

DEPARTMENT OF THE ARMY PERMIT

Permittee: Glen R. DeWillie
Lieutenant Colonel, Corps of Engineers
District Commander
On Behalf of the General Public

Permit No.: 97-000-1

Processing No.:

Effective Date: March 1, 2002

Expiration Date: March 1, 2007

Affirmation Date:

Issuing Office: U.S. Army Engineer District, Buffalo
1776 Niagara Street
Buffalo, New York, 14207-3199

IMPORTANT: PRIOR TO COMMENCING THE ACTIVITY AUTHORIZED BY THIS PERMIT OR DIRECTING A CONTRACTOR TO PERFORM SUCH ACTIVITY ON YOUR BEHALF, BE SURE THAT ALL PARTIES READ, UNDERSTAND AND COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT.

NONCOMPLIANCE WITH ANY OF THE TERMS OR CONDITIONS OF THIS PERMIT MAY RESULT IN AN ORDER TO REMOVE THE ACTIVITY; CIVIL AND/OR CRIMINAL PENALTIES OR BOTH.

AUTHORITIES: You have been authorized to undertake the activity described below pursuant to:

Section 404 of the Clean Water Act (33 U.S.C. 1344)

AUTHORIZED ACTIVITY: Discharges of dredged or fill material associated with minor channel work, as defined under Special Condition #2, performed in conjunction with County Soil and Water Conservation Districts (SWCD) or the Natural Resources Conservation Service (NRCS) and which have received written affirmation of permit applicability from the U.S. Army Engineer District (USAED), Buffalo or the appropriate NRCS or SWCD official acting under the written authority of the commanding officer of USAED, Buffalo.

LOCATION OF THE AUTHORIZED ACTIVITY: Waters of the United States that are located within the following Counties of New York State: Allegany, Broome, Cattaraugus, Chautauqua, Chemung, Chenango, Cortland, Erie, Schuyler, Steuben, Tioga, Tompkins or Wyoming. Navigable Waters as defined under Section 10 of the Rivers and Harbor Act of 1899 are excluded from this regional permit.

The general public is hereby authorized by the Secretary of the Army to perform the work authorized by this permit provided there is full compliance with the following general and special conditions.

NOTE: The term "you" and its derivatives, as used in this permit, mean the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer. The term "activity" as used in this permit includes all structures and work authorized by this permit.

GENERAL CONDITIONS:

1. The work authorized under this regional permit must be completed prior to the expiration date noted on the first page of this authorization. In the event that the affirmation date is less than twelve months prior to the expiration date, the regional permit will remain valid for a period of twelve months from the affirmation date. In no case shall authorization exceed twelve months beyond the expiration date. If you find that you need more time to begin and/or complete the authorized activity, submit your written request for a time extension to this office at least three months before the respective date(s).
2. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office 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.
3. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
4. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

SPECIAL CONDITIONS:

1. This permit shall apply only to those activities specified in Special Condition #2 which are conducted by, or for, any person or agency formally registered as a cooperating landowner with the Allegany, Broome, Cattaraugus, Chautauqua, Chemung, Chenango, Cortland, Erie, Schuyler, Steuben, Tioga, Tompkins or Wyoming County SWCDs or the NRCS and the activity is sanctioned by the respective NRCS or SWCD.
2. This permit is limited to:
 - a. Removal of material from recently formed gravel bars and deposit areas (within the past 18 months) using mechanized land clearing equipment (e.g. bulldozer, gradall, etc.) that results in a discharge of dredged or fill material.
 - b. Bank stabilization utilizing on-site materials (e.g. cobbles, rock, trees) to reduce erosion for a

maximum of 500 linear feet per landowner, where this represents the best management practice for the particular project site as determined by SWCD, NRCS, New York State Department of Environmental Conservation (NYSDEC) or the Buffalo District; or where other best management techniques are demonstrated by the applicant to be economically infeasible.

c. Minor realignment of the stream channel when associated with culvert and bridge repair/replacement, not to exceed a total of 200 linear feet.

d. Blocking of channel braids within one (1) year of formation to maintain normal channel flow.

Special Conditions Applicable to Activities Authorized under Special Condition 2.a.:

3. Removal of material from gravel bars and deposit areas is restricted to areas of streambed with a substrate composed mainly of gravel or cobbles. Gravel bars and deposit areas containing a high composition of silt, clay and/or fine sands, are excluded from this authorization. Removal of stream gravel for the express purpose of subsequent use or sale (i.e. gravel mining) is not authorized by this permit.

4. For projects which propose the removal of gravel bar or deposit area material from a previously authorized location, the NRCS or SWCD personnel shall identify the source of the problem and if feasible, provide a solution to resolve the situation. This information shall be submitted with the permit application.

Special Conditions Applicable to Activities Authorized by Special Condition 2.b.:

5. Bank stabilization projects which entail solely the use of gravel or small cobbles with no other stabilizing structures or material and/or exceed 200 linear feet per landowner must receive individual water quality certification from the appropriate NYSDEC regional office.

6. Fluvial geomorphology restoration techniques and/or bioengineering techniques for stream bank stabilization should be considered in project design when feasible and practicable. Bioengineering methods include: planting native vegetation such as grey dogwood (*Cornus racemosa*), silky dogwood (*Cornus amomum*), arrowwood viburnum (*Viburnum dentatum*), or other appropriate species to improve habitat for fish and wildlife; the installation of coir (coconut fiber) logs, willow wattles, dogwood fascines; and use of erosion control fabric. A brief explanation of why these techniques cannot be incorporated into the proposed project shall be included with the permit application.

7. Trees shall only be used for bank stabilization when designed as tree revetment structures, properly cabled and anchored to the banks.

8. Bank protection involving the use of on-site gravel bar and deposit materials to repair eroding banks shall be achieved by transferring the materials from the gravel bar to the eroding bank with a backhoe or rubber-tired front-end loader. Use of a bulldozer for this purpose shall be avoided unless the new/realigned channel can first be constructed primarily in the dry, starting at the downstream end.

Special Conditions Applicable to All Activities:

9. A preconstruction notification to the Buffalo District is required for the waterways listed below due to the need for site specific reviews for the protection of Federally threatened or endangered species* or species of concern. The Buffalo District, SWCD or NRCS will give the U.S. Fish and Wildlife Service a five (5) day review period related to this matter. Applicants shall not commence work in these waterways under this Regional General Permit until the notification process is completed and the Buffalo District, NRCS or SWCD notifies them to proceed. The following waterways require this notification process: Allegheny River* (Cattaraugus County), Canisteo River (Steuben County), Cassadaga Creek (Cattaraugus County), Catatonk Creek (Tioga County), Cattaraugus Creek* (Cattaraugus County), Chautauqua Creek* (Chautauqua County), Chemung River (Chemung County), Chenango River (Broome and Chenango Counties), Conewango Creek (Cattaraugus County), French Creek (Chautauqua County), Genegantslet Creek (Chenango County), Great Valley Creek (Cattaraugus County), Mud Creek (Chenango and Cortland Counties), Olean Creek (Cattaraugus County), Oswayo Creek (Cattaraugus County), Otselic River (Broome and Cortland Counties), Sangerfield River (Chenango County), Susquehanna River (Broome and Tioga Counties), Tioga River (Steuben County), East, West and Main Branches of the Tioughnioga River (Cortland County), and Unadilla River (Chenango County).

10. The applicant, NRCS, or SWCD shall contact the appropriate NYSDEC-Region office to determine the stream classification. To preclude adverse impacts to indigenous fish species, no in-water work shall be performed:

- in warm water streams from March 15 through July 15
- in cold water streams from October 1 through May 15
- in Rainbow trout streams from November 1 through June 15

11. All new stream channels shall be designed with a parabolic shaped bottom, or be otherwise designed to concentrate flows during low water periods. The new channel shall not be wider and the bottom elevation shall not be lower than the adjoining natural upstream and downstream sections.

12. No in-stream work shall occur during periods of high stream flows.

13. No interruption of water flow shall occur during construction in order to sustain aquatic life downstream.

14. All authorized work shall proceed to completion without interruption between operations whenever practicable.

15. Access across the stream shall be confined to a single ford.

16. Whenever feasible, bank grading and gravel bar and deposit area material removal shall be carried out by land-based equipment rather than from the streambed or flowing water.

17. All erosion, sediment and turbidity controls shall be installed prior to any grading and filling activities. They shall remain in place until construction is complete and the area restored.

18. All stream banks disturbed as a result of any activity authorized by this General permit shall be seeded and mulched immediately upon completion of bank work, unless otherwise protected from erosion.

19. That under no circumstances shall dredged or fill material be sidecast or temporarily

stockpiled in waters of the United States, including wetlands.

20. All excess dredged or fill material not used for bank stabilization shall be deposited on upland property well removed from waters of the United States, including wetlands, and shall be properly stabilized to prevent re-entry into these waters. If the dredged material is temporarily stored on upland property, adjacent to the dredge site, it shall be contained by a filter fabric or hay bale fence to prevent erosion.

21. This permit does not authorize the placement of structures or the discharge of dredged or fill material below the Ordinary High Water elevation of a waterway for the purpose of creating temporary cofferdams, work pads or access roads.

22. Before equipment is removed from the work site and the project is considered complete, the cooperator or his/her contractor shall contact the project manager at the NRCS or SWCD and arrange for an on-site inspection. The cooperator or his/her contractor shall perform all modifications and/or corrective measures, as designated by the NRCS or SWCD, necessary to bring the project into compliance with the terms and conditions of this permit.

23. The District Commander reserves the right to include any additional special conditions on a site specific basis that are deemed necessary to protect the aquatic environment or the needs and welfare of the general public.

EXCLUSIONS:

This permit does not apply to:

1. Sites within the permit area that are located within Navigable Waters, as defined under Section 10 of the Rivers and Harbors Act including but not limited to the following: Allegheny Reservoir, Allegheny River from the NY/PA border to the upstream City limit of Olean, Buffalo River from Lake Erie to 7.1 miles upstream, Cattaraugus Creek from the mouth to 3/4 mile upstream, Cayuga Inlet, Cayuga Lake, Erie Canal, Lake Erie, the Genesee River from Lake Ontario to Black Creek at Belfast, Niagara River, Scajaquada Creek from the Niagara River to 130 feet downstream of Niagara Street, and Seneca Lake, New York.

2. Sites within the permit area that are located within the New York State Coastal Zone Management Area.

3. Areas where the dredged material is known to be heavily contaminated with toxic organic compounds and/or heavy metals.

4. Activities that have an effect on historic, cultural or archaeological sites identified in the latest published version of the National Register of Historic Places, or sites eligible for inclusion in this register, unless the State Historic Preservation Officer makes a determination that the effect will not be adverse.

5. Activities that have an effect on sites included in the latest published version of the National Register of Historic Landmarks, which are published periodically in this register, unless the State Historic Preservation Officer makes a determination that the effect will not be adverse.

6. Any other areas named in Acts of Congress or Presidential Proclamations as National

Wilderness Areas, National Recreational Areas, Lakeshores, Parks, Monuments and such areas as may be established under Federal Law for similar and related purposes, such as estuaries and marine sanctuaries, except where specifically authorized by this regional permit.

7. Activities that have an effect on a component of the National Wild and Scenic Rivers System, or areas listed in the Nationwide Rivers Inventory, Final List of Rivers for New York as published by the U.S. Department of the Interior, or in a component of a State Wild and Scenic River. Activities located in these areas will be evaluated on a case by case basis, which will include coordination with the National Park Service and/or the New York State Department of Environmental Conservation.

8. Activities that have an effect on rivers currently being studied at the direction of Congress as potential additions to the National Wild and Scenic Rivers System, or rivers for which Wild and Scenic Rivers studies have been completed and forwarded to Congress and which Congress is still considering. Activities located in these areas will be evaluated on a case by case basis, which will include coordination with the National Park Service.

9. State designated freshwater wetlands, significant fish and wildlife habitats including candidate designations, important agricultural lands and those which will be designated by the State in the future, historic resources on the State Register of Historic Places, and resources which are a part of the State Nature and Historic Preserve Trust, when these resources lie within the designated New York State Coastal Area.

10. Any freshwater wetland as defined in Title 33 of the Code of Federal Regulations, Parts 320 et. seq., or other special aquatic site as defined in the U.S. Environmental Protection Agency Guidelines for Specification of Disposal Sites for Dredged or Fill Material at Title 40 of the Code of Federal Regulations, Part 230, when the specific site area is a vegetated shallow, pool and riffle complex or mudflat area that the State has specifically designated as an important fish spawning or nursery area or significant fish and wildlife habitat, or is designated as such in the future, or the District Engineer has determined to be an ecologically sensitive area.

11. Activities which may jeopardize the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or result in the likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of the Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended.

Note: Limitations in items 4 through 11 above do not apply to any authorized activity when the work is for the benefit and uses of the site and is specifically endorsed, in writing, by the responsible Federal and State government officials such as the State Historic Preservation Officer, Refuge Manager, Regional Directors of U.S. Department of the Interior Offices such as the National Park Service and the U.S. Fish and Wildlife Service, etc.

12. Activities performed or proposed, unless the property owner has submitted a written request for authorization describing the activity, and the District Commander or authorized agent has determined that it complies with the terms and conditions of this permit.

LIMITS OF THIS AUTHORIZATION

1. The granting of this permit does not obviate the need to obtain other Federal, State or local

authorizations as required by law. Specifically, a permit pursuant to the Environmental Conservation Law Articles 15, 24 or 34 may be required from the New York State Department of Environmental Conservation.

2. Issuance of this permit does not grant you any property rights or exclusive privileges, nor does it authorize any injury to the property or rights of others.
3. This permit does not authorize interference with any existing or proposed Federal project, nor does it convey any authority to interfere with the right of the public to free navigation on all navigable waters of the United States.

LIMITS OF FEDERAL LIABILITY: In issuing this permit, the Federal Government does not assume any liability for the following:

1. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
2. 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.
3. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
4. Design or construction deficiencies associated with the permitted work.
5. Damages associated with any future modification, suspension, or revocation of this permit.

RELIANCE ON APPLICANT'S DATA: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

RE-EVALUATION OF THE DECISION TO GRANT A REGIONAL PERMIT: This office may re-evaluate its decision on this permit at any time circumstances warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:

1. You fail to comply with the terms and conditions of this permit.
2. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate.
3. Significant information surfaces which this office did not consider in reaching the original public interest decision.

Such a re-evaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in Title 33 of the Code of Federal Regulations Part 325.7 or enforcement procedures such as those contained in Title 33 of the Code of Federal Regulations Parts 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may, in certain situations

(such as those specified in Title 33 of the Code of Federal Regulations Part 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

EXTENSIONS: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a re-evaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit. Extension requests must be submitted in accordance with the directions given in General Condition 1.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

District Commander

Date

When the property associated with the work authorized by this permit is sold or transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

Transferee

Date