

DEPARTMENT OF THE ARMY GENERAL PERMIT  
DELAWARE-SPGP-18

PERMITTEE AND PERMIT NUMBER:

CENAP-OP-R-SPGP-18

ISSUING OFFICE:

Department of the Army  
U.S. Army Corps of Engineers, Philadelphia District  
Wanamaker Building - 100 Penn Square East  
Philadelphia, Pennsylvania 19107-3390

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.

**PROJECT DESCRIPTION:** This general permit authorizes the construction of structures, performance of work, and the discharge of dredged and fill material in substantially developed artificial tidal lagoons, and their access channels. The terms "structure" and "work" are defined in Federal regulations contained in 33 CFR 322.2[b] & [c]. The terms "discharge of dredged material", "fill material" and "discharge of fill material" are defined in Federal regulations contained in 33 CFR 323.2[d], [e] & [f]. "Substantially developed" artificial tidal lagoons are those artificial tidal lagoons at which the surrounding lands are uplands and do not support wetlands other than a narrow band of fringe wetlands along the waterline. Lagoons are defined as artificially created linear waterways, sometimes branched, terminating in a dead end with no significant upland drainage. A natural waterway, which is altered by activities including, but not limited to filling, channelizing, or bulkheading shall not be considered a lagoon. A bulkheaded boat slip shall not be considered a lagoon.

**PROJECT LOCATION:** This general permit is applicable to navigable waters of the United States located in substantially developed artificial tidal lagoons and their access channels within the geographic boundaries of the State of Delaware.

**TERMS OF AUTHORIZATION:**

In order for work and structures to be approved by this general permit, the work and structures must be reviewed and receive the approval(s) of the Delaware Department of Natural Resources and Environmental Control (DDNREC) pursuant to the Subaqueous Lands Act (Title 7, Delaware Code, Chapter 72). Additionally, in order for work to be approved under this general permit, the permittee must be furnished a copy of this general permit from the DDNREC at the time of the permittee's receipt of State approval.

2. This general permit is not applicable to work which is authorized by the State due to failure of the State to make a permit decision within the review period mandated by State Law and/or regulation. This general permit is not applicable when work is authorized by the State as part of a settlement agreement.

3. This general permit allows for the installation of temporary structures, work, and discharges, including cofferdams, necessary for dewatering construction sites/activities authorized by this general permit. All temporary structures, work, and discharges must be entirely removed to upland areas following completion of construction activities and the affected areas restored to pre-project conditions.

4. This general permit is not applicable to work that is reasonably related to another activity requiring an individual Department of the Army permit application and approval by the District Engineer, Corps of Engineers.

5. This general permit does not apply to:

- a) any area named in Acts of Congress or Presidential Proclamations as National Rivers, National Wilderness Areas, National Seashores, National Recreation Areas, National Lakeshores, National Parks, National Monuments, and such areas as may be established under Federal Law for similar and related purposes, such as estuaries and marine sanctuaries;
- b) any area designated a component of the National Wild and Scenic River System; nor 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.

6. The District Engineer retains discretionary authority to require on a case-by-case basis submission of an individual Department of the Army permit application for proposed work when it is determined that such a review would be in the public interest (i.e., potential for significant impact on environmental resources, effect on navigation, etc.).

7. This General Permit will expire on December 31, 2012. At that time, this General Permit may be re-issued/extended. In the event that this General Permit is re-issued/extended, any activity which has been authorized under the terms and conditions of this General Permit will remain authorized until such time that the required State permit/authorization issued with the general permit expires, provided the authorized activity complies with any subsequent re-authorization or modification of this general permit.

8. The replacement or repair of an existing bulkhead may not extend more than 18 inches channelward of the existing bulkhead unless the DDNREC determines that the additional encroachment is necessary. In order to maintain safe navigability of the lagoons, any subsequent replacement or repair of the bulkhead shall be in-place.

9. This general permit is applicable only to work and structures occurring in substantially developed, artificial, tidal lagoons within the State of Delaware previously approved by the Corps of Engineers. This general permit is also applicable to work and structures occurring in substantially developed, artificial, tidal lagoons within the State of Delaware constructed prior to December 18, 1968, provided the work or structures do not interfere with navigation. Work and structures in all other waters of the United States do not qualify for this general permit, and require separate Department of the Army authorization.

10. This general permit does not authorize the construction of dams and/or dikes. An individual Department of the Army permit application must be submitted to the Philadelphia District, Corps of Engineers for such work.
11. Dredging by mechanical and hydraulic methods is authorized subject to the following conditions.
  - a) This general permit authorizes maintenance dredging of substantially developed artificial tidal lagoons, associated shoal areas, and previously authorized access channels.
  - b) A substantially developed artificial tidal lagoon includes any associated shoal area which has developed at the mouth of the lagoon and which impedes vessel access to it. The dredging of shoals is limited to the generation of no more than 300 cubic yards of dredged material.
  - c) For the purposes of this permit, the term "access channel" is defined as a navigation channel which is located outside of a substantially developed artificial tidal lagoon, and which connects the mouth of the lagoon to the nearest navigable channel. Maintenance dredging of previously authorized access channels is authorized by this general permit provided dredging is not conducted between January 1 and August 31 of any year. Maintenance dredging of previously authorized access channels shall be limited to a maximum length of 100 linear feet and the generation of no more than 300 cubic yards of dredged material.
  - d) Any new dredging of access channels (i.e., not previously authorized) will require submission of an individual Department of the Army permit application and approval by the District Engineer, Corps of Engineers.
  - e) Dredging performed under the authority of this general permit shall not exceed the controlling depth of adjacent waters.
  - f) The applicant shall notify this office 30 days before any subsequent maintenance dredging takes place. The notification shall include the amounts of dredged material to be generated and the location of the dredged material disposal facility.
  - g) Pipelines used for hydraulic dredging shall be marked in accordance with U.S. Coast Guard regulations/specifications and shall rest on the channel bottom where it crosses a navigation channel or submerged to a sufficient depth to protect navigation. Buoyant or semi-buoyant pipelines used outside of the navigation channels shall be marked in accordance with U.S. Coast Guard regulations/specifications.
  - h) This general permit does not authorize dredging in wetlands. Additionally, the proposed slope from the waterward edge of any wetlands to the nearest edge of the dredged area shall not exceed three feet horizontal to one foot vertical.
  - i) The discharge of dredged or fill material associated with the construction of a disposal facility in waters of the U.S., including wetlands, is prohibited. The entire disposal facility shall be located in an upland/non-wetland area.
  - j) Dredged material, other than return water from hydraulic dredging, shall not be discharged into waters of the U.S., including wetlands. All dredged material shall be placed in a disposal facility and contained in such a manner as to preclude its escape into the waterway. The return water from a contained disposal facility is administratively defined as a discharge of dredged material by Federal regulations contained in 33 CFR 323.2(d).
12. This general permit does not authorize discharges of dredged and/or fill material in wetlands. Work which involves the discharge of dredged and/or fill material in wetlands shall require a separate Department of the Army authorization.
13. When lagoons are to be crossed by submarine cables or pipelines, the cables or pipelines shall be buried at least four feet below the existing bottom or the authorized dredging depth of the lagoon, whichever is deeper.
14. This general permit authorizes the burial of submarine cables and pipelines by trenching or by

directional drilling/boring or similar jacking methods. For directional drilling/boring installations, the entry and exit ports shall be located in upland areas. For trenching installations, all excavated material must be removed from the waterway. As soon as the cable is installed, appropriate new or previously excavated backfill material shall be placed in the trench and the area restored to its pre-construction condition. All excess dredged and/or excavated material not used as backfill shall be disposed on upland, non-wetland areas and shall be suitably retained to prevent its escape to any waterway or wetland.

15. This general permit authorizes the construction of aerial power lines. The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electric Safety Code.

Clearances for communication lines, stream gauging cables, ferry cables, and other aerial crossings are required to be a minimum of ten feet above clearances required for bridges. Greater clearances will be required if the public interest so indicates.

Minimum Additional Clearance (Feet)

Nominal System Voltage, KV	Above Clearance Required for Bridges
115 and below	20
138	22
161	24
230	26
350	30
500	35
760	42
750 to 765	45

PERMIT CONDITIONS:

General Conditions:

1. The time limit for completing the work authorized by this general permit ends on December 31, 2012. However, Term of Authorization 7 specifically addresses those circumstances where this time limit may be extended beyond December 31, 2012.
2. 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.
3. If you sell the property associated with this general permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
4. If a conditioned water quality certification has been issued for your project by DDNREC, you must comply with conditions specified in the certification as special conditions to this general permit.
5. 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 general permit.

Special Conditions:

1. When the activity authorized by this General Permit is a submerged cable or pipeline, the permittee shall notify in writing the National Oceanic and Atmospheric Administration, National Ocean Service, Nautical Data Branch, N/CS 26, Station 7230, 1315 East/West Highway, Silver Spring, Maryland 20910-3282, of the commencement and completion dates of the authorized work. A copy of the notification letter shall be forwarded to the Corps of Engineers District Office for inclusion in the permit application file. Upon completion of the authorized work, the permittee shall furnish this office with certification that the submerged cable or pipeline has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the elevation of the cable or pipeline below mean low water at both edges and at the centerline of the channel and at fifty (50) foot intervals from its entrance into the waterway.

2. When the activity authorized by this General Permit is an aerial wire or cable crossing, the permittee shall, upon completion of the authorized work, furnish the Corps of Engineers and the National Oceanic and Atmospheric Administration, National Ocean Service, Nautical Data Branch, N/CS 26, Station 7230, 1315 East/West Highway, Silver Spring, Maryland 20910-3282 with certification that the aerial wire/cable has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the minimum clearance of the aerial crossing above the mean high water line at the time of the survey. The certification shall also include a statement by the permittee that the clearance of the wires, at maximum sag conditions, shall never be less than the clearance shown on the approved plans.

3. The applicant must notify the District Engineer if the authorized activity may affect any historic properties listed, or determined to be eligible, or which the applicant 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 National Historic Preservation Act have been satisfied and that the activity is authorized. Furthermore, that if the permittee before or during prosecution of the work authorized encounters a historic property that has not been listed or determined eligible for listing on the National Register but which may be eligible for listing in the National Register, he shall immediately notify the District Engineer.

4. Any archeological artifacts discovered during the performance of work under the authorization of this general permit must be adequately protected and their discovery promptly reported to the District Engineer.

5. No activity authorized under this General Permit shall adversely affect any federally-listed threatened or endangered species, as identified under the Endangered Species Act of 1973, or result in the destruction or adverse modification of critical habitat of such species. If the activity may affect listed species or critical habitat, or is likely to jeopardize proposed species, or likely to result in the adverse modification of proposed critical habitat, the Corps shall initiate and complete a Section 7 consultation or conference, as appropriate, in accordance with the Endangered Species Act of 1973 prior to authorization of the activity under this General Permit.

6. Prior to commencing any work under this general permit, the permittee should contact the various utility authorities and companies (i.e., electric, gas, water, sewage, etc.) in order to prevent personal injury and/or damage to property, which may occur during construction of the project.

All work performed under the authorization of this general permit must be consistent with the approved State of Delaware Coastal Zone Management Program. The applicant must include a statement with the permit application indicating that: "The proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management (CZM) Program."

8. Discharges of dredged or fill material, or any structures authorized by this general permit, shall not include unsuitable materials or solid waste (e.g., trash, debris, car bodies, etc.), and all material discharged must be free from toxic pollutants in toxic amounts pursuant to Section 307 of the Clean Water Act.

9. All work identified and authorized herein shall be consistent with the terms and conditions of this general permit. The Corps of Engineers may impose other special conditions on a project authorized pursuant to SPGP-18 when it is determined that such conditions are necessary to minimize adverse environmental effects, or when such conditions are in the public interest. Any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit, in whole or in part, and may result in the institution of such legal proceedings as the United States Government may consider appropriate.

10. The applicant shall notify the Corps of Engineers, Philadelphia District at least 10 days prior to the commencement of authorized work by completing, signing, and transmitting the enclosed Notification/Certification of Work Commencement Form (Enclosure 1). The applicant shall also notify the Philadelphia District within 10 days of the completion of the authorized work by completing, signing, and transmitting the enclosed Notification/Certification of Work Completion/Compliance Form (Enclosure 2). All notifications required by this condition shall be in writing and shall be transmitted to this office by registered mail. Oral notifications are not acceptable. Similar notification is required each time maintenance work is to be done under the terms of this Corps of Engineers permit.
11. Damage to structures/vessels: The permittee hereby recognizes the possibility that the structures permitted may be subject to damage by wave wash from passing vessels. The issuance of this general permit does not relieve the permittee from taking all proper steps to insure the integrity of the structures permitted and the safety of boats moored thereto from damage by wave wash, and the permittee shall not hold the United States liable for any such damage.
12. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration. (This special condition is applicable to Corps of Engineers permits that provide authorization under Section 10 of the Rivers and Harbors Act of 1899.)
13. The best management practices listed below shall be followed to the maximum extent practicable.
  - a) Discharges of fill material into previously authorized substantially developed artificial tidal lagoons shall be avoided or minimized through the use of other practical alternatives.
  - b) Discharges shall not restrict or impede the movement of aquatic species indigenous to the waters or 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).
  - c) Heavy equipment working in wetlands shall be placed on mats.
  - d) Discharges into breeding areas for migratory waterfowl shall be avoided.
  - e) Maintenance dredging within lagoons shall be conducted in such a manner as to create a gentle slope from the inside terminus of the lagoon to its mouth in order to improve the flushing characteristics of the lagoon.
14. Dredging shall not exceed the controlling depth of adjacent waters.
15. The permittee shall not conduct maintenance dredging of access channels outside of an artificial tidal lagoon between January 1 and August 31 of any year.

16. The permittee shall notify this office 30 days before any subsequent maintenance dredging takes place. The notification shall include the amounts of dredged material to be generated and the location of the dredged material disposal site.
17. Pipelines used for hydraulic dredging shall be marked in accordance with U.S. Coast Guard regulations/specifications and shall rest on the channel bottom where it crosses a navigation channel or submerged to a sufficient depth to protect navigation. Buoyant or semi-buoyant pipelines used outside of the navigation channels shall be marked in accordance with U.S. Coast Guard regulations/specifications.
18. The permittee shall not perform dredging in wetlands. The proposed slope from the waterward edge of any wetlands to the nearest edge of the dredged area shall not exceed three feet horizontal to one foot vertical.
19. The discharge of dredged or fill material associated with the construction of a disposal facility in waters of the U.S., including wetlands, is prohibited.
20. Dredged material, other than return water from hydraulic dredging, shall not be discharged into waters of the U.S., including wetlands. All dredged material shall be placed in a disposal facility and contained in such a manner as to preclude its escape into the waterway.

#### 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).
2. Limits of this authorization
  - a) This general permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
  - b) This general permit does not grant any property rights or exclusive privileges.
  - c) This general permit does not authorize any injury to the property or rights of others.
  - d) This general permit does not authorize interference with any existing or proposed Federal projects.
3. Limits of Federal Liability. In issuing this general 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.