

# PERMIT REQUIREMENTS

Revised Oct 98

1. General. Many activities occurring within the critical area of flood control projects involve structures, work, or discharges of dredged or fill material in rivers, streams, lakes, and/or wetlands. As part of the review process of these activities, it is necessary that a determination of the need for a Department of the Army (DA) permit be made. Therefore, an overview of the DA regulatory program and information regarding the requirements and procedures involved, has been incorporated as an aid to assure a timely and concurrent review. The DA regulatory permit program is administered on a daily basis by the Corps of Engineers (COE), with ultimate oversight of the Environmental Protection Agency (EPA).

1.1. The purpose of the DA regulatory program is to protect the public interest in the nation's water resources. This is accomplished by restoring their chemical, biological, and physical integrity. This purpose is primarily accomplished through two Acts of Congress. The implementing regulations for these Acts are found at 33 CFR 320-330.

1.2. Under Section 10 of the Rivers and Harbors Act of 1899, prior authorization is required from the COE, for any work or structures in, over, or under a Navigable Water of the United States (NWUS). The major thrust of the RHA is to protect navigation. The NWUS within the Regulatory Boundary of the Kansas City District (KCD), COE are listed in the attached Fact Sheet. The NWUS are waters that have been, are presently, or could be used for navigation.

1.3. Under Section 404 of the Clean Water Act (CWA), prior authorization is required for the discharge of dredged or fill materials in any water of the United States (WUS), including wetlands. The CWA covers all waters, including the Section 10 NWUS. Dredged material is material that is removed from a WUS and then returned to a WUS. Fill material is material that is obtained outside a WUS and then discharged (placed) in a WUS.

## 2. Requirements.

2.1 Jurisdiction. Regulatory jurisdiction applies to rivers, streams, lakes, and wetlands, or basically all WUS. On rivers, lakes, and streams, COE jurisdiction extends to that area below the ordinary high water mark (OHWM), which is defined in the regulations as that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural lines impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area. For jurisdictional purposes, the OHWM elevation can be visually established or surveyed from known benchmarks if an elevation contour is desired. A list of the NWUS is attached. The KCD has established OHWM elevation profiles for two of the NWUS, the Kansas and Missouri Rivers.

2.1.1. Wetlands are also subject to regulatory jurisdiction. Wetlands are defined in the

regulations as" those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marches, bogs, and similar areas. The three primary components of wetlands include hydrology (water), hydrophytic vegetation, and hydric soils. Farmed wetlands, wooded wetlands, seasonal depressions, etc are determined to be wetlands.

2.2. Types of Permits. There are four types of permits that are available to authorize activities in WUS. These are Individual Permits (IDAP), Letters of Permission (LOP), General Permits (GP), and Nationwide Permits (NWP).

2.2.1. An IDAP is generally referred to as a standard permit, meaning it is used when all other simpler permits are not applicable, An IDAP involves distribution of a public notice soliciting comments from adjacent property owners, Federal, state, and local agencies, organizations, and other interested individuals. After a review of comments received, consideration of public interest factors, and compliance with the Section 404 b (1) guidelines developed by the EPA, a determination is made to either issue or deny the permit. Our goal for IDAPs is to make a decision within 120 days of receipt of a complete application. Some IDAPs are good for the lifetime of a structure, but usually require that the activity be completed within three years. IDAPs can be modified to increase or decrease the scope of work, to extend the completion date, to transfer the permit or to impose additional restrictions as required by the public interest.

2.2.2. LOPs are a shortened version of IDAPs. They are issued through an abbreviated processing procedure and involve all aspects of an IDAP, except, they are only coordinated with Federal and state agencies, without a public notice. They are used for minor activities with minimal individual or cumulative environmental impacts that should not encounter any appreciable opposition. LOPs are subject to the same time restraints as IDAPs.

2.2.3. GPs are a type of permit authorizing on a regional basis those activities that are substantially similar in nature and cause only minimal individual or cumulative environmental impacts. They are developed and issued by each COE district after coordination with agencies and the public. Once issued, they are good for five years, after which they are renewed, modified, or replaced by other types of authorizations. If an activity meets the criteria listed in the particular GP, then we can usually verify authorization within two or three weeks without further coordination. The work authorized must usually be completed within two years of the verification date; or be reviewed again.

2.2.4. NWPs, as the name implies, authorize activities throughout the nation. They are designed to allow minor activities to occur with little, if any delay or paperwork. The NWPs are reviewed every five years and are either renewed, modified, or replaced with other types of authorizations. Although they are intended to authorize activities with little paperwork, we recommend that the activities be verified in writing prior to initiation of the work.

2.3. State and Local Permits. Pursuant to Section 401 of the CWA, all DA Section 404 authorizations require that an individual water quality certification be issued by the appropriate state water quality office for each specific action. With IDAPs and LOPs, it is referenced and included as a condition of each permit. However, with GPs and NWP, a blanket Section 401 certification may be issued by the state water quality certification office. The KCD Regulatory Office can advise you whether a blanket Section 401 certification was issued or you must obtain Section 401 certification for each separate action. DA permit authorizations do not alleviate the need to obtain other state and local permits.

2.4. Other Considerations. During the public interest review of DA permits, other Federal statutes must be considered in relation to the activity. Two major statutes are the National Historic Preservation Act of 1996 (NHPA) and the Endangered Species Act (ESA).

2.4.1. The NHPA created the Advisory Council on Historic properties to advise the President and Congress on matters involving historic preservation, The Council is authorized to review and comment upon activities licensed (permitted) by the Federal government which will have an effect on properties listed in the National Register of Historic Places, or eligible for listing. The initial contact during the public interest review concerning historic properties is the State Historic Preservation Office (SHPO). The SHPO offers comments and recommendations concerning activities that may impact historic properties and they may require a Cultural Resources Survey (CRS) prior to initiation of any activity occurring in WUS.

2.4.2. The ESA declares the intent of Congress to conserve threatened and endangered species and the ecosystems on which those species depend. The Act requires that Federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service, use their authorities in furtherance of its purposes by carrying out programs for the conservation of endangered or threatened species, and by taking such action necessary to insure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary of the Interior or Commerce, as appropriate, to be critical.

3. Enforcement. The RHA and the CWA both establish civil and/or criminal penalties for violations of the Acts for activities occurring in WUS without the appropriate authorization. Therefore, anyone considering any activity that may or will occur in a WUS is encouraged to consult the KCD Regulatory Office, prior to initiation of the proposed activity.

4. How to Apply. Anyone planning to do any work in a WUS must apply for the proper authorization prior to beginning the work. Application form can be obtained by contacting the COE Regulatory Branch in writing or FAXING a request or by calling the Regulatory Branch at 816-983-3990, Fax: 816-426-2321..

5. Standard Operating Procedure. This section establishes the Standard Operating Procedure for the review of requests for activities within the critical area of flood control projects within the KCD regulatory boundary. When a sponsor and/or consultant contacts the KCD asking that a particular project be approved, many times the initial contact is with some one other than a project manager in the Regulatory Branch. Many times, the non-regulatory point of contact is not familiar with the Corps Regulatory Permit Program as previously outlined in this Enclosure. Generally, most of the activities occurring within the critical area do not involve regulatory issues. However, for those times that regulatory issues may be involved, it is essential that the project proponent be apprized of the necessary permit requirements. Situations where the work is located in any kind of depression, drainage area, and/or timbered or densely vegetated area would be good indicators that WUS may be involved and that the activity should be coordinated with the Regulatory Branch.

5.1 If the project proponent initially contacts the Regulatory Branch or if the project is primarily or only a regulatory issue, the Regulatory Branch will be responsible for coordinating a joint District response. Standard routing procedures will be used for reviews, inquiries, changes in District position regarding a project, or requests for other information.

5.2. If the project proponent initially contacts non -regulatory project managers or if the project is primarily or only technical in nature, regardless of regulatory involvement, then the non-regulatory manager will be responsible for providing a joint District response. Standard routing procedures will be used for reviews, inquiries, changes in District position regarding a project, or requests for other information.

5.3. Information to be provided in the joint District response will be furnished to the coordinating project manager as expeditiously as possible. It should be furnished in a format that is easily incorporated into the responsive document.

5.4. If there is sufficient information available at the time of the review that gives a good representation of the impacted area, normally the review can be accomplished within two weeks. If there is not sufficient information available, the Regulatory Branch will coordinate with its appropriate regulatory field office area. Review time may be longer..

6. Flood Coordination. In cases where flood protection projects are damaged due to flooding and emergency repairs are necessary, they should also be coordinated with the regulatory Branch prior to implementation.

**NAVIGABLE WATERS OF THE UNITED STATES  
WITHIN THE  
KANSAS CITY DISTRICT CORPS OF ENGINEERS  
REGULATORY BOUNDARY**

NAVIGABLE WATER	RIVER MILES
Big Blue River	From river mile 0.0 (mouth at Missouri River) upstream to mile 4.0 (within the city limits of Kansas City, Missouri).
Gasconade River	From river mile 0.0 to mile 107.0 (confluence with the Missouri River upstream to the vicinity of Arlington, in Phelps County, Missouri).
Grand River	From river mile 0.0 to mile 3.0 (confluence with the Missouri River upstream to the vicinity of Brunswick, in Chariton County, Missouri).
Kansas River	From river mile 0.0 to mile 170.4 (confluence with the Missouri River upstream to the vicinity of Junction City, in Geary County, Kansas)
Lamine River	From river mile 0.0 to mile 14.0 (confluence with the Missouri River upstream to the vicinity of Roberts Bluff Bridge in Cooper County, Missouri)
Missouri River	From river mile 65.7 to mile 552.7 (St. Charles County upstream to the Missouri/Iowa state line in Atchison county, Missouri)
Osage River	From river mile 0.0 to mile 81.7 (confluence with the Missouri River upstream to Bagnell Dam in Miller County, Missouri)
Lake of the Ozarks	From lake mile 0.0 to mile 89.3 (Bagnell Dam to the vicinity of Warsaw, in Benton County, Missouri)