

REGIONAL GENERAL PERMIT 96-07

Regional General Permit: RGP 96-07 for Flood-related Activities in Colorado
Corps File No.: 199620007
Permittee: General Public
Issuing Office: Omaha District, US Army Corps of Engineers
Location: All waters of the US in the State of Colorado
Permit Issued: November 7, 2006
Permit Expires: July 31, 2011

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

You are authorized to perform work in accordance with the terms and conditions specified below.

DESCRIPTION OF AUTHORIZED WORK

The District Engineers for the Albuquerque, Omaha and Sacramento Districts have re-issued Regional General Permit 96-07 (GP 96-07), originally issued on May 14, 1996. The permit authorizes certain flood-related fill or excavation activities, other work associated with flood protection, and repair work for flood-damaged areas performed in waters of the US within the state of Colorado. Waters of the United States include, but are not limited to, rivers, lakes, ponds, creeks, gulches and wetland areas. This GP may apply to localized or widespread flood events and includes, but is not limited to, the following activities:

- repair and reconstruction of existing roads
- temporary levee construction and repair
- bridge embankment repair
- protection and/or repair of utility structures
- bank protection/stabilization
- protection and restoration of intake structures.

Fill and excavation impacts authorized by this GP will be limited to the minimum necessary for the project. The maximum limits are as follows:

1. **One (1) acre** of impacts to non-wetland jurisdictional areas.
2. **1/3 acre** of impacts to wetlands.
3. Up to **one (1) acre** of wetlands impacts if, with consultation with other Federal and state agencies, the Corps of Engineers determines that the adverse environmental impacts are minimal. This one-acre limit is evaluated prior to considering mitigation.
4. After combining all impacts to waters of the US, including wetlands, the total of all impacts to waters of the US will not exceed **one (1) acre**, for each flood-related activity.

Proposed wetland fill or drainage activities authorized by this permit will require mitigation. Mitigation plans will be developed by the applicant, approved by the Corps, and coordinated with the applicable resource agencies on a case-by-case basis. In urgent situations, approval of mitigation plans by the Corps may be subsequent to approval of the

requested work, since sufficient time may not be available to approve mitigation before the work must take place.

Each permit application will be evaluated and, in some cases, may be authorized by nationwide permits or other regional general permits or may be exempt from regulation under Section 404(f)(1) of the Clean Water Act. For any activity that a District Engineer determines to have more than minimal environmental effects, individually or cumulatively, or that may be contrary to the public interest, an individual permit may be required. Before any project will be considered and before authorization is granted under this GP, it must be in compliance with the following Application Procedures and Permit Conditions.

The time limit for *applying* for flood related repair activities is **one (1) year** following the flood event.

The time limit for *completing* the work authorized by this GP is **six (6) months** from the permit issuance date. If additional time will be needed to complete the authorized activity, a written request for a time extension must be submitted to the Corps at least **four (4) weeks** before the permit expires. The request should include justification for an extension.

APPLICATION PROCEDURES

All parties proposing work under this GP are required to contact their local Corps Regulatory Office so that a determination can be made that the proposed work is necessitated by flood conditions and meets the criteria contained in Federal regulation 33 CFR 325.2(e)(2). The following information is required in order to process a permit application.

- a. Your name, address, and telephone number and the name, address and telephone number of the owner of the affected land.
- b. A written description of the proposed work including:
 - the purpose and need
 - type, composition, and quantity of material to be excavated or placed (including temporary material used for cofferdams, etc.)
 - length, width, and depth of fill area and/or excavation area
 - a discussion of the direct and indirect adverse environmental effects of the activity
 - location of disposal site for excavated material
 - type of equipment to be used
 - identification/delineation of wetlands
 - the receiving site for excess water (drainage projects)
 - any other pertinent, supporting data.
- c. A location map indicating the location of the proposed work and a legal description (section, township, range and county, and latitude and longitude).
- d. A set of 8.5 by 11-inch drawings showing the details of the proposed work (plan and cross sectional views showing elevations and dimensions).
- e. If applicable, a compensatory mitigation plan for proposed wetland fill or drainage activities.
- f. A written statement that you agree to abide by the terms and conditions of this permits

g. A written statement certifying that the authorized work has been completed in accordance with this permit must be submitted to the Corps following completion of the project. Photographs, taken from the same locations before the work is begun and after the work is completed, must be included.

The information submitted must clearly describe the project so that the Corps can determine whether or not the work complies with the terms, conditions, and limitations of this GP. The project may not proceed until notification approval has been received from the Corps that the proposed work meets the GP criteria. Any Corps authorization granted pursuant to this GP does not supersede the Food Security Act regulations and requirements for applicable projects.

PERMIT CONDITIONS

1. 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 in compliance with General Condition 3 below. 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.
2. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
3. If you sell the property associated with this permit, you must obtain the signature of the new owner and forward a copy of the permit to this office to validate the transfer of this authorization.
4. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.
5. The time limit for applying for flood related repair activities is one (1) year following the flood event.
6. The time limit for completing the work authorized by this GP is six (6) months from the permit issuance date. If additional time will be needed to complete the authorized activity, a written request for a time extension must be submitted to the Corps at least four (4) weeks before the permit expires. The request should include justification for an extension.
7. No activity is authorized under this permit 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 Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. When appropriate, the Corps will consult with the U.S. Fish and Wildlife Service (USFWS) on specific requests to perform work under this GP when a project may affect a threatened or endangered species.
8. An activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is not authorized by this general permit until the Corps has complied with Appendix C of 33 CFR 325 *and* the latest Corps interim guidance with respect to Appendix C. As of the effective date of this reissue of GP 96-07, interim guidance is found in the April 25, 2005 document, Revised Interim Guidance for Implementing Appendix C of 33 CFR Part 325 with the Revised Advisory Council on Historic Preservation Regulations at 36 CFR 800. The applicant must notify the Corps if the activity may affect any historic properties listed, determined to be eligible for listing, or which the applicant has

reason to believe may be eligible for listing in the National Register of Historic Places, and will not begin the activity until notified by the Corps that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. In the event that subsurface archaeological resources are encountered during ground disturbing activities, the work will be halted until such resources can be evaluated in consultation with the State Historic Preservation Officer.

9. Channel restoration work will be limited to restoring the area to pre-flood contours and conditions unless a determination has been made, and the Corps agrees, that a realignment of the channel or changes in grades are necessary for restoration. Straightening of a channel is prohibited.

10. Temporary levees, temporary access roads, and other temporary fills must involve the least damaging alternative and have minimum impact to waters of the United States. Appropriate measures must be taken to maintain near normal downstream flows to minimize additional flooding. Construction of permanent levees or access roads is not authorized by this GP.

11. All fill must be of suitable materials and placed in such a manner that the material will not be eroded by expected high flows (in most cases instream material is not suitable fill, as it will erode during high flows). If the use of streambed material is authorized for bank stabilization and erosion control, it must be stabilized with vegetation or appropriate rock protection. The following materials are prohibited or restricted as fill material under this permit:

- Vehicle bodies, farm machinery and metal junk, including appliances, containers and barrels (including plastic barrels) are prohibited
- Asphalt will not be used for bank stabilization or erosion control, and old or used asphalt will not be used as a fill material
- Biodegradable building materials, including wood debris, sheet rock, roofing materials, and chemically treated materials subject to leaching when placed in an aquatic environment are prohibited;
- Trees and treetops are prohibited unless properly anchored;
- Tires are prohibited
- The use of clean brick and broken concrete will be allowed on a case-by-case basis (broken concrete should be free of exposed rebar and old asphalt).

12. Proposed wetland fill or drainage activities authorized by this permit will require mitigation. Mitigation plans will be developed by the applicant, approved by the Corps, and coordinated with the applicable resource agencies on a case-by-case basis. In appropriate situations, approval of mitigation plans by the Corps may be subsequent to approval of the requested work, since sufficient time may not be available to approve mitigation before the work must take place.

13. All fill material will be obtained from a non-wetland source.

14. All temporary fills in waters of the United States, including sandbags, straw or hay bales with string or wire, must be completely removed and the area restored to pre-project conditions and contours within 30 days of the end of the flood event.

15. All areas disturbed by construction, which will not be ripped, will be seeded/planted for protection against subsequent erosion and to minimize adverse impacts to fish and wildlife resources (this includes both herbaceous and woody species that are indigenous to the area).

16. The clearing of vegetation, including trees located in or immediately adjacent to waters of the United States, will be limited to that which is absolutely necessary for construction of the project.

17. Equipment for handling and conveying materials during construction will be operated to prevent dumping or spilling the materials into the water except as approved herein. Construction equipment will not be operated in flowing water to the maximum extent practicable.
18. All dredged or excavated materials, with the exception of that authorized herein, will be placed on an upland site above the ordinary high water line in a confined area, not classified as a wetland, to prevent the return of such materials to the waterway.
19. Concrete trucks will be washed at a site and in such a manner that washwater cannot enter a waterway or wetland.
20. During construction, petroleum products, chemicals, or other deleterious materials will not be allowed to enter or be deposited, in waters of the United States. Precautions will be taken to prevent entry of these materials into waters of the United States. Any unauthorized release of petroleum products, chemicals, or other deleterious materials into waters of the United States will be reported immediately to the Colorado Environmental Release and Incident Reporting Line at 1-877-518-5608.
21. All work in the waterway will be performed in such a manner so as to minimize increases in suspended solids and turbidity which may degrade water quality and damage aquatic life outside the immediate area of operation.
22. All earthwork operations on the bank will be carried out in such a manner that sediment runoff and soil erosion to the waterbody are controlled.
23. If and when the District Engineer has been notified that a dredging or filling activity is adversely affecting fish or wildlife resources or the harvest thereof and the District Engineer subsequently directs remedial measures, the permittee will comply with such directions to suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect as required.
24. If the Corps is notified that work being performed does not comply with or fall within the scope of this General Permit, the responsible party will take immediate steps, as directed by the Corps, to bring the work into compliance with this permit.
25. The District Engineer may require that additional special conditions be included in any authorization issued under this General Permit to avoid, minimize or compensate for adverse environmental impacts.
26. Any activity authorized under this permit may not occur in a component of the National Wild and Scenic River system, or 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.
27. An activity may not impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
28. This permit does not obviate the need to obtain other federal, state, or local authorizations as required by law, does not grant any property rights or exclusive rights to others, and does not authorize interference with any existing or proposed federal project.
29. For any activity that the District Engineers determines to have more than minimal adverse environmental effects, individually or cumulatively, or may be contrary to the public interest, an individual permit may be required.
30. In issuing this permit and giving approval to perform work under this permit, the Federal Government does not assume any liability for 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; damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit; design or construction deficiencies associated with the permitted work; or damage claims associated with any future modification, suspension, or revocation of this permit.

31. Corps representatives will be allowed 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 this permit.

32. The State of Colorado has certified the activities authorized by this permit under Section 401 of the Clean Water Act. The Environmental Protection Agency must individually certify the activities in Indian Country authorized by this permit. To obtain water quality certification in Indian Country, write to the Environmental Protection Agency, Eco-Systems Protection and Remediation Program, 999 18th Street, Suite 500, Denver, Colorado 80202. The certification from EPA, for a project in Indian Country, should accompany the application.

33. The Corps may reevaluate its decision on any authorization given in accordance with this permit at any time that circumstances may warrant. Circumstances that could require a reevaluation include, but are not limited to the following:

- failure to comply with the terms and conditions of the permit;
- the information provided in support of the application proves to be false, incomplete, or inaccurate; and
- significant new information surfaces which the Corps did not consider in reaching a decision.

Such reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in Title 33, CFR Parts 326.4 and 326.5. These enforcement procedures provide for the issuance of an administrative order requiring compliance with the terms and conditions of this permit and for the initiation of legal action where appropriate. The permittee may be required to pay for any corrective measures ordered by the Corps and failure to comply with such directives in certain situations may result in the Corps accomplishing the corrective measures by contract or otherwise and billing the permittee for the cost.

FURTHER INFORMATION

1. **Congressional Authorities:** You have been authorized to undertake the activity described above pursuant to:

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

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

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. **Limits of this authorization.**

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. **Limits of Federal Liability.** In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. 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.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation 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 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions.** Conditions 1 and 2 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 reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Issued for and in behalf of Lieutenant Colonel Joel R. Cross, Omaha District Engineer.

/s/

Martha S. Chieply
Chief, Regulatory Branch
Operations Division
Omaha District