



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

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

**CENAO-TS-REG
06-RP-05**

Regional Permit

Effective Date: January 20, 2006

Expiration Date: January 31, 2011

Authorized Activities: Construction of small impoundments in certain waters of the United States, except urban storm-water management ponds (BMPs).

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 most non-tidal wetlands for the construction of certain small impoundments.

The intent of this authorization is to allow the public to construct small impoundments for general farm use and other private uses, such as irrigation, livestock watering, fire prevention, and recreational use, in non-tidal waters of the United States, including most non-tidal wetlands, provided they have only a minimal environmental impact.

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 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. The Norfolk District will monitor the activities authorized under this regional permit in order to evaluate their cumulative impacts.

The provisions of this permit **do not** apply in the following areas. A separate Department of the Army (DOA) permit is required.

- a. Tidal waters.
- b. Stormwater management facilities associated with new or existing residential, commercial, and industrial development, and road projects. In most cases, a Norfolk District State Program General Permit(SPGP-01) or individual permit will be required.
- c. Construction of waste treatment lagoons in waters of the United States.
- d. 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 or the National Marine Fisheries Service.

e. Wetland areas composed of 10% or more of the following species (singularly or in combination) in any stratum: Atlantic white cedar, bald cypress, water tupelo, or overcup oak.

f. 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.

g. Watersheds larger than 2 square miles (1280 acres).

h. 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 Department of Environmental Quality (DEQ) may require a VWPP for discharges in isolated wetlands.**

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 conditions, standards, and limitations will require a separate DOA permit.

All work under this permit will require a separate VWPP from the DEQ.

Specific Activities Authorized.

The discharge of dredged or fill material associated with the conversion of non-tidal waters of the United States, including wetlands, to small impoundments:

1. Construction of impoundments that impact by filling, flooding, draining, or clearing of not more than 1/10 acre of non-tidal waters of the United States, including wetlands, streams, and open-waters (e.g. lakes, ponds, and other non-linear systems), as measured upstream from the downstream edge of the impoundment structure, provided the following terms are met:

a. The proponent has documentation indicating that the proposed work will not affect federally proposed or listed threatened and endangered species or proposed or designated critical habitat. Documentation includes correspondence from the local field office of the Corps of Engineers having jurisdiction over the proposed project, Virginia Department of Game and Inland Fisheries, Virginia Department of Agriculture and Consumer Services, or the U.S. Fish and Wildlife Service, indicating the proposed work will not affect any federally-listed species or federally designated critical habitat.

b. Notification of the Corps is required for work in trout waters, designated critical habitat, or certain natural heritage resources areas as specified in Special Conditions 7 and 8.

c. The discharge does not cause the loss of more than 300 linear feet of streambed, unless this criterion is waived in writing by the Corps pursuant to its determination, that the activity complies with the other terms and conditions of the RP-05 and that the adverse environmental effects are minimal both individually and cumulatively before the permittee may proceed.

d. The Corps of Engineers is notified within 30 days of completion of pond construction using the attached Certificate of Compliance form.

2. Construction of impoundments that impact by filling, flooding, draining, or clearing greater than 1/10 acre and not more than 1/2 acre of non-tidal waters, including wetlands, open-waters (e.g. lakes, ponds, and other non-linear systems), and not more than 1500 linear feet of streambed (as measured upstream from the downstream edge of the impoundment structure), requires notification to the Corps and written approval from the Corps prior to initiating construction. These activities may be determined to have a minimal adverse effect, provided compensatory mitigation is provided to offset the unavoidable impacts to waters of the U.S., including wetlands. (See special condition 6)

3. Construction of impoundments that impact more than 1/2 acre of non-tidal waters, including wetlands, open-waters (e.g. lakes, ponds, and other non-linear systems), and/or more than 1500 linear feet of streambed (as measured upstream from the impoundment structure) require an individual Department of the Army permit, or SPGP, and are not authorized under this regional permit.

Special Conditions

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. The activities authorized under this permit include all aspects of pond construction such as land clearing, berm construction, placement of water control structures and spillways, backflooding, and mitigation.

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 (RP-05) related to the same tract or property must be provided to the Corps.

3. Any wetland or stream impacts involving U.S. Department of Agriculture program participants must be coordinated with the Natural Resources Conservation Service (NRCS) prior to commencing work. This permit would also authorize facilities

referred to by the NRCS as Converted Wetlands for Non Agricultural purposes (CWNA) or Best Management Practices (BMPs).

4. Ponds which impact greater than 1/10 acre of waters of the United States, including wetlands and open waters (e.g. lakes, ponds, and other non-linear systems), or that impact greater than 300 linear feet of streambed, must be appropriately sized 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.

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

6. Mitigation.

a. Mitigation for wetland impacts. All appropriate and practicable compensatory mitigation will be required for all non-tidal wetland impacts greater than 1/10 acre. The Corps may accept compensatory wetland mitigation in the form of wetland creation, restoration, 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 either onsite or off-site. Off-site mitigation and the use of wetland mitigation banks must occur either within the same hydrologic unit code (HUC) as the wetland impact, or within an adjacent HUC in the same river watershed, as determined by the Corps.

b. Mitigation for stream impacts. All practicable and appropriate mitigation may be required when impacts to streams in excess of 300 linear feet are determined to be more than minimal. The District Engineer may consider the following options for providing compensatory mitigation for impacts to streams.

- (1) stream restoration and bioengineering;
- (2) riparian preservation through restrictive covenants;
- (3) livestock exclusion with buffers and fencing;
- (4) other mitigation as 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, as determined by the Corps.

d. In Lieu Fee Program. Voluntary contributions to the Virginia Aquatic Resources Trust Fund may be accepted in lieu of onsite/offsite mitigation, as determined by the Corps.

7. Notification to the appropriate Corps of Engineers field office (see the attached map with addresses and telephone numbers) is required for activities occurring in the following waters and wetlands:

a. Two categories of Trout Waters (Stockable Trout Waters and Natural Trout Waters), as defined by the DEQ's Water Quality Standards (9VAC25-260-00 et seq.), dated December 10, 1997, or as subsequently amended. Activities proposed in Trout Waters in the following river basins require notification:

- (1) Potomac-Shenandoah
- (2) James
- (3) Roanoke
- (4) New
- (5) Tennessee and Big Sandy
- (6) Rappahannock

The counties in which this notification requirement applies include:

Albemarle	Franklin	Rappahannock
Alleghany	Frederick	Roanoke
Amherst	Giles	Rockbridge
Augusta	Grayson	Rockingham
Bath	Greene	Russell
Bedford	Henry	Scott
Bland	Highland	Shenandoah
Botetourt	Lee	Smyth
Buchanan	Madison	Washington
Carroll	Montgomery	Warren
Clarke	Nelson	Wise
Craig	Page	Wythe
Dickenson	Patrick	
Floyd	Pulaski	

The Corps will coordinate the notification with the DEQ and the Virginia Department of Game and Inland Fisheries (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 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 3 (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 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.

8. Notification to the Corps must be in writing (the standard Joint Permit Application may also be used) and must include the following information:

- a. Name, address and telephone number of the project proponent;
- b. Location of the project (including Tract and Farm Numbers if available);
- c. 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;
- d. 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.
- e. A delineation/determination of the extent of the waters and wetland areas on the tract is required. The Corps recommends characterizing the water and wetland resources using the Cowardin Classification System Mapping Conventions (e.g., PF0, PEM, POW, etc.)
- f. A proposal to mitigate for unavoidable impacts to waters of the U.S., including wetlands .

9. When all required information is received by the appropriate Corps office (see attached map), the Corps will notify the project proponent within 45 days whether the project can proceed under the regional permit or whether an individual permit is required. For Notifications submitted under Specific Activity Two (wetland impacts greater than 1/10 acre and stream impacts in excess of 500 linear feet) the Corps will coordinate the Notification with the USFWS. Full consideration will be given to the USFWS' comments. 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.

10. No discharge of dredged or fill material may consist of unsuitable material

(trash, debris, car bodies, asphalt etc.), and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

11. 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 line, must be permanently stabilized at the earliest practicable date.

12. 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.

13. Any heavy equipment used in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

14. Obstruction of High Flows: 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.

15. Adverse Effect from Impoundments: If the discharge creates an impoundment of water, 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.

16. Waterfowl Breeding Areas: Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

General Conditions:

1. A Certificate of Compliance must be completed, and a copy should be 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. The statement must include the following:

a. Indication that the authorized work has been performed in accordance with the Corps' authorization;

b. A statement that required mitigation has been completed in accordance with the permit conditions; and

c. The signature of the permittee, certifying the completion of the work and mitigation.

2. A copy of this permit and any verification letter must be provided to any contractors involved in the project and must be made available at the project site to any regulatory representative.

3. Federally-Listed Species:

a. No activity is authorized under this permit that 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 USFWS or the National Marine Fisheries Service (NMFS), 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 USFWS and NMFS or their world wide web pages at <http://www.fws.gov/endangered/wildlife.html#Species> and http://www.nmfs.noaa.gov/pr/species/esa_species.htm respectively.

4. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized unless and 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, or the Corps of Engineers.

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. Permittees are expected to fully comply with Virginia Administrative Code 9 VAC 25-260-00, Water Quality Standards and all other appropriate laws and regulations of the Commonwealth of Virginia pertaining to water quality.

7. Navigation: No activity may cause more than a minimal adverse effect on navigation.

8. **Proper Maintenance:** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
9. **Aquatic Life Movements:** 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. Culverts placed in streams must be installed to maintain low flow conditions.
10. **Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake.
11. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
12. **Authorized activities must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".**
13. **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.**
14. **Failure to comply with the terms and conditions of this permit can result in enforcement actions against the permittee and/or contractor.**
15. **The provisions of this permit shall be binding on any assignee or successor in interest of the permittee.**
16. **In order to transfer this permit, the transferee must supply the Norfolk District with a written request to transfer the permit.**
17. **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.**

Further Information:

1. **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 involve Corps property, please contact Norfolk District's Real Estate Division at the address listed on the front page or telephone (757) 201-7735.

2. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume liability of any kind for any reason including 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.

3. Reliance on Data. 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.

4. Reevaluation of Permit Decision: The Norfolk District may reconsider, reevaluate, or revoke its decision regarding authorization under this permit at any time Norfolk District, in its sole discretion determines that it is appropriate. Circumstances that could require such a reevaluation or change include, but are not limited to, the following:

a. Failure to comply with the terms and conditions of this permit.

b. Information provided in support of the permit application proves to have been false, incomplete, or inaccurate (See 3 above).

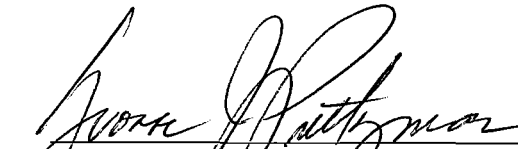
c. Discovery of significant new information, which this office did not consider in reaching the original decision.

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 compliance with the terms and conditions of the 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 you will be responsible for the cost. In addition, unpermitted work or violation of permit conditions may result in civil, criminal or administrative penalties (33 U.S.C. 406).

5. This regional permit, unless further modified, suspended or revoked, will be in effect until January 31, 2011. Upon expiration, Norfolk District may decide to revalidate and extend this regional permit.

18 Jan 2006
Date


Yvonne J. Prettyman-Beck
Colonel, Corps of Engineers
District Engineer