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

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

**CENAO-WR-R**
**13-RP-05**

# REGIONAL PERMIT

**Effective Date: August 14, 2013** **Expiration Date: August 14, 2018**

## I. AUTHORITIES:

The people of the Commonwealth of Virginia are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) to discharge dredged or fill material into non-tidal waters of the United States, including non-tidal wetlands, for the construction of small impoundments as expressly conditioned and limited herein, with the exception of urban stormwater management ponds (BMPs).

The discharge must not cause the loss of greater than 1/2 acre of non-tidal waters, including the loss of no more than 1000 linear feet of stream bed. This requirement may be waived in writing by the District Engineer in intermittent and ephemeral streams.

The activities authorized under this permit include all aspects of pond construction such as mechanized land clearing, dam construction, placement of water control structures and spillways, backflooding, maintenance /access roads, building pads, and mitigation.

The intent of this authorization is to allow the public to construct small impoundments for general farm use and other private uses such as, but not limited to, irrigation, livestock watering, fire prevention, recreation, in non-tidal waters of the United States, including non-tidal wetlands, provided they have only a minimal environmental effect.

Activities authorized under this regional permit do not require additional authorization under the provisions contained in 33 CFR 325, Regulatory Programs of the Corps of Engineers, unless the District Commander determines on a case-by-case basis that additional review is in the public interest. In some instances the District Engineer may determine that overriding national factors of the public interest would require an individual permit (in accordance with 33 CFR 325) for a particular project which would normally qualify for this regional permit. The Norfolk District will monitor the activities authorized under this regional permit in order to evaluate their cumulative impacts.

This regional permit shall not be interpreted as authorizing any work other than that which is contained in this document. All work undertaken outside the following special and/or general

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conditions, standards, and limitations will require a separate Department of the Army authorization.

## II. NOTIFICATION REQUIREMENTS:

Prospective permittees ("permittees") must submit a Preconstruction Notification (PCN) to the District Engineer prior to commencing the activity and must receive written notification from the Corps acknowledging that the project satisfies the criteria of this RP. (See Special Conditions 3 and 4 for procedures).

## III. STATE AND LOCAL APPROVALS:

1. Prospective permittees may be required to obtain additional state and/or local approvals prior to commencement of work in waters of the United States from the Virginia Marine Resources Commission (VMRC) and/or the local wetlands board. Permittees may contact the VMRC at (757) 247-2200 and/or local government office for further information concerning their permit requirements.

2. *The Corps is coordinating separately with Department of Environmental Quality (DEQ) regarding the requirements of the Virginia Water Protection Permit Regulation, which also serves as the Commonwealth's §401 Water Quality Certification. Individual §401 Water Quality Certifications will be detailed in this section once provided by DEQ.*

   A Joint Permit application must be submitted to the Virginia Department of Environmental Quality Water if the permittee is required to obtain a Virginia withdrawal permit pursuant to 9VAC25-200. More information on Virginia water withdrawal permits can be obtained at http://www.deq.state.va.us/wetlands/swaterwith.html.

3. 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 the need to coordinate with state or local government authority or responsibilities pursuant to the Act or to any State or local law or regulation.

## IV. PERMIT EXCLUSIONS:

The provisions of this permit **DO NOT** apply in the following areas. A separate Department of the Army authorization is required.

1. Tidal waters.

2. Stormwater management ponds associated with new or existing residential, commercial or industrial development and road projects. In most cases, a Norfolk District State Programmatic General Permit (11-SPGP-01) or individual permit will be required.

3. Construction of waste treatment lagoons in waters of the United States.

4. Areas of documented or confirmed use by anadromous fish, including spawning areas. For further information on the location of these areas, contact the Virginia Department of Game and Inland Fisheries (VDGIF) or the NOAA Fisheries Service.

5. Wetland areas composed of 10% or more of the following species (singularly or in combination) in any stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatic*), or overcup oak (*Quercus lyrata*).

6. Wetland areas underlain by histosols. Histosols are organic soils that are often called mucks, peats, mucky peats, etc. The list of histosols in Virginia includes but is not limited to the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pocaty, Pungo, and Rappahannock.

7. Watersheds larger than 2 square miles (1,280 acres). This permit is intended for use only in ephemeral, intermittent, or perennial streams with a drainage area of less than 2 square miles.

8. Isolated Wetlands. NOTE: Corps regulatory jurisdiction over isolated waters and isolated wetlands is limited by and subject to the holdings of the U.S. Supreme Court in the Case of Solid Waste Authority of Northern Cook County vs. U.S. Army Corps of Engineers, No. 99-1178 ("SWANCC decision"). The Virginia DEQ may require a Virginia Water Protection Permit (VWPP) for discharges in isolated wetland.

9. Ponds constructed in support of mining activities, such as Marcellus Shale drilling activities.

## V. <u>SPECIAL CONDITIONS</u>:

1. For the purposes of this regional permit, the impacted area of waters of the United States includes the wetlands, streams, and other waters of the United States that are permanently filled, flooded, cleared, or drained as a result of the regulated activity.

2. The cumulative impacts as a result of permitted or proposed activities to waters of the United States, including adjacent wetlands, for each project or tract will be considered in determining compliance with the provisions of this permit. Information on any prior use of this regional permit (11-RP-05) related to the same tract or property must be provided to the Corps. Use of this permit for more than one pond may be considered, but will require a demonstration of purpose and need.

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3. Notification to the Corps must be in writing (the standard Joint Permit Application may also be used) and must include the following information:
   - Name, address and telephone number of the project proponent;
   - Location of the project (including Tract and Farm Numbers if available);
   - Vicinity map (preferably USGS Quadrangle map), aerial photograph, or drawing accurately showing the extent of the area of the proposed pond and the extent of waters of the U.S., including wetlands;
   - Brief description of the proposed project, its purpose and need, and its direct and indirect adverse environmental effects; including the criteria used to determine the size of the impoundment;
   - A delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;
   - If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and/or 300 linear feet of stream, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

   A Joint Permit Application (JPA) may also be used. A JPA may 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

4. When all required information is received by the appropriate Corps office, the Corps will notify the prospective permittee within 45 days whether the project can proceed under the regional permit, whether the permit issuance will be delayed until all historic property/endangered species concerns/other concerns have been resolved, or whether an alternative Department of Army permit is required. If, after reviewing the notification, the District Engineer determines that the proposed activity would have more than minimal individual or cumulative adverse impacts on the aquatic environment or otherwise may be contrary to the public interest, then he/she will either condition the regional permit authorization to reduce or eliminate the adverse impacts, or notify the project proponent that the activity is not authorized by the regional permit and will provide instructions for seeking authorization under an individual permit. If the proponent is not notified otherwise within the 45-day period, the proponent may begin the activity provided all other applicable federal and state program requirements have been met. Subsequently, the permittee's right to proceed under this regional permit may be modified, suspended, or revoked only in accordance with the procedures set forth in 33 CFR 325.7.

5. Mitigation: In accordance with 33 CFR 332.3 (a) the District Engineer will consider what is environmentally preferable. Factors considered will be likelihood of success, sustainability, location relative to the impact site and significance within the watershed,

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and the costs of the compensatory mitigation project. The District Engineer will require the most appropriate and practicable mitigation 33 CFR 320.4(r).

a. Mitigation for wetland impacts: The Corps may accept compensatory wetland mitigation in the form of wetland restoration, creation, or preservation. Generally, impacts to forested wetlands will be compensated for at a 2:1 ratio, scrub-shrub wetlands at a 1.5:1 ratio, and emergent wetlands at a 1:1 ratio. Wetland creation or restoration, as determined by the Corps, may occur off-site if appropriate. In many cases the most appropriate and practicable mitigation is onsite mitigation through the construction of wetlands and buffers around the perimeter of the pond. Onsite mitigation minimizes sedimentation, improves habitat, and maintains waters quality.

b. Mitigation for stream impacts: The Corps may accept compensatory stream mitigation in the form of stream restoration, stream buffer restoration, creation, or preservation. The following options may be considered: Riparian preservation through restrictive covenants; livestock exclusion with buffers and fencing; restoration and bioengineering. Stream enhancement or restoration, as determined by the Corps, may occur off-site, if deemed appropriate.

c. Mitigation Banks: Purchase of credits from approved wetland and stream mitigation banks may be allowed provided banks are located in the same watershed, if deemed appropriate.

d. In-lieu fee program: Voluntary contributions to the Virginia Aquatic Resources Trust Fund (VARTF) may be accepted in lieu of onsite/offsite mitigation, if deemed appropriate.

6. Any wetland or stream impacts involving U.S. Department of Agriculture program participants must be coordinated with NRCS prior to commencing work. This permit would also authorize facilities referred to by the Natural Resources Conservation Service (NRCS) as Converted Wetlands for Non Agricultural purposes (CWNA) or Best Management Practices (BMPs).

7. Ponds which impact greater than 1/10 acre of wetlands and/or greater than 300 linear feet of streambed may require appropriate sizing to accomplish their stated purpose and need.

   a. For irrigation facilities, a description of the extent of the area to be irrigated and the amount of water storage volume required must be provided to the Corps.

   b. For livestock watering facilities, a description of the type of farming operation, herd size and pasture acreage to be served by this facility must be provided to the Corps.

8. Any temporary fills in waters or wetlands must be removed in their entirety and the affected areas returned to pre-existing elevations and contours.

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9. In the following geographic areas, special conditions may be required upon coordination with the U.S. Fish and Wildlife Service (USFWS), the Virginia Department of Game and Inland Fisheries (VDGIF), and the Virginia Department of Environmental Quality (DEQ).

   a. Designated Trout Waters: Notification is required for activities occurring in the following two categories of Designated Trout Waters: Class V (Put and Take Trout Waters) and Class VI (Natural Trout Waters), as defined by the Virginia State Water Control Board Regulations, Water Quality Standards (VR-680-21-00), dated January 1, 1991, or the most recently updated publication. The Virginia Department of Game and Inland Fisheries (VDGIF) designated these same trout streams into six classes. Classes I-IV are considered wild trout streams. Classes V and VI are considered stockable trout streams. Information on designated trout streams can be obtained via their Virginia Fish and Wildlife Information Service's (VAFWIS's) Cold Water Stream Survey database.

      The waters, occurring specifically within the mountains of Virginia, are within the following river basins:
      1) Potomac-Shenandoah Rivers
      2) James River
      3) Roanoke River
      4) New River
      5) Tennessee and Big Sandy Rivers
      6) Rappahannock River

      This notification requirement applies to all waters of the United States within the following counties and cities: Albemarle, Allegheny, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Bristol, Buchanan, Buena Vista, Carroll, Clarke, Covington, Craig, Dickenson, Floyd, Franklin, Frederick, Giles, Grayson, Greene, Henry, Highland, Lee, Loudoun, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Rappahannock, Roanoke City, Roanoke Co., Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Staunton, Tazewell, Warren, Washington, Waynesboro, Wise, and Wythe.

      The Corps will coordinate the notification with the DEQ and/or the VDGIF. Comments from DEQ and VDGIF will be fully considered before the Corps makes a final decision on the project.

   b. Federally Designated Critical Habitat**:** The main channel and tributaries of waters of the United States, including their adjacent wetlands, within or one mile upstream of the following waters:
      - Powell River: From the Virginia State Line to the Route 58 Bridge in Big Stone Gap and one mile upstream of the mouth of any tributary adjacent to this portion of the River.
      - Clinch River: From the Virginia/Tennessee State Line upstream to Route 632 at Pisgah in Tazewell County, Virginia and one mile upstream of the mouth of any tributary adjacent to this portion of the River, the Little River to its confluence

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with Maiden Spring Creek and one mile upstream of the mouth of any tributary adjacent to this portion of Little River.

- Indian Creek: From its confluence with the Clinch River upstream to the fourth Norfolk and Western Railroad bridge at Van Dyke in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek.
- Copper Creek: From its confluence with the Clinch River to the Route 58 Bridge at Dickensonville in Russell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek**.**
- North Fork Holston River: From the Virginia State Line to the Smyth County/Bland County line extending one mile upstream and one mile upstream of the mouth of any tributary adjacent to this portion of the River.
- Middle Fork Holston River: From the Virginia State Line to the confluence of Walker Creek in Smyth County near Marion, Virginia.
- South Fork Holston River: From the confluence of the Middle Fork Holston River upstream to the confluence of Beech Creek in Washington County**.**

If the Corps determines that any of the areas or species described in this section may be affected, it will initiate consultation with the U. S. Fish and Wildlife Service (USFWS) pursuant to Section 7 of the Endangered Species Act in accordance with General Condition 12 (below). The applicant cannot begin work in jurisdictional waters or wetlands until the Corps provides written notification that such work may proceed and includes any project specific special conditions concerning federally-listed species.

c. Natural Heritage Resource Areas: Natural Heritage Resource Areas described as follows:
   1) Naturally occurring basins or depressions that normally contain standing water seasonally or permanently (e.g., Delmarva/Carolina Bays, sinkhole ponds, vernal ponds, etc.);
   2) Wetlands driven by discharges from the water table in the coastal plain (i.e. seeps); and sphagnum-dominated wetlands;
   3) High alkaline marshes in calcareous substrate. There are a number of different wetland community types that fall into this category, and no single set of indicator species. For instance, the grass/sedge dominated wet prairies of the Shenandoah Valley have several characteristic sedges, including the state-rare *Carex lacustris* (lake-bank sedge) and the more common *Carex lanuginosa* (woolly sedge) and *Carex trichocarpa* (hairy-fruit sedge). Another example is calcareous seeps, which are often "crunchy" under foot. This crunch is caused by a whitish, clay-like material known as travertine-marl that can cover the ground surface. Marl is a calcium carbonate precipitate formed when the seepage water is warmed and agitated along its course down a slope.

10. The construction or work authorized by this permit must be conducted in a manner so as to minimize any degradation of water quality and/or damage to aquatic life. Also, measures must be taken to prevent or control spills of fuels or lubricants from entering the waterway.

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11. Adverse Effect from Impoundments: Adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable. The District may require project designs to insure MINIMUM -IN-STREAM flows are maintained to downstream waters.

## VI. 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 U.S. Army Corps of Engineers (the Corps).
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 Corps.
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 CFR Part 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.
7. **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.
8. **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 impacts are considered cumulatively and do not exceed the acreage limit or linear foot limits of the RP/ NWP.
9. **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:**

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10. **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 Corps with the appropriate documentation to demonstrate compliance with those requirements. The Corps will review the documentation and determine whether it is sufficient to address Section 106 compliance for the RP activity, or whether additional Section 106 consultation is necessary. (c) Non-federal permittees must notify the Corps if the authorized activity has the 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. Assistance regarding information on the location or potential for the presence of historic resources can be sought from the Virginia Department of Historic Resources (VDHR) or Tribal Historic Preservation Officer (THPO), as appropriate, 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 Corps 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 Corps 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, SHPO/ THPO, 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.
11. **Discovery of Previously Unknown Remains and Artifacts.** If you discover any previously unknown historic, cultural, or archaeological remains and artifacts while accomplishing activity authorized by this permit, you must immediately stop work and notify the Corps of what has been found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The Corps will initiate Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
12. **Tribal rights.** No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights, treaty fishing, and hunting rights.

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13. **Federal 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 unless approval from the applicable land management agency is provided with the permit application.
14. **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 U.S. Fish and Wildlife online project review process at http://www.fws.gov/northeast/virginiafield/endspecies/Project_Reviews.html and/or the NOAA Fisheries Habitat Conservation Division, P.O. Box 1346, 7580 Spencer Road, Gloucester Point, VA 23062. For activities that might affect Federally-listed rare, 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
15. **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 affect Essential Fish Habitat (EFH). The EFH Designations within the

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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.

16. **Migratory Birds and Bald and Golden Eagle Protection Act**. The bald eagle (Haliaeetus leucocephalus) is no longer a federally listed threatened or endangered species; therefore, the Endangered Species Act provisions are not applicable to this species. The Bald and Golden Eagle Protection Act (BGEPA) does not require that a federal agency involved in permitting the proposed action conduct coordination. The permittee is responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the BGEPA. The applicant should either obtain "take" permit or a letter of concurrence from FWS indicating that a permit is not necessary prior to initiating construction activities. You should contact FWS concerning this matter at U.S. Fish and Wildlife Service, Virginia Field Office, ATTN: Kim Smith, 6669 Short Lane, Gloucester, VA 23061. Information on active bald eagle nests and concentration areas can be obtained in Step 6 of the U.S. Fish and Wildlife Service's online project review system available at: http://www.fws.gov/northeast/virginiafield/endspecies/Project_Reviews_Introduction.html.
17. **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.
18. **Federal navigation project.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.
19. **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 Corps, 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.
20. **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.

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21. **Real estate.** Activities authorized under this RP do not grant any Corps or Federal real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7735 or at the address listed on the front page of this permit.
22. **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".
23. **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:**

24. **Avoidance and minimization.** Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.( 40 CFR Part 230.10(a) Section 404 (b)(1) Guidelines).
25. **Mitigation.** Mitigation in all its forms (avoiding, minimizing, or compensating for resource losses) may be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site)."
26. **Heavy equipment in wetlands.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
27. **Temporary fills.** All temporarily disturbed waters and wetlands must be restored to preconstruction contours within 6 months of commencing the temporary impact's construction. Impacts that will not be restored within 6 months (calculated from the start of the temporary impacts construction) will be considered permanent unless otherwise approved by the RP. 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.
28. **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.
29. **Aquatic life movements.** No authorized activities may substantially disrupt the necessary life cycle movements 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. Corps has determined that fish and wildlife are most often

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present in any stream being crossed, in the absence of evidence to the contrary. All permanent and temporary crossings of water bodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species.

30. **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.
31. **Obstruction of high flows.** Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
32. **Waterbird breeding areas.** Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
33. **Native trout and anadromous fishes.** Authorizations for activities under this RP within 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.
34. **Water supply intakes. No discharge of dredged or fill mate**rial may occur in proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

**General Procedural Conditions:**

35. **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 understands and agrees that the Corps are permitted and allowed to make periodic inspections at any time the Corps deems 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 Corps 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.
36. **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.
37. **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.
38. **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 CFR Part

325.7. Any such action shall not be the basis for any claim for damages against the United States.

39. **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.
40. **Special conditions.** The Corps 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 general conditions of the authorization, including special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
41. **False or incomplete information.** In granting authorization pursuant to this permit, the Corps has relied upon information and data provided by the permittee. If, subsequent to notification by the Corps 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.
42. **Abandonment.** If the permittee decides to abandon the activity authorized under this RP, 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 Corps.
43. **Transfer of authorization.** In order to transfer authorization under this RP, the transferee or permittee must supply the Corps with a written and signed, by all appropriate parties, request to make such a transfer. Such transfer is not effective until written approval has been granted by the Corps.
44. **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:**

45. **Duration of Activity's Authorization.** Activities authorized under 13-RP-05 must be completed by August 14, 2018. 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 Corps 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, 2019), unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR Part 325.7(a-e). If work cannot be completed by August 14,

2019, you must reapply for separate permit authorization in order to meet current permit criteria.

46. **Expiration of 13-RP-05.** Unless further modified, suspended, or revoked, this general permit will be in effect until August 14, 2018. 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.

_____ _____

Date

PAUL B. OLSEN
Colonel, Corps of Engineers
Commanding

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