

DEPARTMENT OF THE ARMY
Wilmington District, Corps of Engineers
Post Office Box 1890
Wilmington, North Carolina 28402-1890

Action ID No. 200121204

October 24, 2003

PUBLIC NOTICE
ISSUANCE OF REGIONAL GENERAL PERMIT 200121204

THE DISTRICT ENGINEER, WILMINGTON DISTRICT, Post Office Box 1890, Wilmington, North Carolina 28402 hereby proposes the issuance of Regional General Permit (GP) 200121204 (Emergency Transportation Repairs Following Natural Disasters). Title 33, Code of Federal Regulations, Paragraph 325, allows the District Engineer to issue regional general permits to authorize activities, which are substantially similar in nature and cause only minimal individual and cumulative environmental impacts.

GP 200121204 (copy attached) authorizes the discharge of dredged or fill material in waters of the United States, including navigable waters and tidal and non-tidal wetlands, associated with emergency repairs following qualified natural disaster events, which are constructed by the North Carolina Department of Transportation, or any institution charged with the construction and maintenance of public transportation infrastructure projects, in the state of North Carolina within the geographic limits of the regulatory authority of the U.S. Army Corps of Engineers, Wilmington District. The U.S. Army Corps of Engineers, Wilmington District, District Engineer, will determine which natural disaster events (e.g. hurricanes, tropical storms, floods, etc.) qualify for use of this general permit and the time period in which this general permit is applicable. Issuance of GP 200121204 is being considered pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

Generally, the decision whether to issue this regional general permit will not be made until the North Carolina Division of Water Quality (NCDWQ) issues, denies, or waives State certification required by Section 401 of the Clean Water Act. The NCDWQ considers whether the proposed activity will comply with Sections 301, 302, 306, and 307 of the Clean Water Act. This public notice serves as a request to the NCDWQ to review the applicability of Certification Number 3333.

Additional information regarding the Clean Water Act certification may be reviewed at the offices of the Environmental Operations Section, North Carolina Division of Water Quality (NCDWQ), Salisbury Street, Archdale Building, Raleigh, North Carolina. Copies of such materials will be furnished to any person requesting copies upon payment of reproduction costs.

All persons wanting to make comments regarding the request for Clean Water Act certification should do so in writing delivered to the North Carolina Division of Water Quality (NCDWQ), 1621 Mail Service Center, Raleigh, North Carolina 27699-1621, on or before, November 17, 2003, Attn: Mr. John Dorney.

The GP will not be issued if any required state or local authorizations and/or certifications are denied. The GP will not be issued until a State coordinated viewpoint is received and reviewed by this agency. Recipients of this notice are encouraged to furnish comments on factors of concern represented by the above agencies directly to the respective agency, with a copy furnished to the Corps of Engineers.

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. It is the District Engineer's initial determination that the proposed issuance of the GP will not adversely affect EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fisheries Management Councils and the National Marine Fisheries Service. The required EFH assessment will be incorporated into the Environmental Assessment (EA) that will be prepared for the GP.

The decision, whether to issue the GP, will be based on an evaluation of the probable impacts, including the cumulative impacts, of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts that the proposed activity may have on the public interest requires a careful weighing of all those factors that become relevant in each particular case. The benefits that may be expected to accrue from the proposal must be balanced against its foreseeable detriments. The decision whether to authorize a proposal, and if so the conditions under which it will be allowed to occur, are therefore decided by the outcome of the general balancing process. That decision should reflect the national concern for both protection and use of important resources. All factors that may be relevant to the proposal must be considered including the cumulative effects of it. Among those are conservation, economics, aesthetics, general and flood plain values (according to Executive Order 11988), land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. Subject to all applicable guidelines or criteria, a permit will be granted unless the District Engineer decides that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes and other interested parties to consider and evaluate the individual and cumulative impacts of this proposed action. Any comments received will be considered by the Corps of Engineers to decide whether to issue or modify the attached regional general permit. To make this decision; comments are used to assess potential impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments will

be considered in the preparation of an Environmental Assessment pursuant to the National Environmental Policy Act. Comments are also used to decide the need for a public hearing and to decide the public interest of the proposed action.

Written comments pertinent to the issuance of this general permit will be received at the Raleigh Regulatory Field Office, Attention: Mrs. Jean B. Manuele, until 4:30 p.m., November 24, 2003. It is requested that you communicate the foregoing information concerning the proposed regional general permit to any persons known by you to be interested.

Additional information concerning this regional general permit can be obtained from Mrs. Jean B. Manuele, Regulatory Division, U.S. Army Corps of Engineers, 6508 Falls of Neuse Road, Suite 120, Raleigh, North Carolina 27615 or telephone (919) 876-8441, Ext. 24.

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Post Office Box 1890
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General Permit No. 200121204
Name of Permittee: General Public
Effective Date:
Expiration Date:

**DEPARTMENT OF THE ARMY
GENERAL PERMIT**

A general permit to perform work in or affecting waters of the United States, including navigable waters and wetlands, upon recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403), and Section 404 of the Clean Water Act (33 U.S.C. 1344), is hereby issued by authority of the Secretary of the Army by the

District Engineer
U.S. Army Engineer District, Wilmington
Corps of Engineers
Post Office Box 1890
Wilmington, North Carolina 28402-1890

TO AUTHORIZE THE DISCHARGE OF DREDGED OR FILL MATERIAL IN WATERS OF THE UNITED STATES, INCLUDING NAVIGABLE WATERS AND TIDAL AND NON-TIDAL WETLANDS, ASSOCIATED WITH EMERGENCY REPAIRS FOLLOWING QUALIFIED NATURAL DISASTER EVENTS, WHICH ARE CONSTRUCTED BY THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, OR ANY INSTITUTION CHARGED WITH THE CONSTRUCTION AND MAINTENANCE OF PUBLIC TRANSPORTATION INFRASTRUCTURE PROJECTS, IN THE STATE OF NORTH CAROLINA WITHIN THE GEOGRAPHIC LIMITS OF THE REGULATORY AUTHORITY OF THE U.S. ARMY CORPS OF ENGINEERS, WILMINGTON DISTRICT. THE U.S. ARMY CORPS OF ENGINEERS, WILMINGTON DISTRICT, DISTRICT ENGINEER, WILL DETERMINE WHICH NATURAL DISASTER EVENTS (E.G., HURRICANES, TROPICAL STORMS, FLOODS, ETC.) QUALIFY FOR USE OF THIS GENERAL PERMIT AND THE TIME PERIOD IN WHICH THIS GENERAL PERMIT IS APPLICABLE.

AUTHORIZED WORK INCLUDES REPLACING BRIDGES WITH BRIDGES, REPLACING CULVERTS WITH CULVERTS AND REPLACING CULVERTS WITH BRIDGES, COFFERDAMS, ABUTMENTS, FOUNDATION SEALS, PIERS, APPROACH FILLS, STRUCTURE INSTALLATION, SCOUR PROTECTION, UTILITY LINE RELOCATION, BRIDGE DEMOLITION AND REMOVAL, AND OTHER DISCHARGES DIRECTLY RELATED TO THESE ACTIVITIES. THIS PERMIT ALSO AUTHORIZES REPAIRS TO FERRY FACILITIES, AIRPORTS, AIRPORT FACILITIES AND RAILROAD FACILITIES.

THIS PERMIT DOES NOT AUTHORIZE REPLACING BRIDGES WITH CULVERTS, UNPAVED TO PAVED ROAD IMPROVEMENTS, AND NON-LINEAR FEATURES COMMONLY ASSOCIATED WITH TRANSPORTATION PROJECTS, SUCH AS VEHICLE MAINTENANCE OR STORAGE BUILDINGS OR PARKING LOTS.

USE OF THIS GENERAL PERMIT IS SUBJECT TO THE FOLLOWING SPECIAL AND GENERAL CONDITIONS.

SPECIAL CONDITIONS:

a. INDIVIDUALS PROPOSING TO USE THIS GENERAL PERMIT MUST CONTACT THE U.S. ARMY CORPS OF ENGINEERS, WILMINGTON DISTRICT TO DETERMINE WHETHER THE EVENT THAT CAUSED THE NEED FOR THE EMERGENCY REPAIRS QUALIFIES UNDER THIS GENERAL PERMIT. UPON SUCH NOTIFICATION, THE DISTRICT ENGINEER WILL ESTABLISH THE AREA AND DURATION THAT THE GENERAL PERMIT IS AVAILABLE FOR USE.

b. Once the Permittee has confirmation from the District Engineer that this General Permit is applicable, then activities authorized by this regional general permit can commence without additional approvals from the USACE, provided that the Permittee can comply with all conditions of this General Permit. If a project cannot meet any condition in this permit, then a preconstruction notification to, and written concurrence from, the U.S. Army Corps of Engineers, District Engineer, is required prior to the beginning of any construction activities. For projects where pre-construction written concurrence is not required, a post-construction notification is required. The post-construction notification shall be received in the appropriate U.S. Army Corps of Engineers Regulatory Field Office no later than 30 days from the completion of the project and should be submitted in the format outlined in Appendix A.

c. Discharges into Waters of the United States designated by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning area are prohibited during the period between February 15 and June 30.

d. Discharges into Waters of the United States designated as sturgeon spawning areas are prohibited during the period between February 1 and June 30.

e. Should all or part of the proposed work be located within an Area of Environmental Concern (AEC) as designated by the North Carolina Coastal Resources Commission, a Coastal Area Management Act (CAMA) permit is required from the North Carolina Division of Coastal Management. Should an activity within or potentially affecting an AEC be proposed by a Federal agency, a consistency determination pursuant to 15 CFR 930 must be provided to the North Carolina Division of Coastal Management before the onset of the proposed activity.

f. For work conducted within an AEC, the limits of excavation and fill associated with bridge or culvert replacement activities involving excavation or fill in waters of the United States, including wetlands (tidal and non-tidal) shall meet the following conditions:

(1) The total area of jurisdictional impacts to waters of the United States, including wetlands, to be excavated or filled shall not exceed 2,500 square feet, with the wetland component not exceeding 500 square feet.

(2) All excavated materials shall be confined above ordinary high water or mean high water and landward of any wetlands behind adequate dikes or other retaining structures to prevent spill-over of solids into any wetlands or surrounding waters.

(3) Culvert inverts shall be set at least one foot below normal bed elevation to facilitate the passage of aquatic life.

g. Activities in any mountain trout waters must comply with all pH, temperature and turbidity criteria established for such waters by the North Carolina Wildlife Resources Commission (NCWRC) and/or the North Carolina Division of Water Quality (NCDWQ). Work in trout waters will be prohibited from November 1 to April 15, of any year, to avoid impacts on trout spawning. The counties in which this condition applies are:

Allegheny	Ashe	Avery
Buncombe	Burke	Caldwell
Cherokee	Clay	Graham
Haywood	Henderson	Jackson
Macon	Madison	McDowell
Mitchell	Polk	Rutherford
Stokes	Surry	Swain
Transylvania	Watauga	Wilkes
Yancey		

h. Culvert construction will include measures to promote fish and other aquatic organism passage. Culvert inverts will be buried a minimum of one foot below the bed of the stream for culverts greater than 48 inches in diameter. Culverts 48 inches in diameter or smaller must be buried below the bed of the stream to a depth equal to or greater than 20 percent of the diameter

of the culvert. Bottomless arch culverts satisfy this condition. All culverts in the 20 coastal counties, requiring CAMA authorization must be buried to a depth of one foot below the bed of the stream to be consistent with CAMA requirements.

i. For road projects, impacts are limited to 0.1 acre of wetland impacts and/or 150 linear feet of stream channel, including the existing fill prior to the disaster, 40 linear feet of permanent new channel impacts, or a 4:1 fill slope, whichever is less. Project acreage limitations include the footprint of the fill and wetlands drained due to excavation. Stream impacts include the cumulative length of stream either filled or excavated. The limitations include both temporary and permanent impacts.

j. Excavation of the stream channel is limited to that which is necessary for installation of the culvert(s). Excavation to improve drainage is not authorized.

k. This permit allows the permanent installation of culverts no greater than 150 feet in length.

l. Stone used for stabilization of the structure will be limited to that necessary to stabilize around the structure (headwall, bent, bridge abutment, pipe, etc.) and that necessary to stabilize the adjacent stream bank within the existing road right-of-way. Lining stream channels with stone (riprap) is not authorized by this permit.

m. Cofferdam construction authorized by this general permit includes metal sheet pile, portable dams, inflatable dams, jersey barricades with impermeable fabric and rip rap underlain by geotextile fabric, in which all stone is to be removed from the jurisdictional area immediately upon project completion. Installation of these structures is not to exceed 90 consecutive days.

n. Placement of fill material shall be restricted to that which is necessary to install the culvert(s).

o. Upon completion of any work authorized by this general permit, all temporary fills will be completely removed and prior wetland areas reestablished as a wetland by restoring natural hydrology, pre-construction contours and replanting with native vegetation. Stream contours and riparian vegetation will be reestablished upon the removal of temporary cofferdams. In such instances, a restoration plan will be submitted to the Wilmington District Engineer for approval.

p. All fills, temporary and permanent, must be stabilized to prevent erosion of fill material into adjacent waters or wetlands.

q. Discharges of dredged or fill material into waters of the United States, including wetlands and streams, must be minimized or avoided to the maximum extent practicable.

r. No activity may substantially impede the movement of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area.

- s. Culverts or pipes installed in crossings must be of sufficient size to allow normal surface water exchange between the wetlands on either side of the road and to maintain normal hydrology across the wetland.
- t. No live or fresh concrete shall come into contact with surface waters until the concrete has hardened.
- u. Wastewater from cofferdams and other containment structures shall not be released directly into surface waters, but will be disposed of in contained upland sites.
- v. All activities authorized by this general permit shall, to the extent practicable, be conducted "in the dry", with barriers installed between work areas and aquatic habitat to protect that habitat from cement or other pollutants. Water in the work area will be pumped to holding or settling ponds and water will not be allowed to re-enter the water column until decanted.
- w. All work will comply with the General Water Quality Certification issued by the North Carolina Division of Water Quality (NCDWQ) for this general permit.
- x. Any bridge demolition and removal done under this general permit shall be done in strict accordance with the latest NCDOT Policy: Bridge Demolition and Removal in Waters of the United States (BDR Policy), including the Best Management Practices for Bridge Demolition and Removal.
- y. No more than one-half of the width of any navigable waterway shall be blocked at any one time by temporary fills.
- z. If an affected waterway is "Navigable Water of the United States", over which the U.S. Coast Guard (USCG) asserts jurisdiction, the location and clearances of the bridge or structure must be approved by the USCG. Such lights and signals as may be prescribed by the USCG shall be installed and maintained by, and at the expense of, the permittee.
- aa. To the maximum extent practicable, the project must be designed to maintain preconstruction downstream flow conditions. Furthermore, the project must not permanently restrict or impede the passage of normal or expected high flows and the structure or discharge of dredged or fill material must withstand expected high flows. Any adverse effects on the aquatic system, including erosion and sedimentation, caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.
- bb. For any activities authorized by this General Permit that do not meet the preceding Special Conditions, a Pre-construction Notification Application must be submitted to the Wilmington District Engineer. In those cases when a Pre-construction Notification is required, written confirmation that the proposed work complies with this general permit must be received from the Wilmington District Engineer prior to the commencement of any work within Waters of the United States including wetlands. The Pre-construction Notification must include the following information:

(1) A map indicating the location of the work, which includes either the UTM coordinates or latitude and longitude of the project site.

(2) Plans of the proposed work (on 8-1/2-inch by 11-inch paper) showing all pertinent structures, elevations, dimensions and quantities of materials and locations of all structures and/or fill, including temporary fills, in wetlands, or waterward of the normal/high water elevation contours in surface waters.

(3) A delineation of any special aquatic sites, including wetlands, and a brief discussion of the affected wetlands and streams, to include types of vegetation present.

(4) Approximate commencement and completion dates.

(5) Plans, including timetables and techniques, for construction, stabilization and removal of all temporary fills.

(6) A written statement detailing measures that have been taken to avoid and minimize discharges of dredged or fill material into waters of the United States, including wetlands and streams.

(7) A compensatory mitigation proposal that offsets the unavoidable losses of waters of the United States, including wetlands and streams. Mitigation will generally be required for impacts greater than 1/10 acre of waters of the United States, and for greater than 150 linear feet of stream, but the mitigation requirement will be at the discretion of the District Engineer.

cc. Projects requiring a Pre-construction Notification will be evaluated to determine if the impact on waters or wetlands is likely to be such as to require review by Federal and State agencies. If it is determined that the impacts are minimal or can be made minimal by changes agreed to by the applicant and/or compensatory mitigation, a letter of authorization to proceed will be provided. If it is determined that review by Federal and State agencies is necessary to fully evaluate impacts, copies of all plans and materials will be faxed to the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), the U.S. Environmental Protection Agency (EPA) and the North Carolina Department of Environment and Natural Resources, Division of Water Quality (NCDWQ) and the Division of Coastal Management (DCM) and the North Carolina Wildlife Resources Commission (NCWRC). These agencies will be provided five working (5) days to provide comments before a decision by the District Engineer is made. In the event that any Federal agency maintains an objection or any required State authorization is outstanding, no notice to proceed will be given until objections are resolved and State authorizations are issued.

dd. For projects requiring a Pre-construction Notification, written notice to proceed from the Wilmington District Engineer may include additional conditions and/or restrictions. Copies of the notice to proceed or denial will be furnished to any agency that provided comments.

GENERAL CONDITIONS:

- a. All activities authorized by this general permit that involve the discharge of dredged or fill material in waters of the United States will be consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pre-treatment standards and management practices established pursuant to the Clean Water Act (33 U.S.C. 1344) and applicable State and local law. If the proposed activity involves the discharge of dredged or fill material in waters of the United States, prior to the commencement of any work, the applicant will satisfy the North Carolina Division of Water Quality (NCDWQ) regarding the need for a Water Quality Certification pursuant to Section 401 of the Clean Water Act.
- b. There will be no unreasonable interference with navigation or the right of the public to riparian access by the existence or use of activities authorized by this general permit.
- c. A permittee, upon receipt of written notice from the Wilmington District Engineer of failure to comply with the terms or conditions of this general permit, will, within 60 days, without expense to the U.S. Government, and in such manner as the Wilmington District Engineer may direct, affect compliance with the terms and conditions or return the worksite to a pre-work condition.
- d. The permittee must make every reasonable effort to perform the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife and natural environmental values.
- e. The permittee must perform the work authorized herein in a manner so as to minimize any degradation of water quality. The activity will be conducted in such a manner as to prevent a significant increase in turbidity outside the area of construction or construction-related discharge. Increases such that the turbidity in the water body is 50 NTU's or less in all rivers not designated as trout waters by the North Carolina Department of Environment and Natural Resources, Division of Water Quality (NCDWQ), 25 NTU's or less in all saltwater classes and in all lakes and reservoirs, and 10 NTU's or less in trout waters, are not considered significant.
- f. The permittee will permit the Wilmington District Engineer or his representative to make periodic inspections at any time deemed necessary in order to assure that the activity is being performed or maintained in strict accordance with the Special and General Conditions of this permit.
- g. This general permit does not convey any rights, either in real estate or material, or any exclusive privileges; and it does not authorize any injury to property or invasion of rights or any infringement of Federal, State or local laws or regulations, nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein. These may include, but are not necessarily limited to, a Dredge and/or Fill Permit (N.C.G.S. 113-229), a Coastal Area Management Act (CAMA) Permit (N.C.G.S. 113A-118), an Easement to Fill (N.C.G.S. 146-12) and a Water Quality Certification pursuant to Section 401 of the Clean Water Act.

h. Authorization provided by this general permit may be either modified, suspended or revoked in whole or in part if the Wilmington District Engineer, acting on behalf of the Secretary of the Army, determines that such action would be in the best public interest. Unless subject to modification, suspension or revocation, the term of this general permit shall be five years. Any modification, suspension or revocation of this authorization will not be the basis for any claim for damages against the U.S. Government.

i. This general permit does not authorize the interference with any existing or proposed Federal project and the permittee will not be entitled to compensation for damages or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

j. This general permit will not be applicable to proposed construction when the Wilmington District Engineer determines that the proposed activity would significantly affect the quality of the human environment and determines that an Environmental Impact Statement (EIS) must be prepared.

k. This general permit will not be applicable to proposed construction when the Wilmington District Engineer determines, after any necessary investigations, that the proposed activity would adversely affect areas, which possess historic, cultural, scenic, conservation or recreational values. Application of this exemption applies to:

(1) Rivers named in Section 3 of the Wild and Scenic Rivers Act (15 U.S.C. 1273), those proposed for inclusion as provided by Sections 4 and 5 of the Act and wild, scenic and recreational rivers established by State and local entities.

(2) Historic, cultural or archeological sites listed in or eligible for inclusion in the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 and its codified regulations, the National Historic Preservation Amendment Acts of 1980 and 1992, the Abandoned Shipwreck Act of 1987 and the Native American Graves Protection and Repatriation Act.

(3) Sites included in or determined eligible for listing in the National Registry of Natural Landmarks.

(4) Endangered or threatened species or habitat of such species as determined by the Secretaries of Interior or Commerce and concerned in accordance with the Endangered Species Act (16 U.S.C. 1531).

1. Permittees are advised that development activities in or near a floodway may be subject to the National Flood Insurance Program, which prohibits any development, including fill, within a floodway that results in any increase in base flood elevations.

m. At his discretion, the Wilmington District Engineer may determine that this general permit will not be applicable to a specific construction proposal. In such case, the procedure for processing an individual permit in accordance with 33 CFR 325 will be available.

n. The permittee or the permittee's successors will maintain the authorized work in good condition and in conformance with the terms and conditions of the general permit.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Charles R. Alexander, Jr.
Colonel, U.S. Army
District Engineer