



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

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1011

**CENAO-WRR
16-RP-05**

REGIONAL PERMIT

Effective Date: June 9, 2017

Expiration Date: June 9, 2022

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 and/or fill material into non-tidal waters of the United States, including non-tidal wetlands, for the purpose of constructing small impoundments as expressly conditioned and limited herein.

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. A prospective permittee may request a waiver of the 1000 linear foot limit on impacts to intermittent and ephemeral streams; the District Engineer will only grant the waiver upon a written determination that the proposed activity will result in no more than minimal adverse direct and indirect effects.

The regulated 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, and flooding. 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 (and/or temporarily) filled, flooded, cleared, or drained as a result of the regulated activity. The Corps will determine, on a case-by-case basis whether attendant structures, access roads, building pads, etc. will be considered within the scope of analysis pursuant to the National Environmental Policy Act, the Endangered Species Act and/or the National Historic Preservation Act. To the extent these features need authorization pursuant to the Clean Water Act, they cannot be authorized under this general permit.

The intent of this regional permit is to authorize private entities to discharge dredged and/or fill material into waters of the U.S. in order to construct small impoundments for general and private use. These uses include, but are not limited to, recreation, aesthetics, and water storage for fire prevention; moreover, the impacts may not result in more than minimal individual or cumulative adverse environmental impacts.

Activities authorized under this regional permit do not require additional Department of the Army authorization under the provisions contained in 33 CFR 325, Regulatory Programs of the Corps of Engineers, unless the District Engineer 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.

This regional permit authorizes only those activities complying with all terms, general and special conditions of this permit and any subsequent special conditions included with a written verification issued by the Corps for a specific project.

II. NOTIFICATION REQUIREMENTS:

Prior to commencing the activity, prospective permittees ("permittees") must submit a Preconstruction Notification (PCN) to the District Engineer and must receive written notification from the Corps acknowledging that the project is authorized pursuant to this RP.

Notification to the Corps must be in writing (the standard Joint Permit Application may also be used, as described below) and must include the following information:

- a) Name, address and telephone number of the prospective permittee;
- b) Name, address and telephone number of the property owner, if different from the prospective permittee;
- c) Location of the project (including Tax Parcel ID Number, if available);
- d) Vicinity map, aerial photograph, and/or drawing accurately showing the extent of the area of the proposed pond and the extent of waters of the U.S., including wetlands;
- e) Project plans depicting the profile view and cross section view of the proposed dam, outfall structure and impoundment area;
- f) 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;
- g) 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;
- h) If the proposed activity will result in the loss or conversion of greater than 1/10 acre of wetlands and/or 300 linear feet of stream, the prospective permittee must submit a statement describing how any required compensatory mitigation will be provided. As an alternative, the prospective permittee may

submit a conceptual or detailed mitigation plan. In accordance with 33 CFR 332.3 (a) the Corps 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, and the costs of the compensatory mitigation project. The Corps will require the most appropriate and practicable mitigation pursuant to 33 CFR 320.4(r).

A Joint Permit Application (JPA) may also be used. A JPA may be obtained by writing to the District at the above address, telephoning the Norfolk District Regulator of the Day at (757) 201-7652 or via the following link to the Norfolk District Regulatory Branch website:

http://www.nao.usace.army.mil/Portals/31/docs/regulatory/RPSPdocs/Revised_Standard_JPA_FillableForm_MAR2014.pdf

The Corps must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the request complete. The request must specify the information needed to make the PCN complete. As a general rule, the Corps will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the Corps will notify the prospective permittee that the PCN is still incomplete and the review process will not commence until all of the requested information has been received by the Corps. The prospective permittee shall not begin the activity until either:

- a) He or she is notified in writing by the Corps that the activity may proceed under the RGP, subject to any additional project-specific special conditions imposed by the Corps; or,
- b) 45 calendar days have passed from the Corps' receipt of the complete PCN and the prospective permittee has not received written notice from the Corps. However, if coordination with other agencies is required, pursuant to Special Condition 4 of this RGP, Section 7 of the Endangered Species Act, and/or Section 106 of the National Historic Preservation Act, the prospective permittee may not proceed until receiving written notification from the Corps, confirming that the coordination is complete.
- c) If, after reviewing the request, the Corps 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 the Corps will 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. The Corps may revoke this Regional Permit for an individual activity by following the procedures set forth in 33 CFR 325.7.

III. STATE AND LOCAL APPROVALS:

1. Prospective permittees may be required to obtain additional state and/or local approvals prior to commencing 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. Pursuant to Virginia Water Protection (VWP) Permit Program Regulation 9VAC25-210-130 H, the State Water Control Board is providing conditional 401 Water Quality Certification for the 16-RP-05. The Board will continue to process applications for Section 401 Certification through a VWP individual permit or VWP general permit coverage, pursuant to VWP permit program regulations, when the applicant proposes to construct an impoundment that is not otherwise excluded from VWP permitting pursuant to 9VAC25-210-60 and the impacts to any type of non-tidal stream bed exceed 1,500 linear feet, regardless of any waiver decision made by the USACE.

A Joint Permit application must be submitted to the Virginia Department of Environmental Quality Water if the permittee is required to obtain a Virginia surface water withdrawal permit pursuant to 9 VAC 25-210. More information on Virginia surface water withdrawal permits can be obtained at <http://www.deq.state.va.us/Programs/Water/WaterSupplyWaterQuantity/WaterWithdrawalPermittingandCompliance.aspx> .

3. Pursuant to the Coastal Zone Management Act (CZMA) of 1972, as amended, and the federal consistency regulations implementing the CZMA (15 CFR 930), the Virginia Department of Environmental Quality concurs that this permit is consistent with the Virginia CZM Program, provided the following conditions are satisfied:
 - a) Prior to construction, applicants shall obtain all other required permits and approvals for programs associated with the Virginia CZM Program's enforceable policies and applicant shall also adhere to all conditions contained therein.
 - b) Impacts to any type of non-tidal stream bed must not exceed 1,500 linear feet. The State Water Control Board has provided conditional Section 401 Water Quality Certification for 16-RP-05 pursuant to VWP Permit Program Regulation 9 VAC 25-210-130 H. The Board will continue to process applications for Section 401 Certification through a VWP individual permit or VWP general permit coverage, pursuant to VWP Permit Program Regulations, when the project (applicant) proposes to construct an impoundment that is not otherwise excluded from VWP permitting pursuant to 9 VAC 25-210-60 and the impacts to any type of non-tidal stream bed exceed 1,500 linear feet, regardless of any waiver decision made by the Corps.

- c) Prior to issuing RP-05 for projects located in Tidewater Virginia (as defined in Virginia Code §28.2-100), the Department of Game and Inland Fisheries is afforded an opportunity to review and comment on these permits to ensure consistency with the fisheries management enforcement policy of the Virginia CZM Program.
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.*).
5. Authorizations under this RP do not supersede state or local government authority or responsibilities pursuant to the Chesapeake Bay Preservation Act or to any State or local laws or regulations.

IV. PERMIT EXCLUSIONS:

This permit is prohibited for use and a separate Department of the Army authorization is required in the following areas.

1. Tidal waters.
2. 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 National Oceanic and Atmospheric Administration (NOAA) Fisheries Service.
3. 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*).
4. 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.
5. 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.

This permit is not intended for the following uses. A separate Department of the Army authorization may be required.

6. Stormwater management ponds and stormwater best management practices (BMPs) 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.
7. Construction of waste treatment lagoons in waters of the United States.
8. Ponds constructed in support of mining activities.
9. Farm or stock ponds (as identified in 33 CFR 323.4).
10. Ponds constructed for aquaculture.

V. SPECIAL CONDITIONS:

1. The activity must be a single and complete project, as defined in # 6 of the General Conditions. This RP cannot be used more than once for the same single and complete project.
2. The cumulative impacts as a result of permitted or proposed activities to waters of the United States, including adjacent wetlands, for each project will be considered in determining compliance with the provisions of this permit. Known information on any prior use of Corps permits related to the same property must be provided to the Corps.
3. All temporarily disturbed waters and wetlands must be restored to their pre-construction contours within 12 months of commencing the temporary impacts' construction. Impacts that will not be restored within 12 months (calculated from the start of the temporary impacts' construction) will be considered permanent, unless otherwise approved by the Corps, and mitigation may be required. Once restored to their natural contours, soil in these areas must be mechanically loosened to a depth of 12 inches and wetland areas must be seeded or sprigged with appropriate native vegetation.

Plant species listed by the most current Virginia Department of Conservation and Recreation's Invasive Alien Plant List shall not be used for re-vegetation for activities authorized by any NWP. The list of invasive plants in Virginia may be found at: <http://www.dcr.virginia.gov/natural-heritage/invspdflist>. DCR recommends the use of regional native species for re-vegetation as identified in the DCR Native Plants for Conservation, Restoration and Landscaping brochures for the coastal, piedmont and mountain regions <http://www.dcr.virginia.gov/natural-heritage/nativeplants#brochure>.

4. Upon coordination with the U.S. Fish and Wildlife Service (USFWS), the Virginia Department of Game and Inland Fisheries (VDGIF), the Virginia Department of Conservation and Recreation, Division of Natural Heritage (DNH) and/or the Virginia Department of Environmental Quality (DEQ), special conditions may be required to

address impacts to the following resources in the geographic areas listed under each sub-heading:

a) Designated Trout Waters:

Coordination is required for activities occurring in the following two categories of Designated 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: Class V (Put and Take Trout Waters) and Class VI (Natural Trout Waters).

The Virginia Department of Game and Inland Fisheries (VDGIF) classifies the two aforementioned classes of trout streams into six classes based on aesthetics, productivity, resident fish population and stream structure. Classes I-IV rate wild trout habitat and Classes V and VI rate cold water habitat not suitable for wild trout but adequate for year-round hold-over of stocked trout. Information on designated trout streams can be obtained via their Virginia Fish and Wildlife Information Service's (VAFWIS's) Cold Water Stream Survey database. <http://vafwis.org/fwis/?Menu=Home>

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 permit request 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 Listed Species and Designated Critical Habitat and Waters with Federally Listed Endangered or Threatened Species, Waters Federally Designated as Critical Habitat, and One-mile Upstream (including tributaries) of Any Such Waters:

The U.S. Fish and Wildlife Service (Service) developed an online system that allows users to find information about sensitive resources that may occur within the vicinity of a proposed project. This system is named “Information, Planning and Conservation System” (IPaC), and is located at: <http://ecos.fws.gov/ipac/>. The applicant may use IPaC to determine if any federally listed species or designated critical habitat may be affected by the proposed project.

Upon review of your application, if the Corps determines that your project may affect any federally listed threatened or endangered species, it will initiate consultation with the Service pursuant to Section 7 of the Endangered Species Act in accordance with General Condition 14, below. The prospective permittee cannot begin work in waters of the U.S. until the Corps provides written notification that such work may proceed and includes any project specific special conditions concerning federally-listed species. Further information about the Service’s Virginia Field Office “Project Review Process” may be found at: <http://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html>.

Additional consultation may also be required with National Marine Fisheries Service for species or critical habitat under their jurisdiction, including sea turtles, marine mammals, shortnose sturgeon, and Atlantic sturgeon. For additional information about their jurisdiction in Virginia, please see <https://www.greateratlantic.fisheries.noaa.gov/protected/index.html>.

Additional resources to assist in determining compliance with this condition can be found on our webpage: <http://www.nao.usace.army.mil/Missions/Regulatory/USFWS.aspx>

c) Natural Heritage Resource Areas:

Coordination may be required for projects occurring in the following Natural Heritage Resource Areas:

- 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.

5. 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. The Corps may include additional special conditions on a case-by-case basis.
6. 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 Corps may require project designs to insure minimum in stream flows are maintained to downstream waters.
7. Safety of Impoundment Structures: To ensure that all impoundment structures are safely designed, the Corps may require non-Federal applications to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The Corps may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

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 (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 23510-1011 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 Engineer 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 other 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:

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 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 (VDHR)

(<http://www.dhr.virginia.gov/>) 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.
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 U.S. Fish and Wildlife Service, 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 engineer with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees shall notify the district engineer if any proposed or listed species or proposed or designated critical habitat may 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 engineer that the requirements of the ESA have been satisfied and that the activity is authorized. Information on the location proposed/listed species and proposed/designated critical habitat can be obtained directly from the U.S. Fish and Wildlife (USFWS) online project review process at

<https://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html>. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to proposed or listed species or proposed or 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 proposed or listed species or proposed or designated 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 that the proposed activities will have "no effect" on proposed or listed species or proposed or designated critical habitat, or until Section 7 consultation has been completed. (d) As a result of formal or informal consultation with the USFWS or NOAA PRD the district engineer 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 USFWS or NOAA PRD, both lethal and non-lethal "take" 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 Service Habitat Conservation Division (NOAA HCD) 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 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 with NOAA HCD, 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 USFWS indicating that a permit is not necessary prior to initiating construction activities. You should contact USFWS 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:

<https://www.fws.gov/northeast/virginiafield/endangered/projectreviewprocess.htm>

17. **Wild and Scenic Rivers.** Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia. 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. **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.
19. **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.
20. **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".
21. **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.

22. Activities Affecting Structures or Works Built by the United States: If the RP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the activity that requires section 408 permission is not authorized by the RP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written RP verification.

General Conditions Related to Minimizing Environmental Impacts:

- 23. 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).
- 24. 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).
- 25. Heavy equipment in wetlands.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
- 26. Removal of Temporary fills.** Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated as appropriate.
- 27. 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.
- 28. Aquatic life movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activities purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitable culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.
- 29. 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.
30. **Obstruction of high flows.** Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
 31. **Waterbird breeding areas.** Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
 32. **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.
 33. **Water supply intakes.** 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 and/or the Corps has provided specific authorization under this permit.

General Procedural Conditions:

34. **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.
35. **Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions.
36. **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.
37. **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.
38. **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.

39. **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 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.
40. **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.
41. **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.
42. **Transfer of Regional Permit Verifications.** If the permittee sells the property associated with the regional permit verification, the permittee may transfer the verification to the new owner by submitting a letter to the appropriate Corps District Office to validate the transfer. A copy of the regional permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by the regional permit are still in existence at the time the property is transferred, the terms and conditions of this regional permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of the regional permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

43. **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:

44. **Duration of Activity's Authorization.** Activities authorized under 16-RP-05 must be completed by June 9, 2022. 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. June 9, 2022), 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 June 9, 2022, you must reapply for separate permit authorization in order to meet current permit criteria.
45. **Expiration of 16-RGP-05.** Unless further modified, suspended, or revoked, this general permit will be in effect until June 9, 2022. 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.

09 June 2017
Date



JASON E. KELLY
Colonel, Corps of Engineers
Commanding