



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

CENAO-CO-R
98-RP-40

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

REGIONAL PERMIT

Effective date: August 28, 1998

Expiration Date: August 28, 2003

Authorized Activities: Maintenance dredging and/or excavation in non-tidal waters of the United States.

Pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, permits are required from the Army Corps of Engineers for construction, dredging, and filling in waters of the United States. The Corps has issued several nationwide permits that allow work to be performed without prior notification provided certain conditions are met. In addition, Section 404(f) of the Clean Water Act specifically exempts certain types of discharges from permit requirements associated with agriculture and post-flood-related activities.

In response to the need for a more streamlined review of permit requests that do not meet the aforementioned exemptions or Corps nationwide permits, the people of the Commonwealth of Virginia are hereby authorized to perform maintenance dredging and/or excavation in non-tidal waters of the United States (e.g., rivers, streams, lakes, and ponds) which would have minimal environmental effects.

On 19 June, 1998, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit affirmed the district court's decision involving the "Excavation Rule" (also known as the Tulloch Rule) in American Mining Congress v. U.S. Army Corps of Engineers. A stay was granted which allowed the Corps to continue to regulate the "incidental fallback" associated with dredging operations.

Subsequently, the same panel of the D.C. Circuit Court issued an order vacating the stay. The United States may ask the Court of Appeals en banc to rehear the panel's decision. In short, we do not know if or when the Corps of Engineers will have the authority to regulate "incidental fallback" in the future under Section 404. However, if we do, this regional permit will authorize the work described above.

Types of projects which would qualify for this regional permit include, but are not limited to, the following:

1. Activities involving the removal of sediment and debris where such an activity would prevent loss of property or to reduce flooding and/or erosion. This is especially necessary after a catastrophic event, including flooding, fire, windstorm, etc. However, this Regional Permit will not authorize any rechannelization, channel widening, deepening, straightening, or levee construction.
2. Maintenance dredging of serviceable impoundments, including stormwater management facilities, detention and retention ponds, flood control structures, private and public lakes and ponds, etc. to reestablish their original design contours and capacity.

The following special conditions are proposed for this regional permit:

1. The permittee shall notify the District Engineer and include the following information:
 - a. Name, address and telephone number of the prospective permittee;
 - b. Location of the proposed project, including vicinity map;
 - c. Brief description of the proposed project, including methods of work, and the project purpose;
 - d. A plan view and cross section view of the proposed project, including dimensions, and;
 - e. Location, and design, if applicable, of the disposal area for the excavated material.
2. If the proposed work in a non-tidal stream is necessary to correct damage from a flood, and will occur within six months of that flood, and will not affect more than 500 linear feet of the stream, applicants may not need submit any written information to the Corps to qualify for this regional permit. Instead, an applicant may contact the nearest Corps regulatory office (see map) by telephone and describe the nature and location of the work to the Corps project manager. The Corps project manager will either authorize the work over the telephone, or schedule a site visit.
3. The work would not cause the loss of more than 1/10 acre of wetlands and is part of a "single and complete project". A wetland delineation should be included.
4. The work shall be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the Clean Water Act.
5. The Virginia Department of Environmental Quality has waived Section 401 Water Quality Certification for the activities that qualify for this Regional Permit with the following exceptions:
 - a. Activities occurring in Class V Waters- Stockable Trout Waters or activities occurring in Class VI Waters Natural Trout Waters (Virginia Water Quality Standards 9 VAC 25-260-10 et seq.).
 - b. Activities that impact more than 500 linear feet of a stream.
 - c. Activities that result in the dredging of more than 5,000 cubic yards of material.For the activities listed above, the Virginia Department of Environmental Quality will process applications for individual Section 401 Water Quality Certifications.
6. After review of the available information, the District Engineer will determine if further coordination, relative to State trout waters, endangered and threatened species and their critical habitat, and/or cultural and historic resources, is warranted. Proposed activities involving State trout waters will be coordinated with the Virginia Department of Game and Inland Fisheries as part of the Corps' review. Proposed activities in riffle pool complexes or affecting greater than 500 linear feet of stream will be coordinated with the Environmental Protection Agency as part of the Corps' review.
7. The work shall not be carried out until notified in writing by the District Engineer.

Special Conditions for Discharges:

1. If the activity involves a discharge of dredged or fill material, the discharge will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the Clean Water Act and published in 40 CFR 230.
2. No discharge of dredged or fill material may consist of unsuitable material (e.g.: trash, debris, car bodies, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

3. No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for adjacent bank stabilization.
4. No discharge of dredged or fill material may occur in areas of concentrated shellfish production.
5. Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.
6. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water.
7. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
8. Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing elevation.

General Conditions:

1. 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. 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.
3. (a) No activity is authorized under this permit 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, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the Norfolk District if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.
(b) Authorization of an activity by this permit does not authorize the “take” of a threatened or endangered species as defined under the Federal Endangered Species Act. 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. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal “takes” of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world web pages at:
<http://www.fws.gov/~r9endspp/endspp.html>
and
http://kingfish.ssp.nmfs.gov/tmcintyr/prot_res.html#ES and recovery
4. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized until the Norfolk District has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the Norfolk District if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the Norfolk District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and

existence of historic resources can be obtained from the Virginia Department of Historic Resources and the National Register of Historic Places.

5. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify the Norfolk District of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
6. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
7. Authorized activities must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".
8. No activity may cause more than a minimal adverse effect on navigation.
9. No activity may substantially disrupt the movement of those species 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.
10. Appropriate erosion and siltation controls must be used 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 or high tide line, must be permanently stabilized at the earliest practicable date.
11. The construction or work authorized by this permit will be conducted in a manner so as to avoid any degradation of water quality and/or damage to aquatic life where possible, and minimize any degradation where unavoidable. Also, you will employ measures to prevent or control spills of fuels or lubricants from entering the waterway.
12. Permittees are expected to fully comply with Virginia Administrative Code 9 VAC 25-260-10, Water Quality Standards, and all other appropriate laws and regulations of the Commonwealth of Virginia pertaining to water quality.
13. The permittee will make every reasonable effort to conduct the construction or operation of the work authorized by this permit in a manner so as to minimize any adverse impact on fish, wildlife and natural environmental values.
14. Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
15. The permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.
16. Failure to comply with the terms and conditions of this permit can result in enforcement actions against the permittee and/or contractor.
17. The provisions of this permit shall be binding on any assignee or successor in interest of the permittee.

18. In order to transfer this permit, the transferee must supply the Norfolk District with a written request to transfer the permit.

19. Should you be unable to complete the authorized activity in the time limit provided, you must submit your request for a time extension to this office for consideration at least one month before the permit expiration date.

20. In granting an authorization pursuant to this permit, the Norfolk District has relied on the 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 Government may institute appropriate legal proceedings.

21. Limits of this authorization:

- a. This permit does not obviate the need to obtain other Federal, state or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal projects.
- e. This permit does not grant any Corps real estate rights. If real estate rights are needed from the Corps, please contact Norfolk District's Real Estate Division at the address listed on the front page or telephone (757) 441-7735.

22. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

23. The Norfolk District may reevaluate its decision on your authorization under this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 20 above).
- c. Significant new information surfaces which this office did not consider in reaching the original decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost. In addition, unpermitted work or violation of permit conditions may result in civil, criminal or administrative penalties (33 U.S.C. 1319 c, d, and g).

24. This regional permit, unless further modified, suspended or revoked, will be in effect until August 28, 2003. Upon expiration, it may be considered for revalidation.

25 August 1998

//Signed//

Date

Robert H. Reardon, Jr.
Colonel, Corps of Engineers
District Engineer