

# Public Notice

Public Notice No: CENAP-OP-R-SPGP-19 Date: December 30, 2009

**US Army Corps of Engineers**

100 Penn Square East

Philadelphia, Pennsylvania 19107-3390

In Reply Refer to: CENAP-OP-R (Regulatory Branch)

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Reference is made to Public Notice CENAP-OP-R-New Jersey-SPGP-19 dated July 20, 2009 proposing the revalidation and extension of General Permit SPGP-19 under Section 10 of the River and Harbor Act of 1899 and Section 404 of the Clean Water Act for the construction of certain existing and proposed non-commercial piers, docks, mooring piles, boat lifts, timber breakwaters and the replacement of existing serviceable bulkheads in navigable waters of the United States in the State of New Jersey.

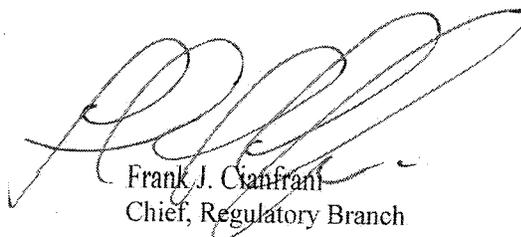
After a complete review of our file and full consideration of the comments and recommendations received in response to the above referenced public notice, the revalidation and extension of General Permit SPGP-19 was issued on December 30, 2009. This General Permit authorizes construction of proposed and maintenance of existing non-commercial piers, docks, mooring piles, boat lifts, minor maintenance dredging, timber breakwaters and the replacement of existing serviceable bulkheads in navigable waters of the United States in the State of New Jersey. This general permit is applicable to the navigable waters located within the geographic boundaries of both the Philadelphia District and the New York District of the Corps of Engineers.

Any person who wishes to perform work under the terms and conditions of this General Permit need only apply to the State of New Jersey, Department of Environmental Protection, Land Use Regulation Program, Bureau of Coastal Regulation, P.O. Box 439, Trenton, NJ 08625. Once the State has determined that the proposed work conforms with this General Permit, any Waterfront Development permit and/or Wetlands permit issued by the State of New Jersey, Department of Environmental Protection, Land Use Regulation Program, Bureau of Coastal Regulation, for the work will also include the approval of the Corps of Engineers (SPGP-19). Conversely, existing or proposed structures or work in navigable waters of the United States will not be considered approved by this office unless prior review and approval has been completed by the State. No work under the General Permit shall commence until a copy of the General Permit (SPGP-19) is received from the State of New Jersey.

This General Permit has been reissued for a period of five (5) years. It expires on December 31, 2014. At that time, an assessment of the cumulative impacts of this General Permit will be done to determine if the general permit should be re-issued.

The re-issued SPGP-19 includes several clarifications regarding bulkhead extensions, submerged aquatic vegetative habitat designation, dredging and associated dock structures. The re-issued SPGP-19 also provides for utilization under certain circumstance associated with State settlement agreements and associated with the States 90-Day regulations. Due to the fact that several of the Terms of Authorization are proposed for modification, the entire SPGP-19 document is attached.

Any questions concerning this general permit should be addressed in writing to the Philadelphia District Office at the address on the letterhead of this notice or by calling this office at (215) 656-6728.



Frank J. Cianfrani  
Chief, Regulatory Branch

DEPARTMENT OF THE ARMY  
STATE PROGRAMMATIC GENERAL PERMIT  
NEW JERSEY-SPGP-19

PERMITTEE AND PERMIT NUMBER:

CENAP-OP-R-SPGP-19-

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:** Construction of proposed and maintenance of existing non-commercial piers, docks, gangway/ramps, stairs/ladders, mooring piles, boat lifts, breakwaters, the replacement of existing serviceable bulkheads and minor maintenance dredging of mooring slips. This general permit also authorizes the discharge of fill material between existing and proposed bulkheads as well as legalization of previously existing structures provided the structures meet all terms and conditions of this permit.

**PROJECT LOCATION:** Navigable waters of the United States in the State of New Jersey. This general permit is applicable to navigable waters located within the geographic boundaries of both the Philadelphia District and the New York District, U.S. Army Corps of Engineers.

**TERMS OF AUTHORIZATION:**

1. That 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 New Jersey Department of Environmental Protection (NJDEP), pursuant to N.J.S.A. 12:5-3 (Waterfront Development Permit), N.J.S.A. 13:9A-1 et seq (Coastal Wetlands Permit) and New Jersey Water Pollution Control Act, N.J.S.A. 58, 10A (Water Quality Certificate). Additionally, in order for work to be approved under this general permit, you must be furnished a copy of this general permit from the NJDEP at the time you receive your 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, as per N.J.A.C. 7:1C, unless the State has reviewed the project, determined it compliant with applicable State rules and regulations and the terms of this general permit, and issues a State permit. This general permit is not applicable when work is authorized by the State as part of a settlement agreement or administrative consent order unless the State has reviewed the project, determined it

compliant with applicable State rules and regulations and the terms of this general permit, and issues a State permit. This general permit is not applicable when work is authorized by or eligible for an exemption such as in State regulations N.J.A.C. 7:7-2.3(d) (“Zanes”).

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3. That the work and/or structures may be used for non-commercial purposes only. This general permit may be used for non-commercial Municipal projects provided the project complies with all Terms of Authorization and Special Conditions of this permit.
4. No more than one pier/dock per buildable lot, exclusive of finger piers, "L" or "T" dock ends and other such mooring structures. A buildable lot is defined as a single parcel or multiple contiguous parcels of land which supports a residential building.
5. No more than four (4) designated slips/mooring spaces per buildable lot. No more than two (2) designated slips/mooring spaces per buildable lot within submerged aquatic vegetation habitat and shellfish habitat.
6. In submerged aquatic vegetation habitat, as defined in State of New Jersey Department of Environmental Protection Coastal Zone Management rule 7:7E-3.6(a), a minimum water depth of four (4) feet at Mean Low Water must be present in the area where the boats will be moored.
7. That the structures subject to this general permit shall not extend more than 20 percent of the width of the adjacent waterway measured from mean low water line and in no instances exceed 250 feet channelward of the mean high water line. Each application shall include a written justification for the number and length of all proposed structures.
8. That the piers and docks subject to this general permit shall be limited to a maximum width of eight (8) feet except where crossing wetlands, mudflats and submerged aquatic vegetation habitat where the width of the structures shall be a maximum width of four (4) feet. Jet ski docks and solid jet ski platforms are considered to be docks/mooring structures for the purpose of this general permit. The height of structures, as measured from the lower most portion of the deck structure, over the wetlands ground surface shall be a minimum of four and half feet (4.5). The height of structures in submerged aquatic vegetation habitat shall be a minimum of four (4) feet above the Mean High Water line. Under normal circumstances, a minimum of 3/8", 1/2", 3/4", or 1" space is to be provided for 4", 6", 8-10", or 12" wide planks, respectively. Floating docks shall be constructed to prevent them from resting on the bottom at low tide.
9. That this general permit authorizes the construction of structural breakwaters. Breakwaters in shellfish habitat shall comply with term of authorization 13 of this section. All breakwaters must be constructed at least 18 inches above the bottom of the waterway with a minimum spacing of three (3) inches between sheathing.
10. That the structures subject to this general permit shall be constructed a minimum of 50 feet outside of any authorized Federal/State navigation channel/project, except within the West Canal and along Inside Thorofare from Portland Avenue to Albany Avenue, Ventnor, New Jersey. Proposed structures within the West Canal and Inside Thorofare shall be a minimum of 25 feet outside of the authorized Federal navigation channel. Existing authorized structures presently located within the buffer zone must meet these buffer zone requirements if they are proposed for reconstruction in the future.
11. That this general permit is not applicable for work reasonably related to another activity requiring an individual Department of the Army permit application and approval by the District Engineer, Corps

of Engineers.

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12. The provisions of this general permit shall apply to any area designated as a component of the National Wild and Scenic River System or any river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status provided the National Park Service, after having been notified of the proposed work, determines that the proposed activity will not adversely effect the Wild and Scenic River Designation or study status.
13. The provisions of this general permit shall apply to areas designated shellfish habitat, as defined in State of New Jersey Department of Environmental Protection "Coastal Zone Management Rules" N.J.A.C. 7:7E-3.2(a)(1-4), provided the following:
  - a) All structures, including piers and docks (piles, stringers, whalers and decking), boat lifts, mooring piles, breakwaters, and replacement bulkheads must be constructed with non-polluting material, such as plastic, natural cedar or other untreated wood, polymer coated pressure-treated wood, concrete or other inert products. Creosote and pressure-treated lumber (i.e. preservative treatment such as CCA-C, ACZA, CC, ACQ, etc.)(wolmanized) which is susceptible to leaching are considered polluting materials and are not acceptable for the purpose of this general permit;
  - b) All proposed docks shall be limited to two designated slips/moorings and the boats shall be moored in a boat lift when practicable;
  - c) Only one pier/dock per buildable lot; and
  - d) The National Marine Fisheries Service, after having been notified of the proposed work by NJDEP, does not object to the project and work may proceed pursuant to SPGP-19.

Those shellfish areas mapped by the NJDEP as "condemned" and/or "prohibited" for the purpose of harvesting shellfish, shall continue to be considered as shellfish habitat for the purposes of this general permit.

14. That this general permit does not authorize the following:
  - a. Any other activity not specified in this general permit.
  - b. Piers, docks, boat lifts and breakwaters constructed of solid fill (earth or rock). Construction of these types of structures will require submission of a separate permit application to the District Engineer and issuance of an Individual Department of the Army Permit.
  - c. The storage of petrochemicals, pollutants, or hazardous products on docks or piers.
  - d. Any structures or work within the Cape May Canal. Proposed work/structures within this waterway will require submission of a separate permit application to the Philadelphia District Engineer and issuance of an Individual Department of the Army Permit.
  - e. Floating docks in submerged aquatic vegetation habitat.
  - f. Any structure or fill activity in areas named in Acts of Congress or Presidential Proclamations as Natural Landmarks, National Rivers, National Wilderness Areas, National Wildlife Refuges, 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.

15. That 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.).
16. This General Permit will expire on December 31, 2014. 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.
17. The replacement or repair of an existing bulkhead may not extend more than 18 inches channelward of the existing bulkhead unless the NJDEP, Land Use Regulation Program in accordance with New Jersey "Structural Shore Protection" regulations [NJAC 7:7E-7.11(e)(2)], determines that the additional encroachment is necessary. In order to minimize impacts to shellfish and submerged aquatic vegetation habitats, any replacement or repair of a bulkhead shall be in place.
18. This general permit authorizes the extension and/or replacement of existing stormwater outfall structures constructed through an existing bulkhead, provided the outfall pipe(s) does not extend more than 12 inches from the face of the bulkhead.
19. Mechanical maintenance dredging is authorized provided:
  - a. No more than 1,000 cubic yards of material is dredged.
  - b. Dredged materials shall be placed on upland portions of the subject property and stabilized in a manner to prevent erosion and sedimentation into the waterway or wetlands. Material dredged from the waterway may not be discharged, at any time, between existing and new bulkheads.
  - c. Dredging shall not be performed between January 1 to May 31 of any given year to protect certain life stages of Winter Flounder.
  - d. Dredging in submerged aquatic vegetation and shellfish habitats is not authorized by this general permit.
  - e. Maintenance dredging is defined as the removal of accumulated sediment from previously authorized and legally dredged boat moorings.

PERMIT CONDITIONS:

General Conditions:

1. The time limit for completing the work authorized by this general permit ends on December 31, 2014. However, term of authorization 16 specifically addresses those circumstances where this time limit may be extended beyond December 31, 2014.
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.

SAMPLE

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 NJDEP, 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. That all construction equipment working on wetlands shall be supported on mats. Any wetlands disturbed during construction shall be restored to pre-project conditions.
2. 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.
3. 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.
4. 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.
5. That 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 during construction of work.
6. All work performed under the authorization of this general permit must be consistent with approved 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", specifically New Jersey Coastal Resource and Development Policies (N.J.A.C. 7:7E-1.1 et seq).

7. No discharge of dredged, excavated or fill material or structures may consist of unsuitable material 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.
8. That all work identified and authorized herein shall be consistent with the terms and conditions of this general permit. The Corps may impose other special conditions on a project authorized pursuant to SPGP-19 where it is determined necessary to minimize adverse environmental effects or based upon any other factor of 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.
9. The applicant shall notify the appropriate Corps District at least 10 days prior to the commencement of authorized work by completing and signing the enclosed Notification/Certification of Work Commencement Form (Enclosure 1). The applicant shall notify the appropriate Corps District within 10 days of the completion of the authorized work by completing and signing 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.
10. Damage to structures/vessels: That 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.
11. 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.)

**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.
  - 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 general 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 general 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. General Condition 1 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.

SAMPLE

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

  
\_\_\_\_\_  
(District Engineer)  
Frank J. Cianfrani, Chief, Regulatory Branch

12/30/09  
(Date)

For Thomas J. Tickner, Lieutenant Colonel  
Corps of Engineers, District Engineer

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEEE)

\_\_\_\_\_  
(DATE)

SAMPLE

NOTIFICATION/CERTIFICATION OF WORK COMMENCEMENT FORM

Permit Number: CENAP-OP-R-SPGP-19  
State Permit #: \_\_\_\_\_  
Name of Permittee: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Waterway: \_\_\_\_\_  
Township, County, State: \_\_\_\_\_  
Compensation/Mitigation Work Required:      Yes      No

TO: Department of the Army  
U.S. Army Corps of Engineers, Philadelphia District  
Wanamaker Building - 100 Penn Square East  
Philadelphia, Pennsylvania 19107-3390  
Attention: CENAP-OP-R

or

US Army Corps of Engineers, NY District  
Attn: Regulatory Branch--Room 1937  
26 Federal Plaza  
New York, NY 10278-0090

I have received authorization to \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The work will be performed by:

Name of Person or Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

I hereby certify that I have reviewed the approved plans, have read the terms and conditions of the above referenced permit, and shall perform the authorized work in strict accordance with the permit document. The authorized work will begin on or about \_\_\_\_\_ and should be completed on \_\_\_\_\_ or about \_\_\_\_\_.

Please note that the permitted activity is subject to compliance inspections by the Army Corps of Engineers. If you fail to return this notification form or fail to comply with the terms or conditions of the permit, you are subject to permit suspension, modification, revocation, and/or penalties.

\_\_\_\_\_  
Permittee (Signature and Date)      Telephone Number

\_\_\_\_\_  
Contractor (Signature and Date)      Telephone Number

NOTE: This form shall be completed/signed and returned to the Philadelphia District Office a