



# Public Notice

Applicant:  
U.S. Army Corps of  
Engineers, Buffalo and New  
York Districts

Published: February 15, 2019  
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U.S. Army Corps of Engineers  
Buffalo and New York Districts

Transportation Regional General Permit (TRGP-1)  
Section: NY 404 and 10

All written comments should reference TRGP-1 and be addressed to:

New York District U.S. Army Corps of Engineers  
Regulatory Branch (Attn: Christine Delorier)  
Upstate Regulatory Field Office  
1 Buffington Street, Bldg. 10, 3<sup>rd</sup> Fl. North  
Watervliet, New York 12189-4000

Buffalo District U.S. Army Corps of Engineers  
Regulatory Branch (Attn: Joseph Rowley)  
1776 Niagara Street  
Buffalo, New York 14207

**THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC REGARDING THE WORK DESCRIBED BELOW. NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED AT THIS TIME.**

**Application for Permit under Authority of  
Section 10 of the Rivers and Harbors Act of 1899 and  
Section 404 of the Clean Water Act (33 U.S.C. 1344).**

The District Commanders, U.S. Army Corps of Engineers (USACE) Districts, Buffalo and New York, are considering, in cooperation with the Federal Highway Administration (FHWA), establishing Regional General Permit (RGP) TRGP-1 pursuant to Section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 USC 403) and Section 404 of the Clean Water Act (CWA) (33 USC 1344) for work related to transportation projects proposed by the New York State Department of Transportation (NYSDOT), the New York State Thruway Authority (NYSTA), and the New York State Canal Corporation (NYSCC) that are located within the State of New York and subject to regulation by the USACE Districts, Buffalo and New York. This action is being taken in accordance with Title 33 of the Code of Federal Regulations (33 CFR) Parts 320 through 332 as published in the November 13, 1986 Federal Register, Volume 51, No. 219.

The USACE is directed by Congress under Section 10 of the RHA to regulate all work or structures in or affecting the course, condition, or capacity of navigable waters of the United States (WOTUS); and under Section 404 of the CWA, to regulate the discharge of dredged and fill material into all WOTUS. The intent of Section 404 is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

This Transportation RGP was developed through a partnership between the USACE and the FHWA to conduct environmental processes in a coordinated, consistent, predictable, and timely manner. This document eliminates duplication in several areas where the USACE can adopt the FHWA's determinations through their respective National Environmental Policy Act (NEPA) responsibilities. This RGP has been developed with the intent of the FHWA's Every Day Counts initiative, along with the goals of Executive Order 13807: One Federal Decision.

The USACE is authorized to issue general permits when such issuance is found not to be contrary to the general public interest. Title 33 of the Code of Federal Regulations (CFR), Part 323.2(h), provides definitions of general permits and authority to issue them on a regional basis for categories of activities when: 1) those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or 2) the general permit would result in avoiding unnecessary duplication of regulatory control exercised by another Federal, State, or Local agency, provided that it has been determined that the environmental consequences of the action are individually and cumulatively minimal.

This RGP is proposed for use only in non-tidal WOTUS. No single and complete project authorized by this RGP would involve the loss of more than 500 linear feet of streams (ephemeral, intermittent or perennial) or 2.0 acres of any WOTUS, including wetlands. This RGP does not authorize channelization, channel widening, deepening, or straightening of a channel that would result in instability of the watercourse. Also, this RGP does not authorize permanent impacts to any WOTUS for the construction of borrow or disposal sites.

The following activities would be authorized under this RGP:

- 1) Maintenance Activities
- 2) Linear Transportation Projects
- 3) Non-Linear Transportation Projects
- 4) Streambed and Bank Stabilization Activities
- 5) Temporary Construction, Access, Dewatering
- 6) Emergency Activities

If this RGP is issued, the attached terms and conditions would apply.

Complete details of the above proposed RGP is described in the attached text.

Comments or questions pertaining to the work described in this notice should reference TRGP-1 and be directed to the attention of Christine Delorier, who can be contacted at the above address, by calling (518) 266-6354, or by e-mail at: [Christine.Delorier@usace.army.mil](mailto:Christine.Delorier@usace.army.mil), or to the attention of Joseph Rowley, who can be contacted at the above address, by calling (716)879-4279, or by e-mail at: [joseph.m.rowley@usace.army.mil](mailto:joseph.m.rowley@usace.army.mil). A lack of response will be interpreted as meaning that there is no objection to the work as proposed.

The following authorization(s) are required for this RGP:

**Water Quality Certification:** Water Quality Certification (or waiver thereof) by the New York State Department of Environmental Conservation (NYSDEC) is required for the proposed RGP. The USACE has submitted its Water Quality Certification request to NYSDEC.

**Coastal Zone Consistency:** The USACE has certified that the proposed activity complies with New York's approved Coastal Zone Management Program and that activities authorized by the Regional Permits will be conducted in a manner consistent with that program. The USACE has submitted its consistency determination to the New York State Department of State.

**National Historic Preservation Act:** Due to the scope of the proposed RGP, the identification of and a determination of effect to properties listed in the National Register of Historic Places or those identified as being eligible for inclusion in the register has not been made pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations. An effects determination for identified historic properties will be made on a project by project basis during the review process. The determination and necessary consultation will be completed by the FHWA for projects funded by that agency. The USACE is proposing to establish alternative consultation procedures which would allow NYSDOT, NYSTA or NYSCC to consult directly with the New York State Historic Preservation Office (NYSHPO) for projects that have No Effect or No Adverse Effect upon cultural resources for projects not funded by FHWA. For all remaining projects, including projects that require tribal consultation, USACE will make the effects determination and perform the required consultation. Specific procedures are described in Section D(2)(n) of the attached RGP.

**The USACE will develop a Programmatic Agreement (PA) with the NYSHPO and the Advisory Council on Historic Preservation to address the alternative consultation procedures. This notice serves to commence the PA development process and solicit comments and identify potential interested parties.**

**Endangered Species Act:** In addition, due to the scope of the proposed RGP, a determination of effect upon species proposed or designated by the U.S. Department of the Interior as threatened or endangered has not been made pursuant to Section 7 of the Endangered Species Act (ESA). An effects determination for endangered species will be made on a project by project basis during the review process. The determination and necessary consultation with the U.S. Fish and Wildlife Service (USFWS) will be completed by the FHWA for projects funded by that agency. The USACE is proposing to delegate consultation responsibilities to NYSDOT, NYSTA or NYSCC for projects not funded by FHWA that may affect, but are not likely to adversely affect, species protected under the ESA. For all remaining projects the USACE will make the necessary effects determination and consult with the USFWS. Specific procedures are described in Section D(2)(m) of the attached RGP.

This notice is promulgated in accordance with Title 33, Code of Federal Regulations, parts 320-332. Any interested party desiring to comment on the work described herein may do so by submitting their comments, in writing, so that they are received no later than 4:30 pm on the expiration date of this notice.

ALL COMMENTS REGARDING THE PERMIT APPLICATION MUST BE PREPARED IN WRITING AND MAILED TO REACH THIS OFFICE BEFORE THE EXPIRATION DATE OF THIS NOTICE, otherwise, it will be presumed that there are no objections to the activity.

Comments submitted in response to this notice will be fully considered during the public interest review for this action. All written comments will be made a part of the administrative record which is available to the public under the Freedom of Information Act. The Administrative Record or portions thereof may also be posted on a Corps of Engineers internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any individual may request a public hearing by submitting their written request, stating the specific reasons for holding a hearing, in the same manner and time period as other comments.

Public hearings for the purposes of the Corps permit program will be held when the District Commander determines he can obtain additional information, not available in written comments, that will aid him in the decision making process for this application. A Corps hearing is not a source of information for the general public, nor a forum for the resolution of issues or conflicting points of view (witnesses are not sworn and cross-examination is prohibited). Hearings will not be held to obtain information on issues unrelated to the work requiring a permit, such as property ownership, neighbor disputes, or the behavior or actions of the public or applicant on upland property not regulated by the Department of the Army. Information obtained from a public hearing is given no greater weight than that obtained from written comments. Therefore, you should not fail to make timely written comments because a hearing might be held.

The decision whether to issue the RGP will be based on an evaluation of the probable impact, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed issuance of a regional general permit. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

It is requested that you communicate the foregoing information concerning the activity to any persons known by you to be interested and who did not receive a copy of this notice.

// SIGNED//

Diane C. Kozlowski  
Chief, Regulatory Branch  
USACE Buffalo District

//SIGNED//

Stephan A. Ryba  
Chief, Regulatory Branch  
USACE New York District

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 30 days from the date of issuance.