



DEPARTMENT OF THE ARMY

ST. LOUIS DISTRICT, CORPS OF ENGINEERS
1222 SPRUCE STREET
ST. LOUIS, MISSOURI 63103-2833

Yvonne / Tom / Karen

Julie

REPLY TO
ATTENTION OF:

December 9, 1996

Regulatory Branch
File Number: 199609500

Mr. Jerry S. Van Fossen
Deputy Project Manager
Department of Energy
Weldon Spring Site
Remedial Action Project Office
7295 Highway 94 South
St. Charles, Missouri 63304

Dear Mr. Van Fossen:

We are in receipt of your August 13, 1996, request to remove chemically and radioactively contaminated sediment from an unnamed tributary originating in the southeast drainage area on the Weldon Springs Remedial Action Site. The drainage is a natural 1.5 mile stream channel extending from the eastern portion of a chemical plant area to it's confluence with the Missouri River. Flows within the drainage result from surface runoff and groundwater discharge through four springs. Sediments within the drainage became chemically and radioactively contaminated as a result of past activities of the U.S. Army and the Department of the Energy. The primary contaminants are radium, uranium, and thorium.

Your proposed remedial action would involve utilizing a track operated machine to excavate specific contaminated areas approximately 2 to 4 feet below the existing tributary's stream bed. The anticipated 2,000 cubic yards of excavated sediment would be stored at the chemical plant before disposal in the engineered disposal cell for the Weldon Spring Site. The subject activity site's start point is located in proximity to the Southeast 1/4 of Section 5, Township 45 North, Range 3 East, while the end point is in proximity to the Northwest 1/4 of Section 32, Township 45 North, Range 3 East, St. Charles County, Missouri.

A Pre-discharge Notification (PDN) was sent to all applicable resource agencies, on December 5, 1996, for comments. No negative or conditional requests were received from the responding agencies.

Section 404 of the Clean Water Act assigns responsibility to the Secretary of the Army to administer a permit program to regulate the excavation or placement of dredged or fill material in waters of the United States. The excavation or placement of any dredged or fill material in waters of the United States below ordinary high water elevation or in wetlands, must be authorized by a Section 404 permit.

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We have determined that the proposed project is authorized under Section 404 of the Clean Water Act by an existing Department of the Army nationwide permit as described in 33 CFR 330, Appendix A (B) (38). Enclosed is a copy of the nationwide permit, and terms and conditions (marked in red) with which you must comply.

The Missouri Clean Water Commission has waived water quality certification under Section 401 of the Clean Water Act for this nationwide permit. The District Engineer has conditioned this permit to include that the banks of the remediated channel shall be seeded with grasses and/or woody vegetation to establish erosion control.

This determination is applicable only to the permit program administered by the Corps of Engineers. It does not eliminate the need to obtain other Federal, state, or local approvals before beginning work.

You are reminded that this permit is based on submitted plans. Variations from these plans may result in the revocation of the permit. This verification will be valid until the nationwide permits are modified, reissued, or revoked. All of the nationwide permits are scheduled to be modified, reissued or revoked prior to January 21, 1997. It is incumbent upon you to remain informed of changes to the nationwide permits. We will issue a public notice announcing the changes when they occur. Furthermore, if you commence, or are under contract to commence, this activity before the date the nationwide permits are modified or revoked you will have twelve months from the date of modification or revocation to complete the activities under the present terms and conditions of the nationwide permit.

If the proposed project does not satisfy all conditions and management practices as indicated, please contact Mr. Charles Frerker at (314) 331-8583 for advice or information you may need in preparing an application for an individual permit.

Sincerely,


Danny D. McClendon
Missouri Evaluation Section
Regulatory Branch

Enclosure

Copy furnished: (w/o enclosure)

Ms. Diana Fawks
Missouri Department of Natural Resources
Water Pollution Control Program
Post Office Box 176
Jefferson City, Missouri 65102-0176

Mr. Norm Stucky
Missouri Department of Conservation
Post Office Box 180
Jefferson City, Missouri 65102-0180

Field Supervisor
U.S. Fish and Wildlife Service
Ecological Services
608 East Cherry Street, Room 200
Columbia, Missouri 65201

Ms. Kathy Mulder
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

Ms. Claire Blackwell
Missouri Department of Natural Resources
Division of State Parks
Post Office Box 176
Jefferson City, Missouri 65102-0176

include a statement that the verification will remain valid for the specified period of time, if during that time period, the NWP authorization is reissued without modification or the activity complies with any subsequent modification of the NWP authorization. Furthermore, the response should include a statement that the provisions of § 330.5(b) will apply, if during that period of time, the NWP authorization expires, or is suspended or revoked, or is modified, such that the activity would no longer comply with the terms and conditions of an NWP. Finally, the response should include any known expiration date that would occur during the specified period of time. A period of time less than two years may be used if deemed appropriate.

(iii) For activities where a state has denied 401 water quality certification and/or did not agree with the Corps consistency determination for an NWP the DE's response will state that the proposed activity meets the terms and conditions for authorization under the NWP with the exception of a state 401 water quality certification and/or CQM consistency concurrence. The response will also indicate the activity is denied without prejudice and cannot be authorized until the requirements of §§ 330.4(c)(3), 330.4(c)(6), 330.4(d)(3), and 330.4(d)(6) are satisfied. The response will also indicate that work may only proceed subject to the terms and conditions of the state 401 water quality certification and/or CQM concurrence.

(iv) Once the DE has provided such verification, he must use the procedures of 33 CFR 330.5 in order to modify, suspend, or revoke the authorization.

(b) *Expiration of nationwide permits.* The Chief of Engineers will periodically review NWPs and their conditions and will decide to either modify, reissue, or revoke the permits. If an NWP is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. Activities which have commenced (i.e. are under construction) or are under contract to commence in reliance upon an NWP will remain authorized provided the activity is completed within twelve months of the date of an NWP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 330.4(e) and 33 CFR 330.5 (c) or (d). Activities completed under the authorization of an NWP which was in effect at the time the activity was

completed continue to be authorized by that NWP.

(c) *Multiple use of nationwide permits.* Two or more different NWPs can be combined to authorize a "single and complete project" as defined at 33 CFR 330.2(j). However, the same NWP cannot be used more than once for a single and complete project.

(d) *Combining nationwide permits with individual permits.* Subject to the following qualifications, portions of a larger project may proceed under the authority of the NWPs while the DE evaluates an individual permit application for other portions of the same project, but only if the portions of the project qualifying for NWP authorization would have independent utility and are able to function or meet their purpose independent of the total project. When the functioning or usefulness of a portion of the total project qualifying for an NWP is dependent on the remainder of the project, such that its construction and use would not be fully justified even if the Corps were to deny the individual permit, the NWP does not apply and all portions of the project must be evaluated as part of the individual permit process.

(1) When a portion of a larger project is authorized to proceed under an NWP, it is with the understanding that its construction will in no way prejudice the decision on the individual permit for the rest of the project. Furthermore, the individual permit documentation must include an analysis of the impacts of the entire project, including related activities authorized by NWP.

(2) NWPs do not apply, even if a portion of the project is not dependent on the rest of the project, when any portion of the project is subject to an enforcement action by the Corps or EPA.

(e) *After-the-fact authorizations.* These authorizations often play an important part in the resolution of violations. In appropriate cases where the activity complies with the terms and conditions of an NWP, the DE can elect to use the NWP for resolution of an after-the-fact permit situation following a consideration of whether the violation being resolved was knowing or intentional and other indications of the need for a penalty. For example, where an unauthorized fill meets the terms and conditions of NWP 13, the DE can consider the appropriateness of allowing the residual fill to remain, in situations where said fill would normally have been permitted under NWP 13. A knowing, intentional, willful violation should be the subject of an enforcement action leading to a penalty, rather than

an after-the-fact authorization. Use of after-the-fact NWP authorization must be consistent with the terms of the Army/EPA Memorandum of Agreement on Enforcement. Copies are available from each district engineer.

Appendix A to Part 330—Nationwide Permits and Conditions

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Nationwide Permit Conditions

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B. Nationwide Permits

1. Aids to Navigation. The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard. (See 33 CFR part 86, chapter I, subchapter C). (section 10)

2. Structures in Artificial Canals. Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.5(g)). (section 10)

3. Maintenance. The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation, or replacement are permitted, provided the environmental impacts resulting from such repair, rehabilitation, or replacement are minimal. Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. This nationwide permit authorizes the repair, rehabilitation, or replacement of those structures destroyed by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced or under contract to commence within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the District Engineer, provided the permittee can demonstrate funding, contract, or other similar delays. Maintenance dredging and beach restoration are not authorized by this nationwide permit. (sections 10 and 404)

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities. Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, clam and oyster digging, and small fish attraction devices such as open water fish concentrators (sea kites, etc). This nationwide permit authorizes shellfish seeding provided this activity does not occur in wetlands or vegetated shallows. This nationwide permit does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of nontoxic species such as lobster. (sections 10 and 404)

5. Scientific Measurement Devices. Staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards and further for discharges of 10 to 25 cubic yards provided the permittee notifies the district engineer in accordance with "Notification" general condition. (sections 10 and 404)

6. Survey Activities. Survey activities including core sampling, seismic exploratory operations, and plugging of seismic shot holes and other exploratory-type bore holes. Drilling and the discharge of excavated material from test wells for oil and gas exploration is not authorized by this nationwide permit; the plugging of such wells is authorized. Fill placed for roads, pads and other similar activities is not authorized by this nationwide permit. The discharge of drilling muds and cuttings may require a permit under section 402 of the Clean Water Act. (sections 10 and 404)

7. Outfall Structures. Activities related to construction of outfall structures and associated intake structures where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted, or are otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System program (section 402 of the Clean Water Act), provided that the nationwide permittee notifies the district engineer in accordance with the "Notification" general condition. (Also see 33 CFR 330.1(e)). Intake structures per se are not included—only those directly associated with an outfall structure. (sections 10 and 404)

8. Oil and Gas Structures. Structures for the exploration, production, and transportation of oil, gas, and minerals

on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Minerals Management Service. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(f). (Where such limits have not been designated, or where changes are anticipated, district engineers will consider asserting discretionary authority in accordance with 33 CFR 330.4(e) and will also review such proposals to ensure they comply with the provisions of the fairway regulations in 33 CFR 322.5(f)). Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334; nor will such structures be permitted in EPA or Corps designated dredged material disposal areas. (section 10)

9. Structures in Fleet and Anchorage Areas. Structures, buoys, boats, and other devices placed within anchorage or fleet areas to facilitate moorage of vessels where such areas have been established for that purpose by the U.S. Coast Guard. (section 10)

10. Mooring Buoys. Non-commercial, single-boat mooring buoys. (section 10)

11. Temporary Recreational Structures. Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir manager must approve each buoy or marker individually. (section 10)

12. Utility Line Backfill and Bedding. Discharges of material for backfill or bedding for utility lines, including outfall and intake structures, provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquefiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messages, and radio and television communication. The term "utility line" does not include activities which drain a water of the United States, such as drainage tile, however, it does apply to pipes conveying drainage from another area. Material resulting from trench excavation may be temporarily sidcast (up to three months) into waters of the United States provided that the material is not placed in such a manner that it is

dispersed by currents or other forces. The DE may extend the period of temporary side-casting up to 180 days, where appropriate. The area of waters of the United States that is disturbed must be limited to the minimum necessary to construct the utility line. In wetlands, the top 8" to 12" of the trench should generally be backfilled with topsoil from the trench. Excess material must be removed to upland areas immediately upon completion of construction. Any exposed slopes and streambanks must be stabilized immediately upon completion of the utility line. The utility line itself will require a Section 10 permit if in navigable waters of the United States. (See 33 CFR part 322). (section 404)

13. Bank Stabilization. Bank stabilization activities necessary for erosion prevention provided:

a. No material is placed in excess of the minimum needed for erosion protection;

b. The bank stabilization activity is less than 500 feet in length;

c. The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line;

d. No material is placed in any special aquatic site, including wetlands;

e. No material is of the type or is placed in any location or in any manner so as to impair surface water flow into or out of any wetland area;

f. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and tree tops may be used in low energy areas); and,

g. The activity is part of a single and complete project.

Bank stabilization activities in excess of 500 feet in length or greater than an average of one cubic yard per running foot may be authorized if the permittee notifies the district engineer in accordance with the "Notification" general condition and the district engineer determines the activity complies with the other terms and conditions of the nationwide permit and the adverse environmental impacts are minimal both individually and cumulatively. (sections 10 and 404)

14. Road Crossing. Fills for roads crossing waters of the United States including wetlands and other special aquatic sites) provided:

a. The width of the fill is limited to the minimum necessary for the actual crossing;

b. The fill placed in waters of the United States is limited to a filled area of no more than 1/4 acre. Furthermore, no

more than a total of 200 linear feet of the fill for the roadway can occur in special aquatic sites, including wetlands;

c. The crossing is culverted, bridged or otherwise designed to prevent the restriction of, and to withstand, expected high flows and tidal flows, and to prevent the restriction of low flows and the movement of aquatic organisms;

d. The crossing, including all attendant features, both temporary and permanent, is part of a single and complete project for crossing of a water of the United States; and,

e. For fills in special aquatic sites, including wetlands, the permittee notifies the district engineer in accordance with the "Notification" general condition. The notification must also include a delineation of affected special aquatic sites, including wetlands.

Some road fills may be eligible for an exemption from the need for a Section 404 permit altogether (see 33 CFR 323.6). Also, where local circumstances indicate the need, district engineers will define the term "expected high flows" for the purpose of establishing applicability of this nationwide permit. (sections 10 and 404)

15. U.S. Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this nationwide permit and will require an individual or regional section 404 permit. (section 404)

16. Return Water From Upland Contained Disposal Areas. Return water from an upland, contained dredged material disposal area. The dredging itself requires a section 10 permit if located in navigable waters of the United States. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d) even though the disposal itself occurs on the upland and thus does not require a section 404 permit. This nationwide permit satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. (section 404)

17. Hydropower Projects. Discharges of dredged or fill material associated with (a) small hydropower projects at existing reservoirs where the project,

which includes the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; and has a total generating capacity of not more than 5000 KW; and the permittee notifies the district engineer in accordance with the "Notification" general condition; or (b) hydropower projects for which the FERC has granted an exemption from licensing pursuant to section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and section 30 of the Federal Power Act, as amended; provided the permittee notifies the district engineer in accordance with the "Notification" general condition. (section 404)

18. Minor Discharges. Minor discharges of dredged or fill material into all waters of the United States provided:

a. The discharge does not exceed 25 cubic yards;

b. The discharge will not cause the loss of more than 1/4 acre of a special aquatic site, including wetlands. For the purposes of this nationwide permit, the acreage limitation includes the filled area plus special aquatic sites that are adversely affected by flooding and special aquatic sites that are drained so that they would no longer be a water of the United States as a result of the project;

c. If the discharge exceeds 10 cubic yards or the discharge is in a special aquatic site, including wetlands, the permittee notifies the district engineer in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. (Also see 33 CFR 331.1(e)); and

d. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project and is not placed for the purpose of stream diversion. (sections 10 and 404)

19. Minor Dredging. Dredging of no more than 25 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States as part of a single and complete project. This nationwide permit does not authorize the dredging or degradation through siltation of coral reefs, submerged aquatic vegetation, anadromous fish spawning areas, or wetlands or, the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). (section 10)

20. Oil Spill Cleanup. Activities required for the containment and

cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan, (40 CFR part 300), provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing State contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. (sections 10 and 404)

21. Surface Coal Mining Activities. Activities associated with surface coal mining activities provided they are authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 and provided the permittee notifies the district engineer in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. (Also see 33 CFR 330.1(e)). (sections 10 and 404)

22. Removal of Vessels. Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made obstructions to navigation. This nationwide permit does not authorize the removal of vessels listed or determined eligible for listing on the National Register of Historic Places unless the district engineer is notified and indicates that there is compliance with the "Historic Properties" general condition. This nationwide permit does not authorize maintenance dredging, shoal removal, or river bank snagging. Vessel disposal in waters of the United States may need a permit from EPA. (see 40 CFR 229.3). (sections 10 and 404)

23. Approved Categorical Exclusions. Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN:

CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Prior to approval for purposes of this nationwide permit of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this nationwide permit. (sections 10 and 404)

24. State Administered Section 404 Program. Any activity permitted by a state administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)-(i) is permitted pursuant to section 10 of the Rivers and Harbors Act of 1899. Those activities which do not involve a section 404 state permit are not included in this nationwide permit, but certain structures will be exempted by section 134 of Public Law 94-587, 90 Stat. 2917 [33 U.S.C. 581] (see 33 CFR 322.3(a)(2)). (section 10)

25. Structural Discharge. Discharges of material such as concrete, sand, rock, etc. into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as piers and docks; and for linear projects, such as bridges, transmission line footings, and walkways. The NWP does not authorize filled structural members that would support buildings, homes, parking areas, storage areas and other such structures. Housepads or other building pads are also not included in this nationwide permit. The structure itself may require a section 10 permit if located in navigable waters of the United States. (section 404)

26. Headwaters and Isolated Waters Discharges. Discharges of dredged or fill material into headwaters and isolated waters provided:

a. The discharge does not cause the loss of more than 10 acres of waters of the United States;

b. The permittee notifies the district engineer if the discharge would cause the loss of waters of the United States greater than one acre in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. (Also see 33 CFR 330.1(e)); and

c. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project.

For the purposes of this nationwide permit, the acreage of loss of waters of

the United States includes the filled area plus waters of the United States that are adversely affected by flooding, excavation or drainage as a result of the project. The ten-acre and one-acre limits of NWP 26 are absolute, and cannot be increased by any mitigation plan offered by the applicant or required by the DE.

Subdivisions: For any real estate subdivision created or subdivided after October 5, 1984, a notification pursuant to subsection b. of this nationwide permit is required for any discharge which would cause the aggregate total loss of waters of the United States for the entire subdivision to exceed one (1) acre. Any discharge in any real estate subdivision which would cause the aggregate total loss of waters of the United States in the subdivision to exceed ten (10) acres is not authorized by this nationwide permit unless the DE exempts a particular subdivision or parcel by making a written determination that: (1) The individual and cumulative adverse environmental effects would be minimal and the property owner had, after October 5, 1984, but prior to January 21, 1982, committed substantial resources in reliance on NWP 26 with regard to a subdivision. In circumstances where it would be inequitable to frustrate his investment-backed expectations, or (2) that the individual and cumulative adverse environmental effects would be minimal, high quality wetlands would not be adversely affected, and there would be an overall benefit to the aquatic environment. Once the exemption is established for a subdivision, subsequent lot development by individual property owners may proceed using NWP 26. For purposes of NWP 26, the term "real estate subdivision" shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial or other real estate subdivision, including all parcels and parts thereof. (section 404)

27. Wetland and Riparian Restoration and Creation Activities. Activities in waters of the United States associated with the restoration of altered and degraded non-tidal wetlands and creation of wetlands on private lands in accordance with the terms and conditions of a binding wetland restoration or creation agreement between the landowner and the U.S. Fish and Wildlife Service (USFWS) or the Soil Conservation Service (SCS); or

activities associated with the restoration of altered and degraded non-tidal wetlands, riparian areas and creation of wetlands and riparian areas on U.S. Forest Service and Bureau of Land Management lands, Federal surplus lands (e.g., military lands proposed for disposal), Farmers Home Administration inventory properties, and Resolution Trust Corporation inventory properties that are under Federal control prior to being transferred to the private sector. Such activities include, but are not limited to: installation and maintenance of small water control structures, dikes, and berms; backfilling of existing drainage ditches; removal of existing drainage structures; construction of small nesting islands; and other related activities. This nationwide permit applies to restoration projects that serve the purpose of restoring "natural" wetland hydrology, vegetation, and function to altered and degraded non-tidal wetlands and "natural" functions of riparian areas. For agreement restoration and creation projects only, this nationwide permit also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its prior condition and use (i.e., prior to restoration under the agreement) within five years after expiration of the limited term wetland restoration or creation agreement, even if the discharge occurs after this nationwide permit expires. The prior condition will be documented in the original agreement, and the determination of return to prior conditions will be made by the Federal agency executing the agreement. Once an area is reverted back to its prior physical condition, it will be subject to whatever the Corps regulatory requirements will be at that future date. This nationwide permit does not authorize the conversion of natural wetlands to another aquatic use, such as creation of waterfowl impoundments where a forested wetland previously existed. (sections 10 and 404)

28. Modifications of Existing Marinas. Reconfigurations of existing docking facilities within an authorized marina area. No dredging, additional slips or dock spaces, or expansion of any kind within waters of the United States are authorized by this nationwide permit. (section 10)

29. Reserved

30. Reserved

31. Reserved

32. Completed Enforcement Actions. Any structure, work or discharge of dredged or fill material undertaken in accordance with, or remaining in place in compliance with, the terms of a final Federal court decision, consent decree,

or settlement agreement in an enforcement action brought by the United States under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899. (sections 10 and 404)

33. Temporary Construction, Access and Dewatering. Temporary structures and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites; provided the associated permanent activity was previously authorized by the Corps of Engineers or the U.S. Coast Guard, or for bridge construction activities not subject to Federal regulation. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must be of materials and placed in a manner that will not be eroded by expected high flows. Temporary fill must be entirely removed to upland areas following completion of the construction activity and the affected areas restored to the pre-project conditions. Cofferdams cannot be used to dewater wetlands or other aquatic areas so as to change their use. Structures left in place after cofferdams are removed require a section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322). The permittee must notify the district engineer in accordance with the "Notification" general condition. The notification must also include a restoration plan of reasonable measures to avoid and minimize impacts to aquatic resources. The district engineer will add special conditions, where necessary, to ensure that adverse environmental impacts are minimal. Such conditions may include: limiting the temporary work to the minimum necessary; requiring seasonal restrictions; modifying the restoration plan; and requiring alternative construction methods (e.g. construction mats in wetlands where practicable). This nationwide permit does not authorize temporary structures or fill associated with mining activities or the construction of marina basins which have not been authorized by the Corps. (sections 10 and 404)

34. Cranberry Production Activities: Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations provided:

a. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing,

does not exceed 10 acres of waters of the United States, including wetlands;

b. The permittee notifies the District Engineer in accordance with the notification procedures; and

c. The activity does not result in a net loss of wetland acreage.

This nationwide permit does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this nationwide permit, the cumulative total of 10 acres will be measured over the period that this nationwide permit is valid. (section 404)

35. Maintenance Dredging of Existing Basins. Excavation and removal of accumulated sediment for maintenance of existing marina basins, canals, and boat slips to previously authorized depths or controlling depths for ingress/egress whichever is less provided the dredged material is disposed of at an upland site and proper siltation controls are used. (section 10)

36. Boat Ramps. Activities required for the construction of boat ramps provided:

a. The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or placement of pre-cast concrete planks or slabs. (Unsuitable material that causes unacceptable chemical pollution or is structurally unstable is not authorized);

b. The boat ramp does not exceed 20 feet in width;

c. The base material is crushed stone, gravel or other suitable material;

d. The excavation is limited to the area necessary for site preparation and all excavated material is removed to the upland; and

e. No material is placed in special aquatic sites, including wetlands.

Dredging to provide access to the boat ramp may be authorized by another NWP, regional general permit, or individual permit pursuant to section 10 if located in navigable waters of the United States. (sections 10 and 404)

37. Emergency Watershed Protection and Rehabilitation. Work done by or funded by the Soil Conservation Service qualifying as an "emergency" situation (requiring immediate action) under its Emergency Watershed Protection Program (7 CFR part 624) and work done or funded by the Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 309.13) provided the district engineer is notified in accordance with the notification general

condition. (Also see 33 CFR 330.1(e), sections 10 and 404)

38. *Cleanup of Hazardous and Toxic Waste.* Specific activities required to effect the containment, stabilization or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority provided the permittee notifies the district engineer in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. Court ordered remedial action plans or related settlements are also authorized by this nationwide permit. This nationwide permit does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste. (sections 10 and 404)

39. Reserved

40. *Farm Buildings.* Discharges of dredged or fill material into jurisdictional wetlands (but not including prairie potholes, plays lakes, or vernal pools) that were in agricultural crop production prior to December 23, 1985 (i.e., farmed wetlands) for foundations and building pads for buildings or agricultural related structures necessary for farming activities. The discharge will be limited to the minimum necessary but will in no case exceed 1 acre (see the "Minimization" section 404 only condition). (section 404)

C. Nationwide Permit Conditions

General Conditions: The following general conditions must be followed in order for any authorization by a nationwide permit to be valid:

1. *Navigation.* No activity may cause more than a minimal adverse effect on navigation.

2. *Proper maintenance.* Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. *Erosion and siltation controls.* Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills must be permanently stabilized at the earliest practicable date.

4. *Aquatic life movements.* No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

5. *Equipment.* Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.

6. *Regional and case-by-case conditions.* The activity must comply with any regional conditions which may have been added by the division engineer (see 33 CFR 330.4(e)) and any case specific conditions added by the Corps.

7. *Wild and Scenic Rivers.* No activity may occur in a component of the National Wild and Scenic River System: of in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status. Information on Wild and Scenic Rivers may be obtained from the National Park Service and the U.S. Forest Service.

8. *Tribal rights.* No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. *Water quality certification.* In certain states, an individual state water quality certification must be obtained or waived (see 33 CFR 330.4(c)).

10. *Coastal zone management.* In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived. (see 33 CFR 330.4(d)).

11. *Endangered Species.* No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the district engineer if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work on the activity until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service. (see 33 CFR 330.4(f))

12. *Historic properties.* No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR 323, appendix C. The prospective permittee must notify the district engineer if the authorized activity may affect any historic properties listed, determined to

be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)).

13. *Notification.* (a) Where required by the terms of the NWP, the prospective permittee must notify the District Engineer as early as possible and shall not begin the activity:

(1) Until notified by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) If notified by the District or Division engineer that an individual permit is required; or

(3) Unless 30 days have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.3(d)(2).

(b) The notification must be in writing and include the following information and any required fees:

(1) Name, address and telephone number of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s) or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity;

(4) Where required by the terms of the NWP, a delineation of affected special aquatic sites, including wetlands; and

(5) A statement that the prospective permittee has contacted:

(i) The USFWS/NMFS regarding the presence of any Federally listed (or proposed for listing) endangered or threatened species or critical habitat in the permit area that may be affected by the proposed project and any available information provided by those agencies. (The prospective permittee may contact Corps District Offices for USFWS/NMFS agency contacts and lists of critical habitat.)

(ii) The SHPO regarding the presence of any historic properties in the permit area that may be affected by the proposed project; and the available information, if any, provided by that agency.

(c) The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PDN and must include all of the information required in (b) (1)-(5) of General Condition 13.

(d) In reviewing an activity under the notification procedure, the District Engineer will first determine whether the activity will result in more than minimal individual or cumulative adverse environmental effects or will be contrary to the public interest. The prospective permittee may, at his option, submit a proposed mitigation plan with the pre-discharge notification to expedite the process and the District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the nationwide permits and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. The district engineer will upon receipt of a notification provide immediately (e.g. facsimile transmission, overnight mail or other expeditious manner) a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 5 calendar days from the date the material is transmitted to telephone the District Engineer if they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 10 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification. If the District Engineer determines that the activity complies with the terms and conditions of the

NWP and that the adverse effects are minimal, he will notify the permittee and include any conditions he deems necessary. If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; or (2) that the project is authorized under the nationwide permit subject to the applicant's submitting a mitigation proposal that would reduce the adverse effects to the minimal level. This mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee elects to submit a mitigation plan, the DE will expeditiously review the proposed mitigation plan, but will not commence a second 30-day notification procedure. If the net adverse effects of the project (with the mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant informing him that the project can proceed under the terms and conditions of the nationwide permit.

(e) *Wetlands Delineations:* Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 30-day period will not start until the wetland delineation has been completed.

(f) *Mitigation:* Factors that the District Engineer will consider when determining the acceptability of appropriate and practicable mitigation include, but are not limited to:

(1) To be practicable the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of overall project purposes;

(2) To the extent appropriate, permittees should consider mitigation banking and other forms of mitigation including contributions to wetland trust funds, which contributes to the restoration, creation, replacement, enhancement, or preservation of wetlands.

Furthermore, examples of mitigation that may be appropriate and practicable include but are not limited to: reducing the size of the project; establishing buffer zones to protect aquatic resource values; and replacing the loss of aquatic resource values by creating, restoring,

and enhancing similar functions and values. In addition, mitigation must address impacts and cannot be used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the nationwide permits (e.g. 5 acres of wetlands cannot be created to change a 5 acre loss of wetlands to a 1 acre loss; however, the 5 created acres can be used to reduce the impacts of the 5 acre loss).

Section 404 Only Conditions

In addition to the General Conditions, the following conditions apply only to activities that involve the discharge of dredged or fill material and must be followed in order for authorization by the nationwide permits to be valid:

1. *Water supply intakes.* No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

2. *Shellfish production.* No discharge of dredged or fill material may occur in areas of concentrated shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by nationwide permit 4.

3. *Suitable material.* No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

4. *Mitigation.* Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site (i.e. on-site), unless the DE has approved a compensation mitigation plan for the specific regulated activity.

5. *Spawning areas.* Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

6. *Obstruction of high flows.* To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

7. *Adverse impacts from impoundments.* If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.

8. *Waterfowl breeding areas.* Discharges into breeding areas for

migratory waterfowl must be avoided to the maximum extent practicable.

2. *Removal of temporary fills.* Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

[FR Doc. 91-27373 Filed 11-21-91; 8:45 am]

BILLING CODE 2610-01-M

