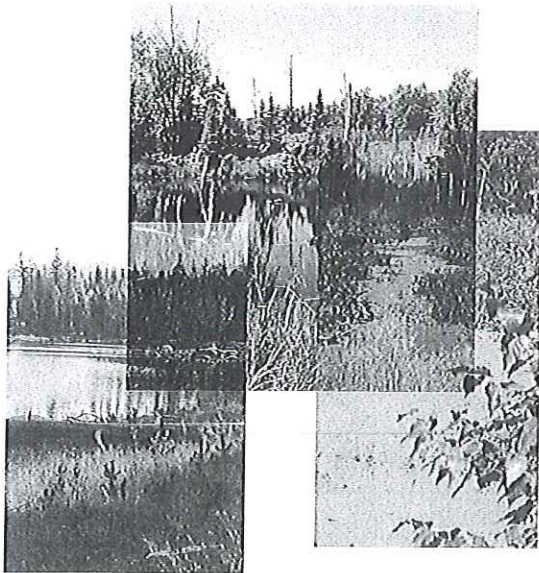


(620) 767-5195 - Council Grove
(316) 322-8247 - El Dorado
(785) 546-2130 - Marquette, KS



IV. Dredge and Fill/ Wetlands (Section 404) Permit Requirements for Construction Projects

If your construction project requires you to perform work in waters of the United States or wetlands, most likely you will need to obtain a Clean Water Act (CWA) Section 404 permit. The regulatory text discussing this program (40 CFR Parts 230-233) can be found at <http://ecfr.gpoaccess.gov> under "Title 40 - Protection of the Environment." The U.S. Army Corps of Engineers (COE) and EPA regulate the discharge of dredged or fill material into waters of the United States under Section 404 of the CWA. You need a Section 404 permit if your construction project will result in the discharge of dredged material (i.e., material excavated from waters) or fill material (i.e., material placed in waters such that dry land replaces water—or a portion thereof—or the water's bottom elevation changes) into a water of the United States. You must obtain a permit (or permit coverage) prior to starting construction. Approval of individual permits might take approximately three months, although general permit authorizations typically take far less time.

Definitions and Acronyms

Dredged Material—Material that is excavated or dredged from waters in the United States.

Fill Material—Material placed in waters of the United States where the material has the effect of either replacing any portion of water of the United States with dry land or changing the bottom elevation of any portion of a water of the United States. Examples include rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in waters of the United States.

Definitions and Acronyms

Waters of the United States—All waters that are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to ebb and flow of the tide. Waters of the United States generally include all interstate waters as well as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds. See 40 CFR Part 232.3 for the complete definition.

Wetlands—Areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

CFR—Code of Federal Regulations

COE—Army Corps of Engineers

CWA—Clean Water Act

Waters of the United States include wetlands. You must determine whether any wetlands or other waters are present in your construction area. COE and EPA define wetlands as “areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.” Wetlands are covered by water or have waterlogged soils for parts of the growing season. Some wetlands are easy to recognize (e.g., swamps and marshes); however, others may be dry during part of the year and difficult to recognize (e.g., bottomland forests, pocosins, pine savannahs, wet meadows, and wet tundra). Contact your COE district office or state environmental department for further information.

Use the following web site to locate
your COE district office:
<http://www.usace.army.mil/where.html>

A. Is a Section 404 Permit Required for Your Construction Project?

Answering the following questions will help you determine whether a Section 404 permit is required for your construction project.

Does your construction project (or any part thereof) occur in or impact a water of the United States?

The COE Wetlands Delineation Manual contains information that you can use to help identify a wetland. However, you should consult trained personnel to help you identify jurisdictional waters of the United

States, and to identify and delineate (i.e., identify and mark its boundaries) wetlands. Some basic questions you can ask when determining if your site contains a wetland include the following:

- Is your area in a flood plain or otherwise has low spots in which water stands at or above the soil surface during the growing season?
- Does your area have plant communities that commonly occur in areas having standing water for part of the growing season (e.g., cypress-gum swamps, cordgrass marshes, cattail marshes, bulrush and tule marshes, and sphagnum bogs)?
- Does your area have peat or muck soils?
- Is your area periodically flooded by tides, even if only by strong, wind-driven, or spring tides?
- Are one or more of the wetland indicators (vegetation, soil, and hydrology) present in your area? See the Wetlands Delineation Manual for specific details.

Find the COE Wetlands Delineation Manual online at <http://www.saj.usace.army.mil/permit/documents/87manual.pdf>

Will your project involve the discharge of dredged or fill material?

COE defines discharges of dredged material at 33 CFR Part 323. These discharges, which require permits under Section 404 of the CWA, include:

- The addition of dredged material to a specified discharge site located in waters of the United States;
- The runoff or overflow from a contained land or water disposal area; and
- Any addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States that is incidental to any activity, including mechanized land clearing, ditching, channelization, or other excavation.

COE also defines discharges of fill material at 33 CFR Part 323. These discharges, which require permits under Section 404 of the CWA, include:

- Placement of fill necessary for the construction of any structure or infrastructure in a water of the United States;
- Building of any structure, infrastructure, or impoundment in waters of the United States requiring rock, sand, dirt, or other material for its construction;
- Site-development fills in waters of the United States for recreational, industrial, commercial, residential, or other uses;
- Causeways or road fills, dams and dikes, artificial islands, beach nourishment, levees, and artificial reefs;
- Property protection and/or reclamation devices such as rip rap, groins, seawalls, breakwaters, and revetments;
- Fill for structures such as sewage treatment facilities;

- Intake and outfall pipes associated with power plants and subaqueous utility lines;
- Placement of fill material in waters of the United States for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills; and
- Placement of overburden, slurry, or tailings or similar mining-related materials in waters of the United States.

Are your activities exempt from a Section 404 permit?

Certain activities are exempt from the requirement to get a Section 404 permit. These include discharging dredged or fill material from normal and ongoing farming, forestry (silviculture), and ranching activities; maintaining currently serviceable structures such as dikes and dams, including emergency reconstruction of recently damaged parts; constructing/maintaining farm or stock ponds or irrigation ditches; maintaining drainage ditches; constructing temporary sedimentation basins on a construction site (does not include placing fill material into navigable waters); certain construction/maintenance activities for farm roads, forest roads, and temporary roads for moving mining equipment; and other activities meeting certain Section 404 requirements. The exemption applies as long as the activity purpose is NOT to bring an area of the navigable waters into a use to which it was not previously subject (i.e., the flow or circulation of navigable waters may not be impaired or the reach of such waters may not be reduced). If the activity performed results in bringing an area of the navigable waters into a new use, then a Section 404 permit is required for your construction project. See Section 404 at <http://www.epa.gov/OWOW/wetlands/regs/sec404.html> for further details on the exemptions.

Contact your state's environmental department and the COE District Office to determine whether your construction project requires a 404 permit.

If you answered "yes" to the first two questions and "no" to the third, then you will need a Section 404 permit.

B. Are You Responsible for the Permit?

All parties associated with construction projects that impact waters of the United States could be held liable. Therefore, the owner, developer, contractor, and other parties involved should ensure that any necessary permits are obtained prior to starting construction.

Are You Responsible for Getting a Permit?

Typically, either the owner, developer, contractor, or architect will get the necessary permit. Owners or developers usually determine whether any wetlands are at the site and if they will be impacted. Before receiving a permit, you also must get approval for your project from your state (Section 401 certification).

There are two types of Section 404 permits: general permits and individual permits.

General Permits. COE issues general permits on a nationwide, regional, or state basis for particular categories of activities resulting in minimal individual and cumulative impacts to aquatic resources. To determine if your construction project is covered by a Nationwide Permit, or by a regional or state general

permit, contact the COE District Office or the state environmental department. You can review the existing Nationwide Permits on the Corps web site.

Individual Permits. For projects with greater anticipated impacts, individual permits may be issued for a specific construction project. You must submit an application to the COE District Office and receive permit approval prior to beginning any construction.

Are You Responsible for Meeting Permit Requirements?

If your project is covered by a general permit, you must follow the conditions listed in that permit. The COE District Engineer also may add specific conditions to your general permit. If your project is covered by an individual permit, you must meet the requirements listed in that permit. Typically, contractors and subcontractors who perform the work on site need to follow these requirements.

While owners, contractors, and consulting engineers all may be found liable for discharging dredge or fill material without a permit, the remedy imposed on each may vary, depending on their respective degrees of control, responsibility, or involvement. For this reason, it is critical to define, before beginning a project, who will be responsible for complying with the Section 404 requirements; assuming another party is "taking care of it" does not absolve you from any liability, and more than one party may be responsible.

C. What Are the Penalties for Working Without the Proper Permit?

The goal of the CWA is to "restore and maintain the chemical, physical, and biological integrity of the nation's waters."

The CWA prohibits the discharge of pollutants by any person from a point source into waters of the United States, except in compliance with various sections of the CWA. As defined by the CWA, "person" means any individual, corporation, partnership, association, state, municipality, commission, subdivision of a state, or interstate body.

EPA may impose administrative, civil, and criminal sanctions on a property owner and/or a contractor for failure to comply with the CWA. Administrative penalties can reach \$157,500 and civil penalties – imposed in a judicial proceeding – can reach \$32,500 per violation per day. Under certain circumstances, the CWA also authorizes criminal penalties. In addition, the CWA allows private citizens to bring civil

**For detailed information on
Nationwide Permits go to
[http://www.usace.army.mil/inet/
functions/cw/cecwo/reg/nwfinal.pdf](http://www.usace.army.mil/inet/functions/cw/cecwo/reg/nwfinal.pdf)**

Case Studies

Landowners, contractors, and consultants have been found liable for discharging into U.S. waters without a permit.¹ In one case, the court found both the owner and the contractor to be liable, ruling that the contractor was responsible for the discharge activity, despite his reliance on the owner to get the necessary permits. Even where the contractor or consultant did not directly cause the violation, he or she still may be held responsible.

¹U.S. v. Florida Keys Comm. Coll., 531 F. Supp. 267 (S.D. Fla 1981); U.S. v. Weisman, 489 F. Supp. 1331 (M.S. Fla 1980)

actions against any person for any alleged violation of "an effluent standard or limitation." In a citizen suit, a court may issue an injunction and/or impose civil penalties, litigation costs, and attorney's fees.

In addition to fines, you may need to pay legal fees and face project delays. If legal action is taken against your construction site, you may also be subject to increased scrutiny at all of your other construction sites by regulatory agencies and the public.

D. In General, What Are the Permit Requirements?

Section 404 specifies that you may not discharge dredged or fill material if a practicable alternative exists that is less damaging to the aquatic environment or if the nation's waters would be significantly degraded. As mentioned in Section IV-B of Part I of this guide, there are two types of Section 404 permits: general permits and individual permits. For discharges that have only minimal adverse effects, COE issues general permits. General permits may be issued on a nationwide, regional, or state basis for particular categories of activities. Individual permits are usually required for activities with potentially significant impacts.

When applying for an individual permit (and certain general permits), you must demonstrate compliance with mitigation provisions by showing that you will:

- Avoid wetland and water impacts where practicable;
- Minimize potential impacts to wetlands and waters; and
- Compensate for any remaining, unavoidable impacts to wetlands or waters through activities to enhance or create wetlands and/or waters.

Demonstration of the above is referred as wetland/water mitigation.

Prior to COE issuing a Section 404 permit, your state also must approve the project by granting certification under Section 401 of the CWA. Your state may have already granted certification for any general permits in your area, which will reduce your burden.

If your construction project requires an individual permit, you must submit an Application for Department of Army Permit to COE and/or the state where the construction project is being done. After public notice and comments, COE, EPA, the state, and any other interested federal agencies will evaluate your application. You will be either granted or denied a permit.

A Nationwide Permit (or regional or state permit) may require you to notify the COE District Engineer of the construction project in a preconstruction notification. If a preconstruction notification is required, you may not begin construction until one of the following occurs:

1. The District Engineer notifies you that the activity may proceed. This notification may include special conditions for your construction project.
2. The District Engineer notifies you that an individual permit is required (and you must apply for and be issued an individual permit).

The COE District Engineer should contact you within 45 days regarding your preconstruction notification. If you have not heard from the District Engineer within 45 days, you should follow up with the District Engineer regarding the status of the notification. Prior to issuing the Section 404 permit, the COE or EPA may require an Endangered Species Act Section 7 consultation if threatened or endangered species may be adversely impacted by your construction activity. However, the permit-issuing agency (e.g., COE) is responsible for completing the consultation. See Section XI of Part I of this guide for more information on requirements for endangered species.

E. Where Do You Get a Permit?

In most states, you must obtain a Section 404 permit or verify coverage under a general permit from your COE District Office. A list of COE district offices is available at:
<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/district.htm>.

Currently, two states (Michigan and New Jersey) have assumed the role of the COE to issue Section 404 permits; however, several other states have enacted laws and regulations to protect wetlands. In many cases, these rules define the state's role in the Section 404/Section 401 permitting process. Some state laws may also have other impacts. For example, a state may define wetlands or regulated activities differently from federal regulations. This could qualify an area as a wetland on the state level even if it does not meet the federal definition. Therefore, always check with your state to determine if there are any additional requirements that you must follow.

F. What Questions Do You Need to Answer Before Starting Your Construction Project?

You can use the questions in Section II of Part I of this guide to start a discussion among all parties involved in the construction project and to assign tasks to ensure all environmental requirements are met. Each question has a space next to it to designate who will take the lead on each task. Note that designating a responsible party does not absolve you of meeting environmental requirements or liability for failing to meet these requirements.

G. Where Can You Get Additional Information?

For further information on Section 404 permits, you can check the following resources:

- The Dredge and Fill/Wetlands (Section 404) Self-Audit Checklist in Part II of this guide;
- The Construction Industry Compliance Assistance Center (<http://www.cicacenter.org/wetlands.html>) provides resources specific to Section 404 permits and wetlands including state requirements and contacts;
- The National Environmental Compliance Assistance Clearinghouse contains a search engine to help you find compliance assistance tools, contacts, and EPA-sponsored programs: <http://www.epa.gov/clearinghouse/>;
- U.S. Army Corps of Engineers (COE) web site (<http://www.usace.army.mil/>) provides a list of District Offices, including phone numbers that you can call concerning permits for construction activities impacting waters of the United States, information on Nationwide Permits, and the application for individual permits;
- U.S. EPA Office of Wetlands, Oceans, and Watersheds (OWOW): <http://www.epa.gov/owow/>;
- Wetlands Helpline: 1-800-832-7828; and
- EPA's "Where you live" page contains links to state environmental agencies: <http://www.epa.gov/epahome/whereyoulive.htm>.

SECTION 404 OF THE CLEAN WATER ACT

- A. The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.
- B. Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary
 - 1. through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zone, and the ocean under section 403(c), and
 - 2. in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.
- C. The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.
- D. The term "Secretary" as used in this section means the Secretary of the Army, acting through the Chief of Engineers.
- E.
 - 1. In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary may, after notice of opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment. Any general permit issued under this subsection shall
 - a. be based on the guidelines described in subsection (b)(1) of this section, and
 - b. set forth the requirements and standards which shall apply to any activity authorized by such general permit.
 - 2. No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for

public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

F.

1. Except as provided in paragraph (2) of this subsection, the discharge of dredge or fill material -
 - a. from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;
 - b. for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;
 - c. for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;
 - d. for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;
 - e. for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;
 - f. resulting from any activity with respect to which a State has an approved program, under section 208(b)(4) which meets the requirements of subparagraphs (B) and (C) of such section, is not prohibited by or otherwise subject to regulation under this section or section 301(a) or 402 of this Act (except for effluent standards or prohibitions under section 307).
2. Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.

G.

1. The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce

shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto), within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program.

2. Not later than the tenth day after the date of the receipt of the program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall provide copies of such program and statement to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.
3. No later than the ninetieth day after the date of the receipt by the Administrator of the program and statement submitted by any State, under paragraph (1) of this subsection, the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such program and statement to the Administrator in writing.

H.

1. Not later than the one-hundred-twentieth day after the date of the receipt by the Administrator of a program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall determine, taking into account any comments submitted by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, pursuant to subsection (g) of this section, whether such State has the following authority with respect to the issuance of permits pursuant to such program:
 - a. To issue permits which -
 - i. apply, and assure compliance with, any applicable requirements of this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, and sections 307 and 403 of this Act;
 - ii. are for fixed terms not exceeding five years; and
 - iii. can be terminated or modified for cause including, but not limited to, the following:
 - I. violation of any condition of the permit;
 - II. obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;
 - III. change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

- b. To issue permits which apply, and assure compliance with, all applicable requirements of section 308 of this Act, or to inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of this Act.
 - c. To assure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application.
 - d. To assure that the Administrator receives notice of each application (including a copy thereof) for a permit.
 - e. To assure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendation to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing.
 - f. To assure that no permit will be issued if, in the judgement of the Secretary, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby.
 - g. To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.
 - h. To assure continued coordination with Federal and Federal-State water-related planning and review processes.
2. If, with respect to a State program submitted under subsection (g)(1) of this section, the Administrator determines that such State -
- A. has the authority set forth in paragraph (1) of this subsection, the Administrator shall approve the program and so notify (i) such State, and (ii) the Secretary, who upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsections (a) and (e) of this section for activities with respect to which a permit may be issued pursuant to such State program; or
 - B. does not have the authority set forth in paragraph (1) of this subsection, the Administrator shall so notify such State, which notification shall also describe the revisions or modifications necessary so that such State may resubmit such program for a determination by the Administrator under this subsection.
3. If the Administrator fails to make a determination with respect to any program submitted by a State under subsection (g)(1) of this section within one-hundred-twenty days after the date of the receipt of such program, such program shall be deemed approved pursuant to paragraph (2)(A) of

this subsection and the Administrator shall so notify such State and the Secretary who, upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (e) of this section for activities with respect to which a permit may be issued by such State.

4. After the Secretary receives notification from the Administrator under paragraph (2) or (3) of this subsection that a State permit program has been approved, the Secretary shall transfer any applications for permits pending before the Secretary for activities with respect to which a permit may be issued pursuant to such State program to such State for appropriate action.
 5. Upon notification from a State with a permit program approved under this subsection that such State intends to administer and enforce the terms and conditions of a general permit issued by the Secretary under subsection (e) of this section with respect to activities in such State to which such general permit applies, the Secretary shall suspend the administration and enforcement of such general permit with respect to such activities.
- I. Whenever the Administrator determines after public hearing that a State is not administering a program approved under section (h)(2)(A) of this section, in accordance with this section, including, but not limited to, the guidelines established under subsection (b)(1) of this section, the Administrator shall so notify the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days after the date of the receipt of such notification, the Administrator shall:
1. withdraw approval of such program until the Administrator determines such corrective action has been taken, and
 2. notify the Secretary that the Secretary shall resume the programs for the issuance of permits under subsection (a) and (e) of this section for activities with respect to which the State was issuing permits and that such authority of the Secretary shall continue in effect until such time as the Administrator makes the determination described in clause (1) of this subsection and such State again has an approved program.
- J. Each State which is administering a permit program pursuant to this section shall transmit to the Administrator
1. a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State, and
 2. a copy of each proposed general permit which such State intends to issue. Not later than the tenth day after the date of the receipt of such permit application or such proposed general permit, the Administrator shall provide copies of such permit application or such proposed general permit to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service. If the Administrator intends to provide written comments to such State with respect to such permit application or such proposed general permit, he

shall so notify such State not later than the thirtieth day after the date of the receipt of such application or such proposed general permit and provide such written comments to such State, after consideration of any comments made in writing with respect to such application or such proposed general permit by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, not later than the ninetieth day after the date of such receipt. If such State is so notified by the Administrator, it shall not issue the proposed permit until after the receipt of such comments from the Administrator, or after such ninetieth day, whichever first occurs. Such State shall not issue such proposed permit after such ninetieth day if it has received such written comments in which the Administrator objects (A) to the issuance of such proposed permit and such proposed permit is one that has been submitted to the Administrator pursuant to subsection (h)(1)(E), or (B) to the issuance of such proposed permit as being outside the requirements of this section, including, but not limited to, the guidelines developed under subsection (b)(1) of this section unless it modified such proposed permit in accordance with such comments. Whenever the Administrator objects to the issuance of a permit under the preceding sentence such written objection shall contain a statement of the reasons for such objection and the conditions which such permit would include if it were issued by the Administrator. In any case where the Administrator objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing or, if no hearing is requested within 90 days after the date of such objection, the Secretary may issue the permit pursuant to subsection (a) or (e) of this section, as the cause may be, for such source in accordance with the guidelines and requirements of this Act.

- K. In accordance with guidelines promulgated pursuant to subsection (i)(2) of section 304 of this Act, the Administrator is authorized to waive the requirements of subsection (j) of this section at the time of the approval of a program pursuant to subsection (h)(2)(A) of this section or any category (including any class, type, or size within such category) of discharge within the State submitting such program.
- L. The Administrator shall promulgate regulations establishing categories of discharges which he determines shall not be subject to the requirements of subsection (j) of this section in any State with a program approved pursuant to subsection (h)(2)(A) of this section. The Administrator may distinguish among classes, types, and sizes within any category of discharges.
- M. Not later than the ninetieth day after the date on which the Secretary notifies the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service that
 1. an application for a permit under subsection (a) of this section has been received by the Secretary, or
 2. the Secretary proposes to issue a general permit under subsection (e) of this section, the Secretary of the Interior, acting through the Director of the

United States Fish and Wildlife Service, shall submit any comments with respect to such application or such proposed general permit in writing to the Secretary.

- N. Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 309 of this Act.
- O. A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or portion thereof, shall further be available on request for the purpose of reproduction.
- P. Compliance with a permit issued pursuant to this section, including any activity carried out pursuant to a general permit issued under this section, shall be deemed compliance, for purposes of sections 309 and 505, with sections 301, 307, and 403.
- Q. Not later than the one-hundred-eightieth day after the date of enactment of this subsection, the Secretary shall enter into agreements with the Administrator, the Secretaries of the Departments of Agriculture, Commerce, Interior, and Transportation, and the heads of other appropriate Federal agencies to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section. Such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section will be made not later than the ninetieth day after the date the notice of such application is published under subsection (a) of this section.
- R. The discharge of dredged or fill material as part of the construction of a Federal project specifically authorized by Congress, whether prior to or on or after the date of enactment of this subsection, is not prohibited by or otherwise subject to regulation under this section, or a State program approved under this section, or section 301(a) or 402 of the Act (except for effluent standards or prohibitions under section 307), if information on the effects of such discharge, including consideration of the guidelines developed under subsection (b)(1) of this section, is included in an environmental impact statement for such project pursuant to the National Environmental Policy Act of 1969 and such environmental impact statement has been submitted to Congress before the actual discharge of dredged or fill material in connection with the construction of such project and prior to either authorization of such project or an appropriation of funds for each construction.
- S.
 - 1. Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any condition or limitation set forth in a permit issued by the Secretary under this section, the Secretary shall issue an order requiring such persons to comply with such condition or limitation, or the Secretary shall bring a civil action in accordance with paragraph (3) of this subsection.
 - 2. A copy of any order issued under this subsection shall be sent immediately by the Secretary to the State in which the violation occurs and other affected States. Any order issued under this subsection shall be by personal service and shall state with reasonable specificity the nature of

the violation, specify a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.

3. The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction for any violation for which he is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.
4.
 - . Any person who willfully or negligently violates any condition or limitation in a permit issued by the Secretary under this section shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.
 - A. For the purposes of this paragraph, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.
5. Any person who violates any condition or limitation in a permit issued by the Secretary under this section, and any person who violates any order issued by the Secretary under paragraph (1) of this subsection, shall be subject to a civil penalty not to exceed \$10,000 per day of such violation.
- T. Nothing in this section shall preclude or deny the right of any State or interstate agency to control the discharge of dredged or fill material in any portion of the navigable waters within the jurisdiction of such State, including any activity of any Federal agency, and each such agency shall comply with such State or interstate requirements both substantive and procedural to control the discharge of dredged or fill material to the same extent that any person is subject to such requirements. This section shall not be construed as affecting or impairing the authority of the Secretary to maintain navigation.

U.S. ARMY CORPS OF ENGINEERS
APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT
33 CFR 325. The proponent agency is CECW-CO-R.

Form Approved -
OMB No. 0710-0003
Expires: 31-AUGUST-2013

Public reporting for this collection of information is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Department of Defense, Washington Headquarters, Executive Services and Communications Directorate, Information Management Division and to the Office of Management and Budget, Paperwork Reduction Project (0710-0003). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. Please DO NOT RETURN your form to either of those addresses. Completed applications must be submitted to the District Engineer having jurisdiction over the location of the proposed activity.

PRIVACY ACT STATEMENT

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Sanctuaries Act, Section 103, 33 USC 1413; Regulatory Programs of the Corps of Engineers; Final Rule 33 CFR 320-332. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public and may be made available as part of a public notice as required by Federal law. Submission of requested information is voluntary, however, if information is not provided the permit application cannot be evaluated nor can a permit be issued. One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and/or instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETE
--------------------	----------------------	------------------	------------------------------

(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT'S NAME First - Middle - Last - Company - E-mail Address -		8. AUTHORIZED AGENT'S NAME AND TITLE (agent is not required) First - Middle - Last - Company - E-mail Address -	
6. APPLICANT'S ADDRESS: Address- City - State - Zip - Country -		9. AGENT'S ADDRESS: Address- City - State - Zip - Country -	
7. APPLICANT'S PHONE NOS. w/AREA CODE a. Residence b. Business c. Fax		10. AGENTS PHONE NOS. w/AREA CODE a. Residence b. Business c. Fax	

STATEMENT OF AUTHORIZATION

11. I hereby authorize, _____ to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

SIGNATURE OF APPLICANT

DATE

NAME, LOCATION, AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions)			
13. NAME OF WATERBODY, IF KNOWN (if applicable)		14. PROJECT STREET ADDRESS (if applicable) Address	
15. LOCATION OF PROJECT Latitude: °N Longitude: °W		City - State- Zip-	
16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions) State Tax Parcel ID Municipality Section - Township - Range -			

17. DIRECTIONS TO THE SITE

18. Nature of Activity (Description of project, include all features)

19. Project Purpose (Describe the reason or purpose of the project, see instructions)

USE BLOCKS 20-23 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. Reason(s) for Discharge

21. Type(s) of Material Being Discharged and the Amount of Each Type in Cubic Yards:

Type Amount in Cubic Yards	Type Amount in Cubic Yards	Type Amount in Cubic Yards
-------------------------------	-------------------------------	-------------------------------

22. Surface Area in Acres of Wetlands or Other Waters Filled (see instructions)

Acres
or
Linear Feet

23. Description of Avoidance, Minimization, and Compensation (see instructions)

24. Is Any Portion of the Work Already Complete? ☐ Yes ☐ No IF YES, DESCRIBE THE COMPLETED WORK

25. Addresses of Adjoining Property Owners, Lessees, Etc., Whose Property Adjoins the Waterbody (if more than can be entered here, please attach a supplemental list).

a. Address-

City -

State -

Zip -

b. Address-

City -

State -

Zip -

c. Address-

City -

State -

Zip -

d. Address-

City -

State -

Zip -

e. Address-

City -

State -

Zip -

26. List of Other Certificates or Approvals/Denials received from other Federal, State, or Local Agencies for Work Described in This Application.

AGENCY	TYPE APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED

* Would include but is not restricted to zoning, building, and flood plain permits

27. Application is hereby made for permit or permits to authorize the work described in this application. I certify that this information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of the applicant.

SIGNATURE OF APPLICANT

DATE

SIGNATURE OF AGENT

DATE

The Application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a duly authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

**Instructions for Preparing a
Department of the Army Permit Application**

Blocks 1 through 4. To be completed by Corps of Engineers.

Block 5. Applicant's Name. Enter the name and the E-mail address of the responsible party or parties. If the responsible party is an agency, company, corporation, or other organization, indicate the name of the organization and responsible officer and title. If more than one party is associated with the application, please attach a sheet with the necessary information marked Block 5.

Block 6. Address of Applicant. Please provide the full address of the party or parties responsible for the application. If more space is needed, attach an extra sheet of paper marked Block 6.

Block 7. Applicant Telephone Number(s). Please provide the number where you can usually be reached during normal business hours.

Blocks 8 through 11. To be completed, if you choose to have an agent.

Block 8. Authorized Agent's Name and Title. Indicate name of individual or agency, designated by you, to represent you in this process. An agent can be an attorney, builder, contractor, engineer, or any other person or organization. Note: An agent is not required.

Blocks 9 and 10. Agent's Address and Telephone Number. Please provide the complete mailing address of the agent, along with the telephone number where he / she can be reached during normal business hours.

Block 11. Statement of Authorization. To be completed by applicant, if an agent is to be employed.

Block 12. Proposed Project Name or Title. Please provide name identifying the proposed project, e.g., Landmark Plaza, Burned Hills Subdivision, or Edsall Commercial Center.

Block 13. Name of Waterbody. Please provide the name of any stream, lake, marsh, or other waterway to be directly impacted by the activity. If it is a minor (no name) stream, identify the waterbody the minor stream enters.

Block 14. Proposed Project Street Address. If the proposed project is located at a site having a street address (not a box number), please enter it here.

Block 15. Location of Proposed Project. Enter the latitude and longitude of where the proposed project is located. If more space is required, please attach a sheet with the necessary information marked Block 15.

Block 16. Other Location Descriptions. If available, provide the Tax Parcel Identification number of the site, Section, Township, and Range of the site (if known), and / or local Municipality that the site is located in.

Block 17. Directions to the Site. Provide directions to the site from a known location or landmark. Include highway and street numbers as well as names. Also provide distances from known locations and any other information that would assist in locating the site. You may also provide description of the proposed project location, such as lot numbers, tract numbers, or you may choose to locate the proposed project site from a known point (such as the right descending bank of Smith Creek, one mile downstream from the Highway 14 bridge). If a large river or stream, include the river mile of the proposed project site if known

Block 18. Nature of Activity. Describe the overall activity or project. Give appropriate dimensions of structures such as wing walls, dikes (identify the materials to be used in construction, as well as the methods by which the work is to be done), or excavations (length, width, and height). Indicate whether discharge of dredged or fill material is involved. Also, identify any structure to be constructed on a fill, piles, or float-supported platforms.

The written descriptions and illustrations are an important part of the application. Please describe, in detail, what you wish to do. If more space is needed, attach an extra sheet of paper marked Block 18.

Block 19. Proposed Project Purpose. Describe the purpose and need for the proposed project. What will it be used for and why? Also include a brief description of any related activities to be developed as the result of the proposed project. Give the approximate dates you plan to both begin and complete all work.

Block 20. Reasons for Discharge. If the activity involves the discharge of dredged and/or fill material into a wetland or other waterbody, including the temporary placement of material, explain the specific purpose of the placement of the material (such as erosion control).

Block 21. Types of Material Being Discharged and the Amount of Each Type in Cubic Yards. Describe the material to be discharged and amount of each material to be discharged within Corps jurisdiction. Please be sure this description will agree with your illustrations. Discharge material includes: rock, sand, clay, concrete, etc.

Block 22. Surface Areas of Wetlands or Other Waters Filled. Describe the area to be filled at each location. Specifically identify the surface areas, or part thereof, to be filled. Also include the means by which the discharge is to be done (backhoe, dragline, etc.). If dredged material is to be discharged on an upland site, identify the site and the steps to be taken (if necessary) to prevent runoff from the dredged material back into a waterbody. If more space is needed, attach an extra sheet of paper marked Block 22.

Block 23. Description of Avoidance, Minimization, and Compensation. Provide a brief explanation describing how impacts to waters of the United States are being avoided and minimized on the project site. Also provide a brief description of how impacts to waters of the United States will be compensated for, or a brief statement explaining why compensatory mitigation should not be required for those impacts.

Block 24. Is Any Portion of the Work Already Complete? Provide any background on any part of the proposed project already completed. Describe the area already developed, structures completed, any dredged or fill material already discharged, the type of material, volume in cubic yards, acres filled, if a wetland or other waterbody (in acres or square feet). If the work was done under an existing Corps permit, identify the authorization, if possible.

Block 25. Names and Addresses of Adjoining Property Owners, Lessees, etc., Whose Property Adjoins the Project Site. List complete names and full mailing addresses of the adjacent property owners (public and private) lessees, etc., whose property adjoins the waterbody or aquatic site where the work is being proposed so that they may be notified of the proposed activity (usually by public notice). If more space is needed, attach an extra sheet of paper marked Block 24.

Information regarding adjacent landowners is usually available through the office of the tax assessor in the county or counties where the project is to be developed.

Block 26. Information about Approvals or Denials by Other Agencies. You may need the approval of other federal, state, or local agencies for your project. Identify any applications you have submitted and the status, if any (approved or denied) of each application. You need not have obtained all other permits before applying for a Corps permit.

Block 27. Signature of Applicant or Agent. The application must be signed by the owner or other authorized party (agent). This signature shall be an affirmation that the party applying for the permit possesses the requisite property rights to undertake the activity applied for (including compliance with special conditions, mitigation, etc.).

DRAWINGS AND ILLUSTRATIONS

General Information.

Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map, a Plan View or a Typical Cross-Section Map. Identify each illustration with a figure or attachment number.

Please submit one original, or good quality copy, of all drawings on 8½ x11 inch plain white paper (electronic media may be substituted). Use the fewest number of sheets necessary for your drawings or illustrations.

Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view, or cross-section). While illustrations need not be professional (many small, private project illustrations are prepared by hand), they should be clear, accurate, and contain all necessary information.