

GENERAL PERMIT 40
(Permit No. 200250464)
FOR DISCHARGES OF DREDGED AND FILL MATERIAL OR
EXCAVATION IN STREAMS IN THE STATE OF UTAH WHERE A STREAM
ALTERATION PERMIT HAS BEEN ISSUED BY THE STATE ENGINEER

Effective Date: May 4, 2004

Expiration Date: May 3, 2009

The District Engineer, Sacramento District, U.S. Army Corps of Engineers (Corps), has reissued Regional General Permit 40 (RGP 40) for the discharge of dredged and fill material in waters of the United States (waters) in the state of Utah in those cases where a stream alteration permit has been issued by the State Engineer in compliance with state law.

PURPOSE: RGP 40 streamlines the application and permitting process for many project proponents in the state of Utah who must obtain both a Department of the Army (DA) permit and a stream alteration permit from the State Engineer before completing work in waters in the state of Utah. RGP 40 allows these project proponents to submit one application that is then reviewed by both agencies. RGP 40 also provides public notice and permitting procedures that allow the two agencies to avoid duplicate efforts.

AREA OF COVERAGE: This general permit applies to all waters in the state of Utah that are part of a surface tributary system and over which the State Engineer has regulatory authority under the state's stream alteration program. (Section 73-3-29, Utah Code Annotated) This general permit does not apply to springs, lakes, fens, wetlands and other waters to which the stream alteration program does not apply. This general permit does not apply to activities undertaken on tribal lands.

SCOPE OF AUTHORIZATION: This general permit establishes the procedure for obtaining DA authorization under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 for discharges of dredged and fill material in waters in the state of Utah in those cases where a stream alteration permit has been issued by the State Engineer. Activities regulated under Section 10 of the Rivers and Harbors Act that do not involve discharges of dredged or fill material may also be authorized under this general permit. Examples of discharges to be considered for authorization under this general permit include, but are not limited to, fills associated with bank protection projects, road and bridge construction or repair projects, the construction of intake and outfall structures, construction of utility line crossings and the construction of boat ramps and cofferdams. Regulated activities on waters over which the State Engineer does not assert jurisdiction under the stream alteration program will not be authorized under this general permit. For such activities, an alternative form of DA authorization will be required.

APPLICATION AND REVIEW PROCEDURE: The State Engineer and the Corps have developed a joint application form for use in applying for a stream alteration permit and authorization to complete work under this general permit. The application form and instructions may be obtained from either agency at the addresses and websites given below. Completed applications may be submitted to either agency. Applications must be completely filled out and all requested information must be provided, including:

- a. A site location map in sufficient detail to enable someone to find the project site;
- b. Plan view and cross-sectional drawings of the work site showing proposed fills. Professional drawings are not always required. However, drawings should be scaled or important dimensions must be clearly indicated;
- c. Location coordinates such as section, township and range; latitude and longitude; or UTM's;
- d. Volume, types and sources of the fills to be placed in the stream;
- e. Total area of the stream to be directly and indirectly affected by the proposed work;

- f. A proposed work plan and schedule; and
- g. Any other relative information.

Applications must clearly state the purpose of the work and explain the need to complete the work. The application must include a brief, but complete, description of the proposed work and a discussion of how and when the work will be completed. A discussion of alternative ways to achieve project goals while avoiding or limiting adverse impacts to the stream is required. For each individual proposal, applicants should be aware that the Corps is required to allow only that alternative that will achieve the basic project purpose while resulting in the least adverse impact to the aquatic environment. It is each applicant's responsibility to prove that the proposal is the one that will result in the least adverse impact to the aquatic environment while still achieving the basic project purpose. Any proposed compensatory mitigation to offset adverse project impacts to the aquatic environment should be identified in the application. Applications must also describe such things as land use, riparian vegetation and stream width and depth. The application must indicate if the stream is perennial, intermittent, or ephemeral and must identify the length of channel to be directly affected by the work. Applicants may use separate sheets as necessary to provide all required information. Those sheets should be attached to the application form.

Copies of the completed applications will be circulated by the State Engineer as public notice of the proposed work. The State Engineer will forward applications to the Corps, the Fish and Wildlife Service, the Environmental Protection Agency, the Utah Division of Wildlife Resources, the Utah Division of Water Quality, the Utah State Historic Preservation Office, local agencies, adjacent property owners and the general public. Normally, 20 days will be allowed for review and comment. The Corps will review each application for compliance with the terms and conditions of this general permit and the Section 404(b)(1) Guidelines. Those proposals not meeting the terms and conditions of this general permit will be referred to the Corps for consideration under an alternative form of DA authorization. The decision to require an alternative form of authorization will normally be based on the probability that the project will result in more than minimal adverse impacts, either individually or cumulatively when considered along with the impacts resulting from other projects in the general area. In evaluating the need for an alternative form of authorization, the Corps will give full consideration to those concerns of the Fish and Wildlife Service, the Environmental Protection Agency and state and local agencies that are within their scope of responsibility. For those proposals that do not qualify for authorization under this general permit, the applicant will be notified that an alternative form of authorization will be required. The State Engineer may continue to process the application as a state stream alteration permit application. Those proposals not meeting the Section 404(b)(1) Guidelines will not be permitted. The State Engineer will notify the Corps of any proposal that generates considerable interest or conflict.

DURATION OF THE GENERAL PERMIT: The Corps will re-evaluate the terms and conditions of this general permit at any time it is deemed necessary to protect the public interest. Such a re-evaluation will occur at least once every five years. The expiration date of reissued RGP 40 is **May 4, 2009**.

ADDITIONAL INFORMATION: This general permit is reissued under authority of Section 404(e) of the Clean Water Act (33 USC 1344) and in accordance with the provisions of 33 CFR 325.5(c), and Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403), in accordance with the provisions of 33 CFR 322.

Blanket Section 401 water quality certification for reissued RGP 40 was granted by the Utah Division of Water Quality on March 4, 2004. Issuance of that certification eliminates the need to request water quality certification for individual proposals. The water quality certification for reissued RGP 40 includes the following conditions:

1. Whenever an applicant causes the water turbidity in an adjacent surface water to increase 10 NTUs or more, the applicant shall notify the Utah Division of Water Quality.
2. The applicant shall not use any fill material which may leach organic chemicals (e.g., discarded asphalt) or nutrients (e.g., phosphate rock) into the receiving water.
3. Applicant shall protect any potentially affected fish spawning areas.

SPECIAL CONDITIONS:

1. No proposal that will adversely affect a species listed as threatened or endangered by the Fish and Wildlife Service pursuant to the Endangered Species Act, or the critical habitat of such species, will be authorized under this general permit. The Corps will review all proposals for possible impacts to threatened or endangered species or their critical habitat.

Should any such issues be identified, the Corps will request the State Engineer either attach appropriate conditions to the verification letter or suspend processing of the application while the applicant considers ways of modifying the project to address concerns. In cases where the above options are not appropriate, authorization under this general permit will not be granted and the applicant will be instructed to apply for an individual DA permit.

2. No proposal that will adversely affect sites listed on or determined eligible for the National Register of Historic Places will be authorized under this general permit. Should any such impacts be identified, the Corps will request, after any necessary coordination with the State Historic Preservation Office, that the State Engineer either attach appropriate conditions to the verification letter or suspend processing of the application while the applicant considers ways of modifying the proposal to address concerns. In cases where the above options are not appropriate, authorization under this general permit will not be granted and the applicant will be instructed to apply for an individual DA permit.

3. Proposals involving regulated activities on waters over which the State Engineer does not assert jurisdiction under the stream alteration program will be referred to the Corps for consideration under alternative forms of DA authorization.

4. Proposals that will adversely affect recreational or commercial navigation will not be authorized under this general permit.

5. The use of stream bed materials for purposes such as changing stream flow characteristics, bank protection and channel relocation will not be authorized under this general permit until the Corps completes additional coordination with other interested agencies and determines that adverse impacts associated with the proposal will be minimal. The use of streambed material as bedding for riprap is not prohibited, provided the material is lifted from the streambed and directly deposited against the eroding bank. The use of heavy equipment to push streambed material into place is not permissible.

6. Fill material used on projects authorized under this general permit must be clean and free of contaminants in other than trace amounts.

7. The use of unsuitable fill material such as vehicle bodies, farm machinery, appliances and other metal objects, asphalt, biodegradable construction debris and tires is prohibited.

8. Fresh cement or concrete shall not be allowed to enter a water unless it is placed in sealed forms.

9. All conditions of the stream alteration permit issued by the State Engineer must be satisfied, including adherence to any best management practices identified in the permit.

10. The need for compensatory mitigation to offset adverse project impacts to the aquatic environment will be determined on a case-by-case basis.

11. Within 30 days of work completion, each permittee shall sign and return to the Corps a certification that the authorized work has been completed in compliance with the terms and conditions of this general permit and any special conditions attached to the individual verification letter. The notification must identify the State Engineer's permit number and include photographs of the completed work and erosion control efforts.

GENERAL CONDITIONS:

1. Permittees must maintain fills or structures authorized under this general permit in good condition and in conformance with the terms and conditions of this general permit.

2. Work must stop if any previously unknown historic properties or archaeological artifacts are identified during the completion of authorized work, and the permittee must immediately notify the Corps. Work may not resume until the Corps has complied with the appropriate regulations.

3. Authorized activities must satisfy all conditions attached to the Section 401 water quality certification issued for this general permit by the Utah Division of Water Quality.

4. The Corps reserves the right to inspect any authorized work at any reasonable time to assure that it is being or has been completed in compliance with the terms and conditions of this general permit.

5. No activity may substantially disrupt the movements of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water or to limit the movement of undesirable aquatic species as part of a program carried out or approved by an appropriate resource agency. Culverts placed in streams must be installed in a manner that maintains flows during low flow periods.

6. No activity, including structures or work in navigable waters or discharges of dredged or fill material, may occur in the proximity of a public water supply intake, except where the activity is for the maintenance, repair or replacement of the intake structure or for adjacent bank stabilization.

7. Activities, including structures and work in navigable waters or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities such as excavations and fill placements that result in the physical destruction or smothering of important spawning areas will not be authorized under this general permit.

8. Activities, including structures and work in navigable waters or discharges of dredged or fill material, in breeding areas for migratory waterfowl must be avoided to the maximum extent practicable and timed so as to limit adverse project impacts to waterfowl.

9. All temporary fills must be removed in their entirety and the affected areas returned to their pre-existing elevations.

10. Authorizations issued under this general permit do not obviate the need to obtain any other required federal, state or local authorizations. Authorizations do not grant any property rights or exclusive privileges nor do they authorize injury to the property or the rights of others. Authorizations do not convey the right to interfere with any existing or future federal project.

11. In issuing authorizations under this general permit, the Federal Government does not assume any liability for the following: damages to authorized projects, or uses thereof, as a result of other permitted or un-permitted activities or natural events; damages to persons or property caused by authorized activity; damages to authorized projects, or uses thereof, as a result of current or future activities undertaken by or

on behalf of the United States in the public interest; design or construction deficiencies associated with the authorized work; damage claims associated with any modification, suspension or revocation of individual authorizations.

12. In issuing authorizations under this general permit, the Corps must rely on applicant-supplied information. Should it be determined that any authorization was based on false, incomplete or inaccurate data, the Corps reserves the right to re-evaluate the case and to suspend, modify or revoke the authorization. Failure to comply with the terms and conditions of an authorization is also grounds for suspension, modification or revocation, as is the discovery of relevant information not considered in the initial application review.

Additional information and application forms and instructions can be obtained from the Corps or the State Engineer at the addresses below. Application forms and instructions can also be obtained at either of the websites below. Completed application forms may be submitted to either agency.

U.S. Army Corps of Engineers
Utah Regulatory Office
533 West 2600 South, Suite 150
Bountiful, Utah 84010
(801) 295-8380

www.spk.usace.army.mil/cespk-co/regulatory/

Utah Division of Water Rights
1594 West North Temple, Suite 220
P.O. Box 146300
Salt Lake City, Utah 84114-6300
(801) 538-7240

www.waterrights.utah.gov/

/signed/

Andrew J. Rosenau
Chief, Regulatory Branch