Part 390 – Technical Assistance on Practices Covered Under United States Army Corps of Engineers Regional General Permit 33

390.0 Introduction

A. This document provides instructions regarding the United States Army Corps of Engineers (USACE) Regional General Permit 33 (RGP 33) which will expire on March 22, 2026.

B. Staff are encouraged to contact the USACE, Regulatory Branch, at (309) 794-5057 if they have questions regarding a specific project for which this document provides inconclusive instruction.

390.1 Purpose

A. The purpose of this document is to provide Natural Resources Conservation Service (NRCS) and partner staff with:

(1) additional clarification of the scope on parts of RGP 33,
(2) definitions of terms used in RGP 33 that are not defined within RGP 33,
(3) instructions for using the companion NRCS RGP 33 flow charts, and
(4) a copy of the companion NRCS RGP 33 flow charts, Figure 390-1: Regional General Permit 33 – Applicability Flow Chart and Figure 390-2: Regional General Permit 33 – Mitigation Flow Chart.

B. This document should be used by NRCS and partner staff providing design assistance on projects that require permits from the USACE in accordance with Title 210, National Engineering Manual (NEM), Part 501 (210-NEM-501) "Authorizations", Subpart E, "Assistance of Shoreline Erosion Control". Refer to 210-NEM-501.50 through 210-NEM-501.53.

390.2 Clarification of the Scope on Parts of RGP 33

A. It is the responsibility of the designer to read the full text of Regional General Permit 33 in order to know and understand all the requirements contained within the permit. This document does not contain the full text of RGP 33 and so does not provide a comprehensive list of all applicable conditions or requirements.

B. RGP 33 was written to cover the discharge of dredged or fill material in association with specific U.S. Department of Agriculture (USDA), NRCS, and Department of Housing and Urban Development (HUD)-sponsored activities which do not qualify for the Clean Water Act (CWA) 404(f)(1) exemptions.

C. This permit is valid only for the Rock Island District within the State of Iowa.

D. It is the responsibility of the owner/client to submit permit applications. Technical assistance may be provided in completing the application form, and developing supporting design documentation, but NRCS and partner staff are not to assume the role of applicant.

E. NRCS and partner staff are not authorized to make a jurisdictional determination. The owner/client must request a jurisdictional determination from the USACE if they believe the project site is non-jurisdictional.

390.3 Definitions

A. Ephemeral Stream. A stream or part of a stream that flows only in direct response to precipitation; it receives little or no water from springs, melting snow, or other sources; its channel is at all times above the water table. (USGS Water Basics Glossary)

B. Intermittent Stream. A stream that flows only when it receives water from rainfall runoff or springs, or from some surface source such as melting snow. (USGS Water Basics Glossary)

C. Perennial stream. A stream that normally has water in its channel at all times.

D. PCN. Pre-construction Notification. See item 3) on page 5 of the permit for PCN requirements.

E. Landscape Regions. The state of Iowa is divided into four landscape regions. Each region has a different drainage area threshold for determining the applicability and reporting level of RGP 33. The landscape regions may be found in Figure 1 on page 4 of the permit.

F. Drainage Area Threshold. Drainage area thresholds that apply to the four landscape regions in Iowa are required to determine the reporting and permitting of activities proposed under RGP 33. The drainage area thresholds may be found in Table 1 on page 4 of the permit.

G. Wetlands Considered Lost. Wetlands that are artificially inundated with water greater than three (3) feet in depth, or filled during earthwork operations, are considered a conversion, and therefore considered lost.

H. Permanent Pool. Pools within the stream that are present during normal periods of precipitation and are a constant feature of the stream. These pools may go dry during periods of drought. Transitory pools are a product of channel changes due to storm runoff or animal activity. For example, pools created by the deposition of debris following a peak event are not considered permanent. Pools created by beaver dams are not considered permanent pools. Permanent pools are often found in pool-riffle sequences. Permanent pools may also be found where a stream makes a sudden change in flow direction, such as in the outer bend of a meandering stream.

I. Project Pool. The pool area created by the proposed practice, as it relates to wetland or stream loss is the permanent pool.

J. Stream Loss. Any stream segment that falls in the area of the dam foundation, the scour hole and initial movement of the finite amount of displaced sediment downstream, and the pool upstream of the dam to the top of dam elevation are considered stream loss.

390.4 Instructions for Using Companion NRCS RGP 33 Flow Charts

A. Figure 390-1, RGP 33 Applicability Flow Chart on pages 4-8, may be used to determine when RGP 33 applies.

(1) Go to 'Start' on page 4.
(2) Follow through the decision tree until reaching an 'END' symbol.
(3) If the comment "RGP 33 does not apply" is in the end box, either the practice isn't covered by RGP 33, or the practice is but the project purpose is not. The practice may be covered by a different USACE permit. Check with your area engineer if you're unsure.
(4) Wetlands on all agricultural land, including within gullies, should be evaluated as part of NRCS-CPA-52, Environmental Evaluation Worksheet, by the planner. A wetland determination, or AD-1026, is not required to complete this exercise.
(5) If, after completing the Applicability Flow Chart, the result is that the RGP 33 permit applies, complete the RPG 33 Mitigation Flow Chart on pages 9 and 10 to determine if any wetland mitigation, or stream mitigation, or both, will be necessary.

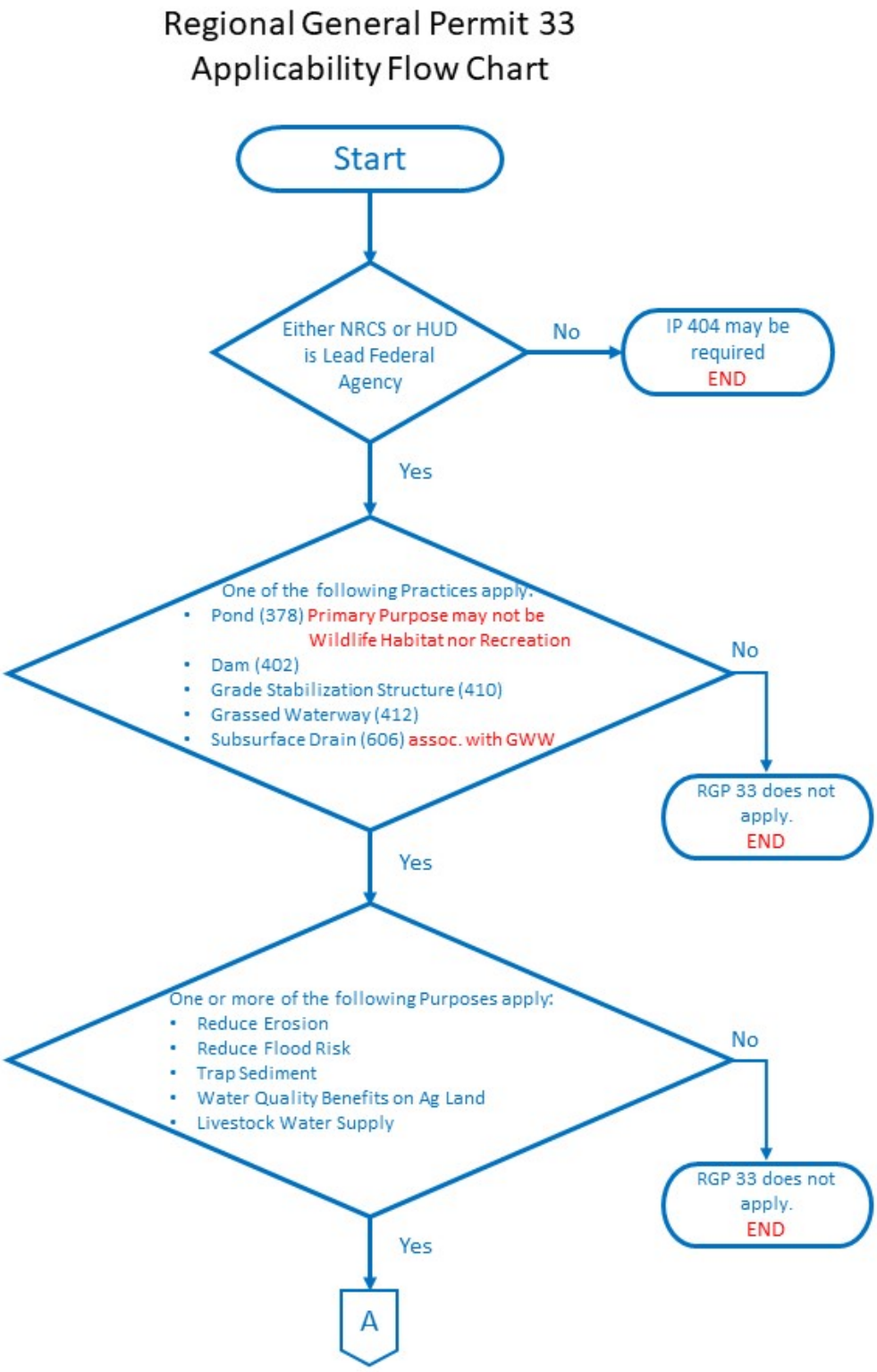
B. Figure 390-2, RGP 33 Mitigation Flow Chart on pages 9 and 10, may be used to determine when wetland and stream mitigation are required.

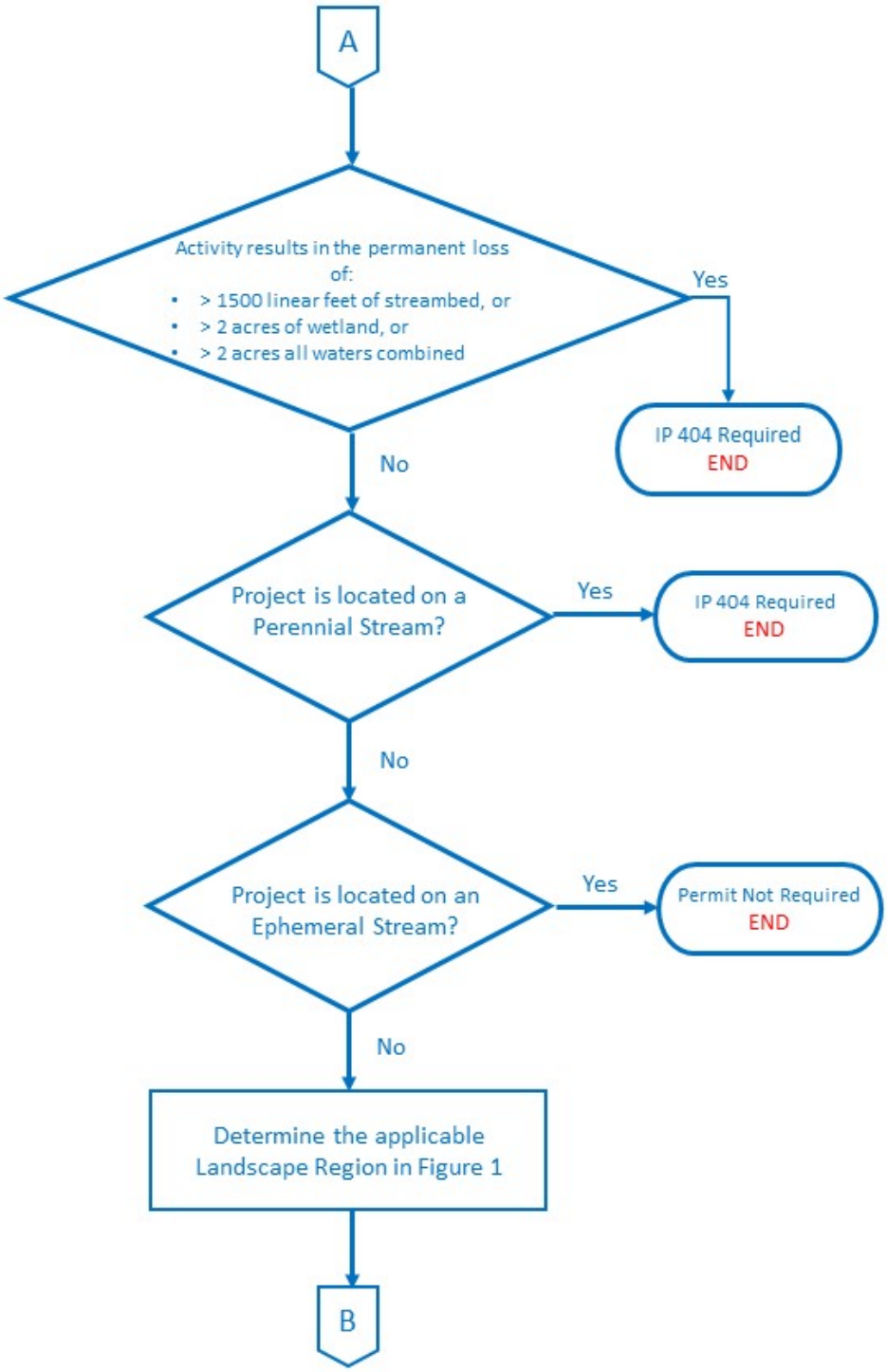
(1) Go to 'Start' on page 9.
(2) Follow through the decision tree until reaching an 'END' symbol.
(3) There are some process steps in the flow chart. The associated sections within RGP 33 are referenced in these steps.

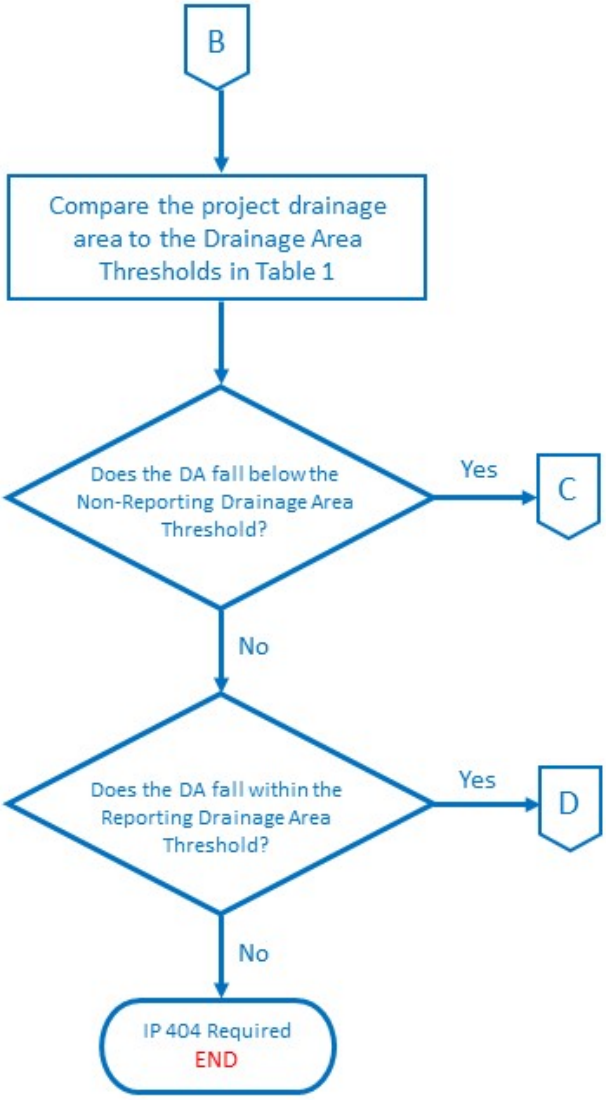
C. The flow regime (ephemeral, intermittent, perennial) for a project may be determined through an evaluation of available data such as the Iowa – NHD Flowlines GIS layer (found in the county and state-wide ArcMap Templates), stream gage data (where available), rainfall data and aerial photos. Part of the evaluation should include a first-hand observation of the impacted stream channel.

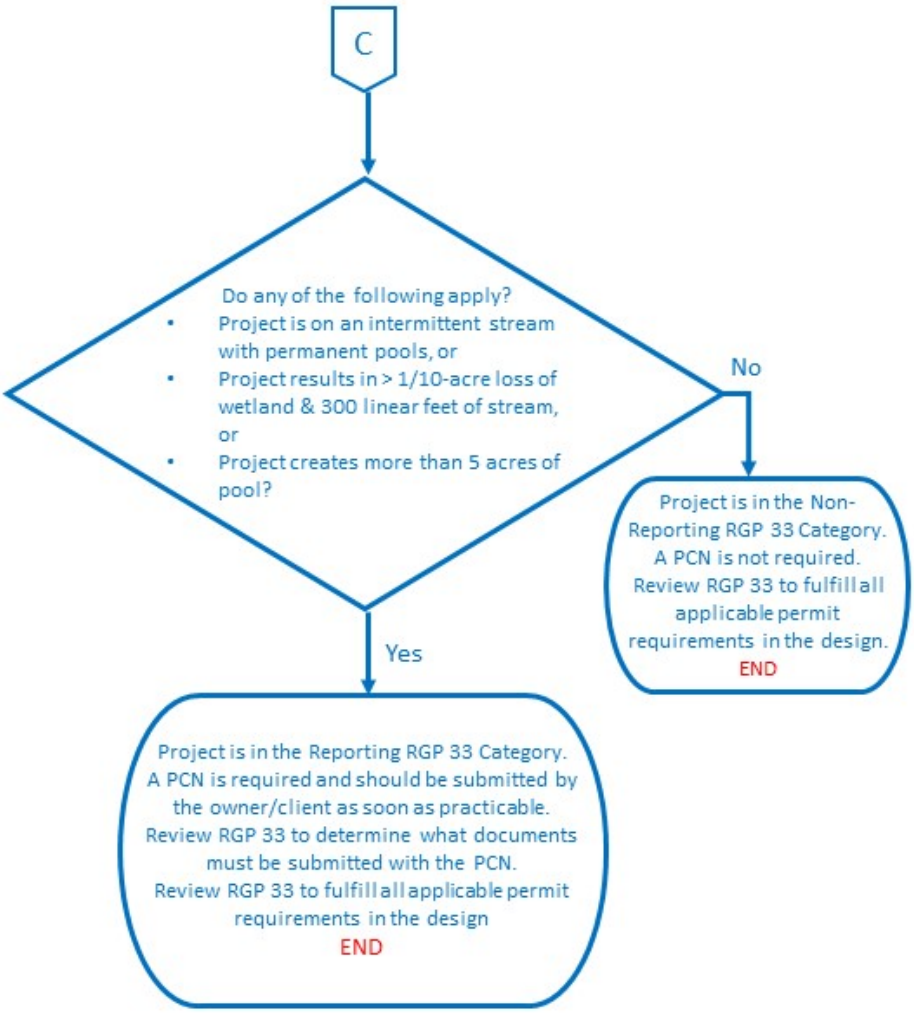
The flow regime is to be determined over average periods of precipitation and should not be assessed based on periods of extreme drought or rainfall.

Figure 390-1: Regional General Permit 33 – Applicability Flow Chart




A
Activity results in the permanent loss of:
• > 1500 linear feet of streambed, or
• > 2 acres of wetland, or
• > 2 acres all waters combined
Yes
IP 404 Required
END
No
Project is located on a Perennial Stream?
Yes
IP 404 Required
END
No
Project is located on an Ephemeral Stream?
Yes
Permit Not Required
END
No
Determine the applicable Landscape Region in Figure 1
B


B
Compare the project drainage area to the Drainage Area Thresholds in Table 1
Does the DA fall below the Non-Reporting Drainage Area Threshold?
Yes
C
No
Does the DA fall within the Reporting Drainage Area Threshold?
Yes
D
No
IP 404 Required
END


C
Do any of the following apply?
• Project is on an intermittent stream with permanent pools, or
• Project results in > 1/10-acre loss of wetland & 300 linear feet of stream, or
• Project creates more than 5 acres of pool?
No
Project is in the Non-Reporting RGP 33 Category. A PCN is not required. Review RGP 33 to fulfill all applicable permit requirements in the design.
END
Yes
Project is in the Reporting RGP 33 Category. A PCN is required and should be submitted by the owner/client as soon as practicable. Review RGP 33 to determine what documents must be submitted with the PCN. Review RGP 33 to fulfill all applicable permit requirements in the design
END

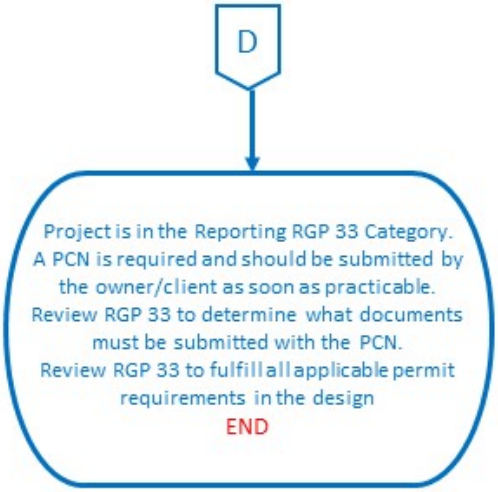
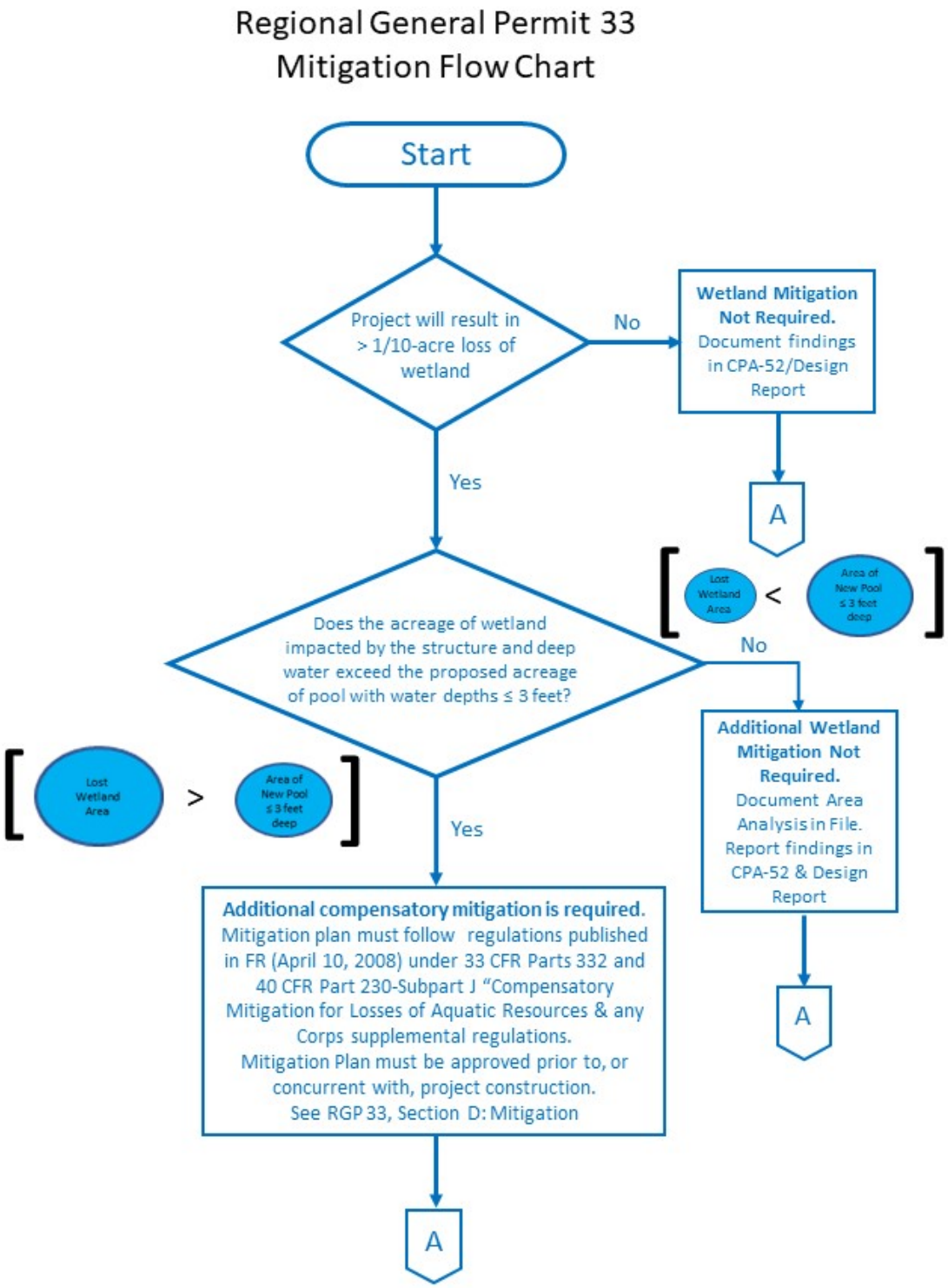
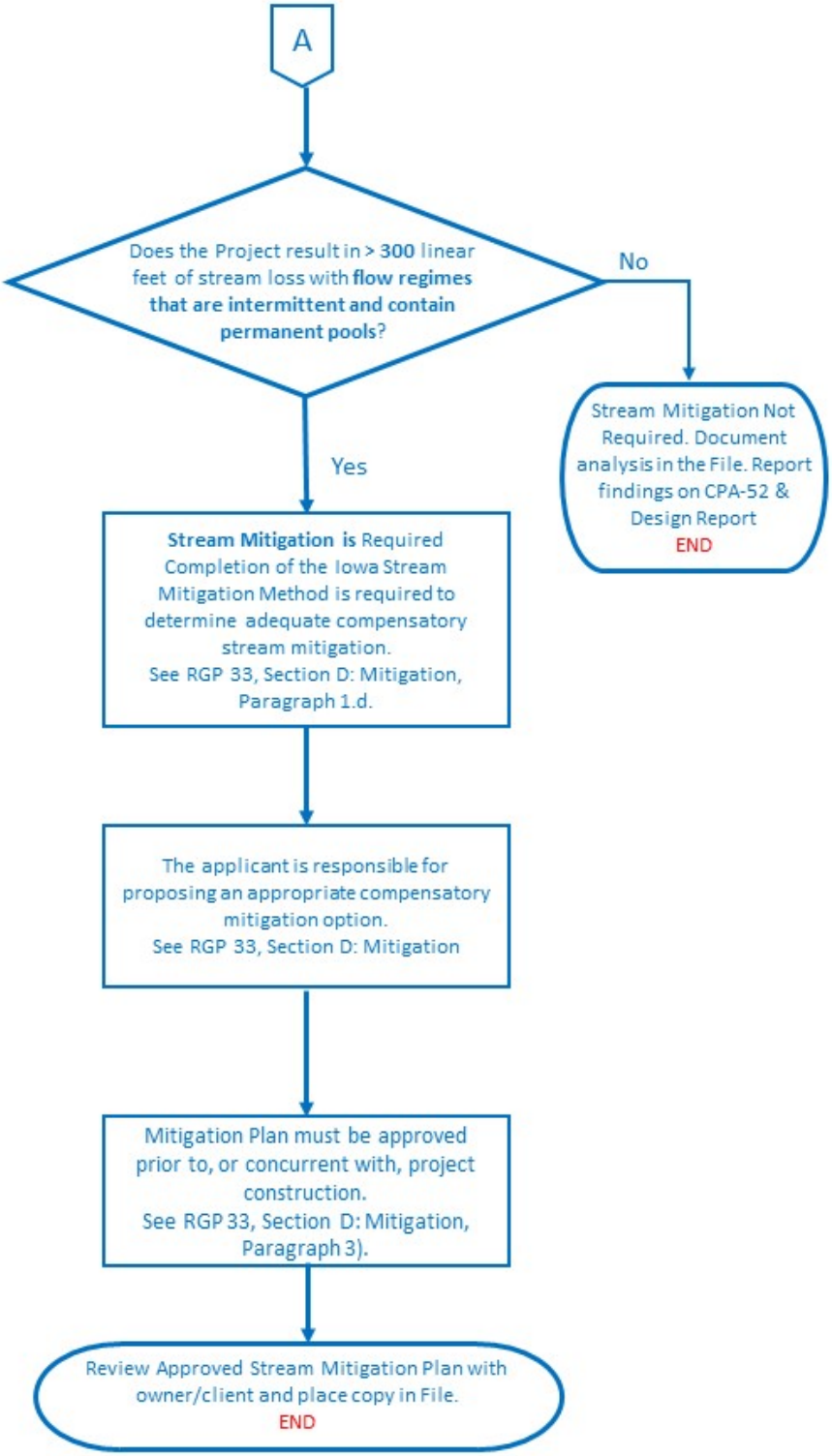

D
Project is in the Reporting RGP 33 Category.
A PCN is required and should be submitted by the owner/client as soon as practicable.
Review RGP 33 to determine what documents must be submitted with the PCN.
Review RGP 33 to fulfill all applicable permit requirements in the design
END

Figure 390-2: Regional General Permit 33 – Mitigation Flow Chart




A
Does the Project result in > 300 linear feet of stream loss with flow regimes that are intermittent and contain permanent pools?
No
Stream Mitigation Not Required. Document analysis in the File. Report findings on CPA-52 & Design Report
END
Yes
Stream Mitigation is Required
Completion of the Iowa Stream Mitigation Method is required to determine adequate compensatory stream mitigation.
See RGP 33, Section D: Mitigation, Paragraph 1.d.
The applicant is responsible for proposing an appropriate compensatory mitigation option.
See RGP 33, Section D: Mitigation
Mitigation Plan must be approved prior to, or concurrent with, project construction.
See RGP 33, Section D: Mitigation, Paragraph 3).
Review Approved Stream Mitigation Plan with owner/client and place copy in File.
END

390.5 References

United States Army Corps of Engineers (USACE), Department of Army Permit, Regional General Permit 33, "Discharge of Dredged or Fill Material Associated with Certain Conservation Practices Sponsored by NRCS/HUD in Waters of the Untied States in the State of Iowa", number CEMVR-OD-P-2020-1497 (Regional General Permit #33): https://www.mvr.usace.army.mil/Portals/48/docs/regulatory/2021%20NWPs/2021%20Regional%20Permits/2020-1497%20%20Regional%20Permit%2033.pdf?ver=eSRIJVP9oeyUqIasuec1wg%3d%3d