

DEPARTMENT OF THE ARMY PERMIT

Permittee: Mark D. Feierstein
Lieutenant Colonel, Corps of Engineers
District Commander
On Behalf of the General Public

Permit No.: 99-000-1

Processing No.: Not Assigned

Effective Date: December 28, 1999

Expiration Date: December 28, 2004

Affirmation Date: Not Affirmed

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)

and

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

AUTHORIZED ACTIVITIES: This general permit authorizes dredging in navigable waters and the discharge of dredged or fill material, including those discharges associated with excavation activities, into waters of the United States to facilitate the remediation of sites that were damaged as a result of a major storm. This permit may be used in conjunction with the Nationwide Permit Program which lists current nationwide permits that are relevant to repair activities.

The specific activities that this general permit authorizes include:

- a. The excavation or dredging (Section 10 waters) of sediments and debris, including storm deposited gravel bars, from waters of the United States where such an activity uses land clearing equipment, such as bulldozer, gradall, etc and would prevent loss of property or reduce flooding and/or erosion. The general permit **DOES NOT** authorize any rechannelization, channel widening, deepening, or straightening.
- b. The discharge of fill material into waters of the United States to facilitate the construction of temporary access roads and/or staging areas at work sites, provided no practicable available upland areas exist.
- c. The installation of structures and/or the discharge of fill material into waters of the United States to be used as cofferdams to temporarily dewater a work site.

LOCATION OF AUTHORIZED ACTIVITY: Waters of the United States located within New York State under the regulatory jurisdiction of the U.S. Army, Buffalo District.

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.

Activities authorized under this general permit do not require further authorization under the provisions contained in Title 33 of the Code of Federal Regulations, Parts 320 through 330, which is the Department of Defense regulation entitled "Corps of Engineers, Department of the Army: Regulatory Programs of the Corps of Engineers; Final Rule", published in the Federal Register on November 13, 1986, provided that they are carried out in accordance with the special conditions listed below and unless the District Engineer determines, on a case by case basis, that the work does not comply with the terms and conditions of this permit.

Also, see General Permit Notification Requirements.

DEFINITIONS: 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 Buffalo District Corps of Engineers division office 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.

Wetlands - Those areas that are 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 (33. C.F.R. 328.3 (b)). Areas that meet this definition are considered wetlands **regardless of size.**

Waters of the United States - All waters which are currently used, or were used historically, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to ebb and flow of the tide; all interstate waters, including wetlands; all other waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, sloughs, prairie potholes, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce... (see 33 CFR, Part 328.3 for complete definition).

Navigable waters - Those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity.

Single and Complete Project - The total project at a specific site that is proposed or accomplished by an applicant, developer, or other entity. The Corps of Engineers will review impacts associated with all activities which constitute a single and complete project in a cumulative manner.

Ordinary High Water Mark - The line on the shore established by the fluctuations of water as indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

GENERAL CONDITIONS:

1. The work authorized under this regional permit must begin within one year of the effective date and must be completed prior to the expiration date noted on the first page of this authorization. In the event that the effective 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 effective 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. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party upon written notification to this office. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown or 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.

4. 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.

5. You must allow a representative 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.

GENERAL PERMIT NOTIFICATION REQUIREMENTS:

The special conditions listed in the next section identify which activities do or do not require written verification of the applicability of this general permit from the Buffalo Corps district prior to commencement of the work.

If your activity **DOES NOT** require prior confirmation from the Buffalo District Corps of Engineers, and you meet all the terms and conditions of this permit, you may proceed with your work. Within 30 days of the completion of the work authorized by this permit, you are required to complete and submit the attached compliance certification form to the Corps of Engineers, Buffalo District office.

For projects that require notification to the Corps of Engineers prior to commencement of the work, the following information must be submitted:

1. Name, address and telephone number of the applicant.
2. Location map identifying project site, and disposal area (if applicable).
3. A brief project description.
4. Project plans depicting proposed work in reference to the ordinary high water mark of the waterway and/or wetland limits. Include the length of proposed roads in feet, the square footage of staging areas, the cubic yardage of sediment to be excavated, the dimensions of the area to be excavated, the type of cofferdam, the dimensions of the area to be de-watered, and any other appropriate project specifications.

Any questions can be directed to 716-879-4330.

Upon receipt of the required information, and if necessary, a site inspection may be scheduled by the Buffalo District. A Buffalo District Project Manager will have the ability to verify the applicability of the general permit on-site.

SPECIAL CONDITIONS:

Conditions Applicable to All Activities:

1. This general permit and existing Nationwide Permits may be combined to authorize a single and complete project provided the permittee **notifies** this office and receives written verification prior to commencing the work.
2. Within 30 days of the completion of the work authorized by this permit, the permittee is required to complete and submit the attached compliance certification form to the Buffalo District Office.
3. That you must obtain a Water Quality Certification or waiver thereof for this project by the State of New York. The Water Quality Certification is incorporated as part of this Department of the Army permit pursuant to Section 401 (d) of the Clean Water Act. Noncompliance with any limitations or requirements stated in the certification may be a basis for suspension, revocation or modification of this permit.
4. Activities that are located within the designated New York State Coastal Area may be authorized by this permit provided the New York State Department of State issues or waives certification that the project is consistent with the New York Coastal Management Plan. Information concerning consistency certification can be obtained from:

Ms. Diana Boos, Consistency Coordinator
New York State Department of State
Division of Coastal Resources
41 State Street
Albany, New York 12231-0001
Telephone (518) 486-3200
5. **Notification** is required to this office for activities located within sensitive areas. The notification is required for these waterways due to the need for site specific reviews for the protection of Federally threatened or endangered species or species of concern. The Buffalo District will give the U.S. Fish and Wildlife Service a five day review period related to this matter. **Applicants shall not commence work in these waterways** under this permit until the notification process is completed and the applicant receives written verification that the work may proceed. **A list of these areas is attached.**
6. No in-stream work shall occur during periods of high flows.
7. Disturbance of vegetation on streambanks shall be kept to the minimum necessary to perform the permitted work.
8. 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.

9. All authorized work shall proceed to completion without interruption between operations.
10. Timber treated with pentachlorophenol should not be used where it will come in contact with waters of the United States. Use of pentachlorophenol treated wood can be used for structures that will remain above the ordinary high water level. Treated wood proposed below the ordinary high water level must be treated in accordance with the standards and methods of the American Wood Preserver's Association (AWPA) and in accordance with AWPA standards. CCA and Creosote treated wood can be used below the ordinary high water level and must be pressure treated (not cold soaked). For CCA, use only CCA Type C. Creosote treated wood must be aged a minimum of six (6) months prior to placement in water.
11. Siltation fencing or haybales shall be installed at the toe of the temporary fill area or excavations to minimize damage to the undisturbed wetland or waterway. The siltation devices shall be inspected periodically to ensure that they are not damaged, repairs shall be completed promptly, and shall remain in place until the site is stabilized by the regrowth of suitable vegetation.
12. The District Commander reserves the right to include any additional special conditions or require an individual permit as may be necessary to safeguard the public interest or protect important public resources on a case by case basis.

Special Conditions Applicable ONLY to Excavation or Dredging Activities (13 - 24):

13. Debris and sediment excavation in waters of the United States shall be limited to the amount that was deposited as a direct result of the discrete storm event.
14. The excavation of debris and sediment within 100 feet upstream or downstream from a structure (i.e. bridge, culvert, or facility) may proceed without prior confirmation from this office provided no other excavation or dredging beyond that range would occur as part of the single and complete project.
15. Projects involving the excavation of debris and sediment beyond 100 feet upstream and downstream of a structure, may be authorized by this permit on a case by case basis provided the permittee **notifies** this office and receives written verification prior to commencing the work.
16. Excavation of storm deposited gravel bars for a maximum length of 200 linear feet or .10 acres at a single location may proceed without prior confirmation from this office provided no other excavation or dredging beyond that range would occur as part of a single and complete project.
17. Projects involving the excavation of storm deposited gravel bars in excess of 200 linear

feet or .10 acres at a single location may be authorized by this permit on a case by case basis provided the permittee **notifies** this office and receives written verification prior to commencing the work.

18. The clearing of gravel bars and deposits is restricted to areas of streambed with the substrate composed mainly of gravel or cobbles. Areas high in silts, clay, and fine sands are excluded from this authorization.

19. Gravel may only be removed by "skimming" the surface of the gravel bar to a depth no lower than six inches above the typical low (summer) water level. The final configuration of the stream channel shall provide for a low flow channel at least six to twelve inches deeper than the toe of the channel banks. Altered channels shall not be wider than the natural channel upstream and downstream of the work site and the bottom elevation shall not be lower than the adjoining upstream and downstream sections.

20. This permit does not authorize the removal of stream gravel for the express purpose of sale as part of a gravel mining operation.

21. All debris and sediment excavated from waters of the United States and not used as bank stabilization shall be deposited at a suitable upland location, and be contained from re-entering any waters of the United States, including wetlands. Under no circumstances shall excavated or dredged materials be sidecast or temporarily stored within waters of the United States, including wetlands.

22. This permit does not authorize excavation or dredging within wetlands.

23. On-site material may be used as fill material for bank stabilization provided that the material is placed in such a manner that it is not eroded by high flows.

24. Whenever feasible, bank grading and gravel removal shall be carried out by landbased equipment rather than from the streambed or flowing water. Work shall proceed from the downstream end to the upstream end of the project reach.

Special Conditions Applicable ONLY to Temporary Access or Dewatering Activities (25 - 35):

25. This general permit only authorizes the temporary access to, or dewatering of, those areas where sediment and debris removal would occur, or where the in-kind and in-place repair or replacement of structures or fills would occur.

26. All temporary fills or structures placed in waters of the United States, including wetlands shall be removed in their entirety immediately upon completion of the work and the affected areas shall be restored to preconstruction contours. All material removed shall be disposed of at an upland site well removed from any waters of the United States, including wetlands and shall be

adequately contained to preclude re-entry into these waters.

27. All discharges of fill material into wetlands shall be limited to the minimum length and width necessary to construct the access road and the access fill is only authorized if no practicable available upland area exists for access to the waterway. The permittee shall **notify** the Buffalo District Corps of Engineers prior to starting work on projects involving greater than 1/10th of an acre of disturbance to wetlands and shall not commence the work until notified in writing that the work is authorized.

28. Staging areas shall not be located within wetlands.

29. Mechanized landclearing shall be limited to the minimum necessary to construct the access road or staging area.

30. Forested wetlands cleared to facilitate access road construction shall be re-planted with native species immediately upon completion of the work.

31. Temporary fill material shall be of the type and placed in such a manner so that it does not wash downstream by normal or unexpected high flows.

32. The water control structure and ancillary features shall be placed in such a manner that minimizes adverse impacts to fish and other aquatic wildlife, water quality, to stream flow and flooding, to navigation, and to access and use of navigable waters by the public.

33. Cofferdams shall consist of an impermeable core with a non-erodible exterior. If fine grained material (such as clay) is used as a core, a layer of filter fabric or heavy plastic shall be placed securely over the surface of the core.

34. The staging areas in waterways shall be constructed within the confines of the water control structure and shall consist of clean non-erodible material such as broken concrete, stone, timber, steel or other inert materials. The staging area shall not be installed until the water control structure is in place and the area has been completely dewatered, and shall be removed prior to removal of the water control structure. The waterway bottom shall be restored to its preconstruction contours, and all material disposed of at an upland site well removed from any water of the United States, including wetlands.

35. That the water control structures shall extend no further than one-half the width of the channel at any one crossing site.

EXCLUSIONS:

This permit does not apply to:

1. 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.

2. 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 general permit.
3. 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.
4. Areas where the excavated or dredged material is known to be heavily contaminated with toxic organic compounds or heavy metals.

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 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 THE 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 that you provided.

RE-EVALUATION OF THE DECISION TO GRANT A GENERAL 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 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may, in certain situations (such as those specified in Title 33 of the Code of Federal Regulations Part 209.170) accomplish the corrective measures by contract or otherwise 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 of the terms and conditions, have the transferee sign and date below.

Transferee

Date

Sample Permit

Concerns under the Endangered Species Act currently exist for the following Townships/Counties within the Buffalo Corps District and that the applicant must consult with the Corps and U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act prior to initiating any work.

<u>County(ies)</u>	<u>Township(s)</u>
Cattaraugus	Cattaraugus Indian Reservation
Chautauqua	Chautauqua, Ripley, Westfield
Chenango	Greene, Oxford
Genesee	Alabama, Bergen, Byron, Tonawanda Indian Reservation
Herkimer	Webb
Jefferson	Alexandria, Orleans, Theresa, Watertown
Jefferson/St. Lawrence	Alexandria, Cape Vincent, Clayton, Hammond
Livingston/Ontario	Canadice, Conesus, Springwater
Madison	Cazenovia, Fenner, Stockbridge, Sullivan
Onondaga	Dewitt, Febius, Onondaga, Pompey, Van Buren
Oswego	Amboy, New Haven, Oswego, Richland, Sandy Creek
Schuyler	Dix
Seneca	Junius, Savannah, Tyre
St. Lawrence	Parishville
Tompkins	Ithaca
Wayne	Arcadia
Yates	Starkey
Yates/Ontario	Italy, Middlesex, South Bristol