

**U.S. Army Corps  
Of Engineers**  
Norfolk District

Fort Norfolk, 803 Front Street  
Norfolk, Virginia 23510-1096

**CENAO-REG  
08-RP-18**

## **REGIONAL PERMIT**

**Effective Date: August 14, 2008**

**Expiration Date: August 14, 2013**

### **I. AUTHORITIES:**

08-RP-18, Regional Permit 18 (“RP”), authorizes the installation or removal of open-pile piers, mooring piles, covered boathouses, boatlifts, and devices associated with shellfish gardening, for private use and those commercial, community, and government piers and/or associated structures where the Virginia Marine Resources Commission does not have jurisdiction.

The intent of this Regional Permit is to provide a streamlined permitting process for those activities listed in paragraph 1 that do not adversely affect general navigation and the aquatic environment.

The people of the Commonwealth of Virginia are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the River and Harbors Act of 1899 (33 U.S.C. 403) to install open-pile piers, mooring piles, covered boathouses, boatlifts and devices associated with shellfish gardening, for private or certain public uses within certain navigable waters of the United States within the Commonwealth of Virginia.

Activities receiving written authorization under this RP do not require further authorization unless the District Commander determines that overriding national factors of the public interest would require an individual permit (in accordance with 33 CFR 325) for a particular project that might generally qualify for this RP. This RP covers only those activities that strictly comply with all of the descriptions, general and special conditions set out below. Any work that does not comply with the following terms, conditions, standards and limitations does not qualify for this RP and will require separate Department of the Army authorization.

### **II. PROCEDURES:**

Prospective permittees (“permittees” or “applicants”) must notify the Corps’ District Commander, via the submission of a Joint Permit Application (“JPA”), and must receive written notification from the Corps acknowledging that the project satisfies the criteria of this RP (the “permit verification”). **No work is authorized unless and until the Corps issues a permit verification.** A JPA can be obtained by writing to the District at the above address or telephoning (757) 201-7652. With internet access, an application may also be obtained by

downloading a copy at the following link:

<http://www.nao.usace.army.mil/technical%20services/Regulatory%20branch/JPA.asp>

For an application to be considered complete:

1. The applicant **MUST** provide a justification as to purpose if the proposed work would extend a pier greater than one-fourth of the distance across the open water measured from mean high water or the channelward edge of the wetlands.
2. The applicant **MUST** provide justification if the proposed work would involve the construction of a pier greater than five feet wide or less than four feet above any wetland substrate.
3. The Corps **MAY** require depth soundings across the waterway at increments designated by the Corps project manager. Typically 10-foot increments for waterways less than 200 feet wide and 20-foot increments for waterways greater than 200 feet wide with the date and time the measurements were taken and how they were taken (e.g., tape, range finder, etc.). Inclusion of depth sounding data in the original JPA is recommended in order to expedite permit evaluation.

### **III. STATE AND LOCAL APPROVALS:**

1. A permit from the Virginia Marine Resources Commission (“VRMC”) to encroach upon State bottom and/or a local permit may also be required for work authorized by this RP.
2. The State Water Control Board provided §401 Water Quality Certification for the 08-RP-18. Therefore, the activities that qualify for this RP meet the requirements of Department of Environmental Quality’s (DEQ) Virginia Water Protection Permit Regulation, provided that the permittee abides by the conditions of 08-RP-18.
3. Those activities on the Potomac River extending beyond the mean low water line may require authorization by the Virginia Marine Resources Commission and/or the Maryland Department of Natural Resources. Authorization may also be needed from the Tennessee Valley Authority for projects constructed on the Clinch and Holston Rivers.
4. Permittees should ensure that projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (“the Act”) (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq.*). Authorizations under this RP do not obviate state or local government authority or responsibilities pursuant to the Act or to any State or local law or regulation.

#### IV. SPECIAL CONDITIONS:

1. If the Corps determines that the proposed activity does not adversely affect general navigation and/or the environment, the Corps may authorize the proposed activity to exceed the limitation of one-fourth of the width of the waterway specified in the Norfolk District's Regional Permit Number 17.
2. The Corps may determine that piers constructed over wetlands can exceed the five feet width restriction and/or that the work can be less than the four-feet-above wetland restrictions of Regional Permit Number 17 (which requires that such piers be no more than a maximum of five feet wide and that the decking be at least four feet above any wetland substrate) if the applicant submits a demonstrated need for the increase width or lowered height, and if the Corps determines that the pier as proposed will have minimal environmental impacts.
3. A pier may be constructed in and over wetland areas to allow access. Such piers shall be attached to the upland at a point landward of mean high water. Mooring piles will be permitted in wetland areas for the purpose of boat mooring only if sufficient water depths exist to float the vessel during periods of low water without alteration of the wetland.
4. If work will occur in areas that contain submerged aquatic vegetation (SAV), additional avoidance and minimization measures, such as relocating a structure, time of year restrictions, compensatory mitigation, etc. may be required to reduce impacts to SAV. Conditions relating to SAV impacts will be determined on a case-by-case basis after consultation with the NOAA Fisheries (NOAA).
5. Floatation units must be made of materials that will not become waterlogged or sink if punctured. Floating sections must be braced so they will not rest on the bottom during periods of low water.
6. A proponent ("permittee" or "applicant") of work proposed in portions of the following waterways may require an easement to be obtained from the Corps Real Estate Division to cross government property before any construction can take place:
  - a. James River
  - b. Lynnhaven Inlet and Connecting Waters
  - c. All Local Cooperation Agreement areas
  - d. Dismal Swamp Canal
  - e. Albemarle and Chesapeake Canal
  - f. Appomattox River

For further information on the need to obtain a government easement, please contact Norfolk District's Real Estate Office at the address on the first page of this Regional Permit or telephone (757) 201-7736.

5. The permittee recognizes the possibility that the structures permitted herein may be subject to damage by waves caused by passing vessels. This RP does not relieve the permittee from taking all proper steps to insure the integrity of the structures permitted herein and the safety of boats moored thereto from damage from wave wash, and the permittee hereby acknowledges and admits that the United States is not liable for any such damage and that it shall not seek to involve the U.S. in any actions or claims regarding such damages.
6. All structures must be of suitable materials and practical design so as to reasonably ensure a safe and sound structure.
7. A permit for a certain structure or activity does not imply that future dredging proposals will be approved.
8. The proposed structure(s) (including any moored vessels) should be located on the property in accordance with the local zoning requirements.
9. If the display of lights and signals on the structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained at the expense of the permittee. The USCG may be reached at the following address and telephone number: Commander (oan), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704-5004, telephone number (757) 398-6230.
10. If and when the permittee desires to abandon the authorized activity he or she must restore the area to a condition satisfactory to the District Commander unless the permittee is transferring his or her interest to a third party. See general condition number 39.
11. The Secretary of the Army or his/her authorized representative may direct the permittee to restore the waterway to its former condition, with no expense to the United States. If the permittee fails to comply with the directive, the Secretary or his/her representative may restore the area to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.
12. No activity is authorized pursuant to this RP if it causes more than a minimal adverse effect on an adjacent property owner's right of access to navigable waters.
13. Any structure authorized shall be properly maintained, including maintenance to ensure public safety.

## V. GENERAL CONDITIONS:

The following conditions apply to all activities authorized under Regional General Permits (RP).

1. **Geographic jurisdiction.** This regional permit will authorize work undertaken within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District.
2. **Compliance Certification.** A Certificate of Compliance must be completed and a copy retained for your records. The original Certificate of Compliance shall be mailed to, U. S. Army Corps of Engineers, Regulatory Branch, 803 Front Street, Norfolk, Virginia 23510-1096 within 30 days of completion of the project.
3. **Other permits.** Authorization does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, state, or local laws.
4. **Minimal effects.** Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts, as determined by the Norfolk District.
5. **Discretionary authority.** The Norfolk District Corps of Engineers District Commander retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 C.F.R. § 320.4(a)). This authority is exercised on a case-by-case basis.
6. **Single and complete projects.** This RP shall only be applied to single and complete projects. For purposes of this RP, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers and which has independent utility. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as single and complete projects with independent utility.
7. **Multiple general permit authorizations.** This Regional Permit may be combined with any Corps general permits (including Nationwide (NWP) or Regional Permits (RP)) for a single and complete project, as long as the acreage loss of waters of the United States authorized by the NWPs/RPs does not exceed the acreage limit of the NWP/RP with the highest specified acreage limit.
8. **Permit on-site.** The permittee shall ensure that a copy of the RP and the accompanying authorization letter are at the work site at all times. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any general permit authorization.

### General Conditions Related to National Concerns:

9. **Historic properties.** (a) In cases where it is determined that the activity may affect properties listed, or eligible for listing on, the National Register of Historic Places, the activity is not authorized until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National

Historic Preservation Act. Federal permittees must provide the Norfolk District with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees must submit a statement to the Corps regarding the authorized activity's potential to cause effects to any historic properties listed, or determined to be eligible for listing on, the National Register of Historic Places, including previously unidentified properties. The statement must say which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location or potential for the presence of historic resources can be sought from the Virginia Department of Historic Resources and the National Register of Historic Places. Where an applicant has identified historic properties which the proposed activity may have the potential to affect, the applicant shall not begin the activity until notified by the Norfolk District that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (d) Prospective permittees should be aware that Section 110(k) of the NHPA (16 U.S.C. § 470(h)-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effects created or permitted by the applicant. If circumstances justify granting the assistance, the Norfolk District is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, State Historic Preservation Officer, Tribal Historic Preservation Officer, appropriate Indian tribes if the undertaking occurs on or affect historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have legitimate interest in the impacts to the permitted activity on historic properties. If the permittee, during construction or work authorized herein, encounters a previously unidentified archaeological or other cultural resource, he/she must immediately stop work and notify the Norfolk District of what has been found. Coordination with the Virginia Department of Historic Resources will commence and the permittee will subsequently be advised when he/she may recommence work.

**10. Tribal rights.** No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**11. National lands.** Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the FWS, U.S. Forest Service, or National Park Service.

**12. Endangered species.**

(a) No activity is authorized under any RP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any RP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district commander with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district commander if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district commander that the requirements of the ESA have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the USFWS Virginia Field Office at 6669 Short Lane, Gloucester, VA 23061 and/or NOAA Fisheries Habitat Conservation Division, P.O. Box 1346, 7580 Spencer Road, Gloucester Point, VA 23062. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district commander will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NOAA Fisheries the district commander may add species-specific regional endangered species conditions to the RP.

(e) Authorization of an activity by a RP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NOAA FISHERIES, both lethal and non-lethal “takes” of protected species are in violation of the ESA.

**13. Essential Fish Habitat.** The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-297; 11 October 1996), requires all Federal agencies to consult with the NOAA Fisheries on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely effect Essential Fish Habitat (EFH). The EFH Designations within the Northeast Region (Maine to Virginia), dated March 1, 1999, has identified EFH for a number of species and their life stages within Virginia waters. If EFH consultation is required, the applicant shall not begin work until the Corps has provided notification that the EFH consultation has concluded.

**14. Wild and Scenic Rivers.** Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia; however, the portion of the Upper New River from Glen Lyn, Virginia to the West Virginia/Virginia state line was designated a “study river” by Congress on October 26, 1992. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system, while the river is in an official study status,

unless the appropriate Federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.

- 15. Federal navigation project.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.
- 16. Navigation.** (a) No authorized activity may cause more than a minimal adverse effect on navigation. (b) The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his/her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Norfolk District, 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.
- 17. Floodplains.** All practicable efforts shall be made to conduct the work authorized by this RP in a manner so as to avoid any adverse impact on the Federal Emergency Management Agency (FEMA) designated 100-year floodplain.
- 18. Real estate.** Activities authorized under this RP do not grant any Corps real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7736 or at the address listed on the front page of this permit.
- 19. Environmental Justice.** Activities authorized under this RP must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".
- 20. Federal liability.** In issuing this RP, 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 RP; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

#### **General Conditions Related to Minimizing Environmental Impacts:**

- 21. Avoidance and minimization.** Discharges of dredged or fill material into waters of the United States shall be avoided and impacts minimized to the maximum extent practicable.
- 22. Heavy equipment in wetlands.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
- 23. Temporary fills.** All temporarily disturbed waters and wetlands must be restored to preconstruction contours as soon as these areas are no longer needed for their authorized

purpose, and not later than completion of project construction. Following restoration of contours, the soil in wetlands must be mechanically loosened to a depth of 12 inches, and the wetlands must then be seeded or sprigged with appropriate native wetland vegetation.

- 24. Sedimentation and erosion control.** Appropriate erosion and sediment controls must be employed and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date.
- 25. Aquatic life movements.** No authorized activities may substantially disrupt the movement of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. The Norfolk District has determined that fish and wildlife are most often present in any stream being crossed, in the absence of evidence to the contrary.
- 26. Discharge of pollutants.** All authorized activities involving any discharge of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 *et seq.*) and applicable state and local laws. No discharge of dredged or fill material in association with this authorization may consist of unsuitable material such as trash, debris, car bodies, asphalt, etc.
- 27. Obstruction of high flows.** Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
- 28. Waterbird breeding areas.** Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
- 29. Native trout and anadromous fishes.** Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish use areas will be conditioned to limit in-stream work within timeframes recommended by the DGIF and/or NOAA Fisheries. Coordination with DGIF and/or NOAA Fisheries will be conducted by the Corps. The applicant shall not begin work until notification is received that all coordination has been completed and/or the Corps has provided the applicant with the appropriate time of year restrictions regarding work in native trout waters or anadromous fish use areas.
- 30. Water supply intakes.** No discharge of dredged or fill material may occur in proximity of a public water supply intake except where the discharge is for adjacent bank stabilization.

#### **General Procedural Conditions:**

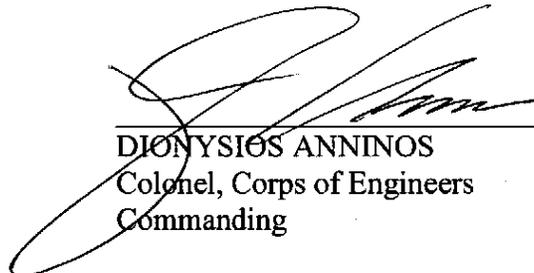
- 31. Inspections.** A copy of this permit and any verification letter must be provided to the contractor and made available at the project site to any regulatory representative. The permittee shall allow the Norfolk District to make periodic inspections at any time deemed necessary in order to assure that the activities being performed under authority of this permit are in accordance with the terms and conditions prescribed herein. The Norfolk District reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under this RP, as deemed necessary on a case-by-case basis.

- 32. Maintenance.** The permittee shall maintain the work authorized herein in good condition and in conformance with all terms and conditions of this permit. All fills shall be properly maintained to ensure public safety.
- 33. Property rights.** This General Permit does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.
- 34. Modification, suspension, and revocation.** This RP may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 C.F.R. § 325.7. Any such action shall not be the basis for any claim for damages against the United States.
- 35. Restoration directive.** The permittee, upon receipt of a restoration directive, shall restore the waters of the United States to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the waters of the United States to their former conditions, by contract or otherwise, and recover the cost from the permittee.
- 35. Special conditions.** The Norfolk District may impose other special conditions on a project authorized pursuant to this RP that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all special and general conditions of this permit, including any additional project specific special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
- 36. False or incomplete information.** In granting authorization pursuant to this permit, the Norfolk District has relied upon information and data provided by the permittee. If, subsequent to notification by the Norfolk District that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.
- 37. Abandonment.** If the permittee decides to abandon the activity authorized under this general permit, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Norfolk District.
- 38. Transfer of authorization.** In order to transfer authorization under this RP, the transferee or permittee must supply the Norfolk District with a written request. Such transfer is effective upon written approval by the Norfolk District of a transfer document signed by both parties evidencing that the transferee commits to assuming all responsibilities of the original permittee under the permit.
- 39. Binding effect.** The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.

**General Conditions Regarding Duration of Authorizations, Time Extensions for Authorizations, and Permit Expiration:**

- 40. Duration of Activity's Authorization.** Activities authorized under 08-RP-18 must be completed by August 14, 2013. If this RP is reissued at that time, and if this work has not been started or completed, but the project continues to meet the terms and conditions of the revalidated RP, then the project will continue to be authorized. The Norfolk District will issue a special public notice announcing any changes to the Regional Permits when they occur; however, it is incumbent upon you to remain informed of changes to the RPs. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this RP that do not meet the terms and conditions of the revalidated RP will remain authorized provided the activity is completed within twelve months of the date of this RP's expiration (i.e. August 14, 2014), unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e). If work cannot be completed by August 14, 2014, you must reapply for separate permit authorization in order to meet current permit criteria.
- 41. Expiration of 08-RP-18.** Unless further modified, suspended, or revoked, this general permit will be in effect until August 14, 2013. Upon expiration, it may be considered for revalidation. Activities completed under the authorization of a RP which was in effect at the time the activity was completed continue to be authorized by that RP.

14 Aug 2013  
Date

  
DIONYSIOS ANNINOS  
Colonel, Corps of Engineers  
Commanding