully understands this permit.**
33. You shall supply a list of project contacts including: MMSD project manager, on-site project manager (if different), and construction manager (for prim and each sub-contractor). **To date this list of contacts is: Dave Fowler 414-277-6368, Devon Ellis, on-site construction manager 414-225-2149, and Wanasek project manager Paul Miller 262-763-3561.** Any changes to this list must be supplied within 5 days to Jennifer Jerich, DNR Water Management Specialist.

Bridges and Culverts

34. You are authorized to replace/install 5 culverts and 2 bridges in accordance with the approved plans.
35. Heavy equipment must not be used below the ordinary high water mark during construction or for maintenance.
36. Maintenance activities may not result in the discharge or deposition of materials (for example paint, sand or abrasives, metal or chemicals) into the waterway.
37. The culvert must be installed so that the culvert invert is buried between 6 to 12 inches below the bed elevation of the stream.
38. You assume all responsibility and liability for a direct or indirect damage caused or resulting from the presence of the bridge/culvert and hold the State of Wisconsin, and its employees, harmless.

Fords – Pedestrian crossings

39. You must construct the ford crossing material so that its upper surface is level with natural streambed elevations, both above and below the crossing site.
40. You are authorized to install up to 5 ford/pedestrian crossings as shown on the approved plans.

Utility Crossings:

41. Utility may be replaced by trenching in the locations indicated on the plans. You shall stabilize the crossings at the end of each working day. Stabilization shall be such to allow high flows to pass without erosion or damage.

Rock on channel banks:

42. You are hereby authorized to place clear, unpainted rock of a minimum necessary to stop lateral movement of low flow channel along either side of the newly created channel in accordance with approved plans. No rock shall be installed or left on the channel bottom other than in the approved bridge and ford/pedestrian crossing locations in approved plans. Concrete may be left under the bridges; no concrete may remain unless it is required for structural stability of the public infrastructure.

Long-Term Vegetation Management:

43. The terraces (area that extends from the low flow channel to the toe of the top slope) shall be maintained as unmowed native vegetation. This vegetation shall be installed and maintained in accordance with revised plans dated May 8, 2006.
44. Long-term maintenance of the native plants shall not be mowed more often than once every two years to control woody vegetation growth or as described in an approved long-term maintenance plan for native vegetation. If it is determined that mowing is needed more often for the control of woody growth you must receive written approval from the Department.
- 45. You shall supply all employees involved in maintenance and mowing along the Indian Creek Corridor with a copy of this permit and a map that clearly shows where/when mowing is allowed.**
46. You shall monitor and manage vegetation for the first 5 years following the completion of the project. Completion of the project means that the project is finished and stabilized entirely below the OHWM. After 5 years the owner of the land can choose monitoring frequency. Maintenance of the native vegetation for the first 5 years may include more frequent mowing and management if necessary to establish the plantings.
47. A vegetation maintenance plan must be written and supplied to the Department for the diversity and aerial extent of native plantings. This plan must be approved by the Department before MMSD transfers long-term management to the Village of Fox Point.
48. You shall submit a report on the vegetation monitoring and management annually to the Department on January 1 to the Milwaukee Water Management Specialist. This report shall include at a minimum photographs of the project, summary of management completed, invasive species locations, recommendations for vegetation maintenance for the following year and schedule for vegetation maintenance completion. The report shall include the permit docket number listed at the top of this permit.

FINDINGS OF FACT

1. Village of Fox Point Milwaukee Metropolitan Sewerage District has filed an application for a permit to remove materials from the bed of, a permit to place a structure on the bed of, Indian Creek, located in the Village of Fox Point, Milwaukee County, also described as in the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 8, Township 8 North, Range 22 East.
2. The project will consist of widening of the overall channel and replacing ether concrete invert with a stone cobble lined low flow channel with natural bottom. Concrete located under bridges may stay in place in necessary for the structural integrity of the bridge. The banks of the waterway will be reestablished and maintained as native unmowed vegetation below the Ordinary High Water Mark (OHWM) in accordance with approved plans.

For the purposed of this permit the low flow channel shall end at the rocks that will line the bank of the low flow channel. The terrace shall be the area from the rocks on the bank of the low flow channel to the toe of the top slope. The top slope extends from the terrace to the road or yards at current grade.

The project also includes replacing culvers to increase capacity at 2 locations on Seneca Road and Indian Creek Parkway, and at Manor Lane. At these locations Indian Creek Parkway also crossed to Tributaries and culverts will be replaced at these locations as well. An unused service road culvert will be removed upstream of Manor Lane. And 3 other culverts will be replaced. These culverts are located at West Seneca and Indian Creek Parkway, North crossing on Seneca approximately 150 feet North of the parkway and at North Indian Creek and Manor Lane. The pedestrian bridge at West Spooner Road will be replaced and the bridge at Indian Creek Parkway and Seneca may be replaced depending on culvert replacement construction methods. Water mains will also be replaced as part of this project. These utility crossings will be working on during prior to the grading portion of the project and therefore requires special stabilization and erosion control measures. The project also includes a number of fords or pedestrian crossings that will be narrow rock lined paths across the waterway. These fords will be made of small stone and will be placed such that are level with the bank/channel elevation. This project will result in a narrow low flow channel and a wider channel. This will result in a widening of the channel below the OHWM. This permit covers work below the OHWM of Indian Creek including dredging, placement of structures (rocks lining low flow channel), bridge replacements, culvert replacement/repair, and ford placement (pedestrian crossing). This permit does not include work above the OHWM of Indian Creek.

3. The Village of Fox Point, Metropolitan Sewerage District and the Department have agreed to an assumed OHWM at the break of the toe of the top slope for post construction. Upon completion and stabilization of water conditions of the project the Department may upon request reevaluate the location of the OHWM and determine an official OHWM.
4. The Department has held two public informational hearings on this project. The first hearing did not have followed all public notice requirements therefore a second hearing was held. These hearings were well attended and additional written comments were received following each hearing.

The first public informational hearing was held on 6/26/2006; approximately 26 people were in attendance. Comments included both support and opposition. Many comments received were outside the scope of this permit jurisdiction. Comments received in support included that the project has been part of a long-term planning process to alleviate flooding in the area. Comments in opposition included concerns that the public did not receive proper notice that the Village was considering the project, the number of trees planned to be removed, maintenance of the vegetation upon completion of project, mosquito population increase, safety, garbage/debris clean-up, ascetics of project, concern that other alternatives were not explored to resolve flooding, questions regarding the need for project size.

The second public informational hearing was held on August 1, 2006; approximately 42 people were in attendance. Comments were both in support and opposition of the project. Many comments received were outside the scope of this permit jurisdiction. Comments in support included that the project has been part of a long-term planning process to alleviate flooding in the area, that concerns raised were addressed through the planning process and that the plantings would provide a better stream corridor long-term for wildlife and water quality. Comments received in opposition included concerns regarding maintenance of the corridor, if any threatened/endangered species will be impacted, if area will function properly as a wetland, misquotes/West Nile Virus, decrease in property values, lack of information regarding alternatives, cutting of trees/loss of mature trees, not adequate notice of project, future pollution of groundwater, and width of channel bottom. Many comments received

where in regards to the design of the flood control project. This permit does not approve the design of the flood control project as a whole. This permit authorizes work below the OHWM and placement of culverts and bridges. Under Chapter 30 the Department does not have jurisdiction over removal of material or grading about the OHWM.

5. The Department completed a review of the natural Heritage Inventory (NHI) for threatened and endangered species. This review did not result in any species within the project boundary that would still exist.
6. The Department has completed an investigation of the project site and has evaluated the project as described in the application and plans.
7. The proposed project, if constructed in accordance with this permit will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats.
8. The proposed project will not impact wetlands if constructed in accordance with this permit.
9. The Department of Natural Resources and the applicant have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 1.11, 30.20, 30.12(1), 30.123, Wisconsin Statutes and Chapters NR 102, 103, 150, 299, 320, 329, 345 of the Wisconsin Administrative Code.

CONCLUSIONS OF LAW

1. The Department has authority under the above indicated Statutes and Administrative Codes, to issue a permit for the construction and maintenance of this project.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing of any individual permit decision pursuant to section 30.209, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921. The petition shall be in writing, shall be dated and signed by the petitioner, and shall include as an attachment a copy of the decision for which administrative review is sought. If you are not the applicant, you must simultaneously provide a copy of the petition to the applicant. If you wish to request a stay of the project, you must provide information, as outlined below, to show that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment. The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review. If you are not the permit applicant, you must

provide a copy of the petition to the permit applicant at the same time that you serve the petition on the Department.

A request for contested case hearing must meet the requirements of section 30.209, Wis. Stats., and section NR 310.18, Wis. Adm. Code, and must include the following information:

1. A description of the Department's action or inaction which is the basis for the request; and,
2. A description of the objection to the decision that is sufficiently specific to allow the department to determine which provisions of Chapter 30, Wis. Stats., may be violated; and
3. A description of the facts supporting the petition that is sufficiently specific to determine how you believe the project may result in a violation of Chapter 30, Wis. Stats.; and,
4. Your commitment to appear at the contested case hearing, if one is granted and present information supporting your objection.
5. If the petition contains a request for a stay of the project, the petition must also include information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

Dated at Sturtevant Service Center, Wisconsin on August 21, 2006.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES
For the Secretary

By 
Jennifer Jerich
Water Management Specialist