

**US Army Corps of Engineers**

100 Penn Square East

Philadelphia, Pennsylvania 19107-3390

# Public Notice

Public Notice No: CENAP-OP-R-SPGP-20 Date: September 23, 2010

File Reference No. CENAP-OP-R-2009-1286

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

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Reference is made to Public Notice CENAP-OP-R-Delaware SPGP-20 first advertised via Public Notice dated June 21, 2010 and authorized on December 31, 2009, the revalidation and extension of General Permit SPGP-20 under Section 10 of the River and Harbor Act of 1899 and Section 404 of the Clean Water Act for construction activities in certain navigable waters of the United States in the State of Delaware.

The attached SPGP-20 dated September 2, 2010, supersedes SPGP-20 dated the December 31, 2009 after comments were received from the State of Delaware, Department of Natural Resources and Environmental Control Subaqueous Lands Section in March 2010. Based on their comments, SPGP-20 was modified and re-advertised via Special Public Notice on June 21, 2010. After a complete review of our file and full consideration of the comments and recommendations received in response to both of the above referenced public notices, SPGP-20 was modified and re-issued on September 2, 2010. The modified SPGP-20 includes Term of Authorization #10 (Residential Community Structures) and slightly modified Term of Authorization #12 to authorize rip-rap at the toe of replacement bulkheads. No other changes or authorizations were made to the General Permit, SPGP-20.

Any person who wishes to perform work under the terms and conditions of this General Permit (SPGP-20 revised September 2, 2010) need only apply to the State of Delaware, Department of Natural Resources & Environmental Control, Wetlands & Subaqueous Lands Section, 89 Kings Highway, Dover, Delaware 19901.

Once the State has determined that the proposed work conforms to this General Permit, any Subaqueous Lands Lease or Wetlands Permit issued by the State of Delaware for the proposed work will also include the approval of the Corps of Engineers (SPGP-20). 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-20) is received from the State of Delaware.

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 performed to determine if the general permit should be re-issued.

A copy of the SPGP-20 is attached which identifies all work that is authorized by this General Permit including the Terms of Authorization and Special Conditions which must be met in order to make the permit valid.

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 GENERAL PERMIT**  
**CENAP-OP-R-DELAWARE-SPGP-20**  
**(Rev. August 2010)**

PERMITTEE AND PERMIT NUMBER:

CENAP-OP-R-Delaware State Permit General Permit 20 (SPGP-20)

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 new and the maintenance of existing non-commercial piers, docks, gangway/ramps, stairs/ladders, mooring piles, boat lifts, modular floating platforms for jet skis and larger vessels, breakwaters, and the replacement of existing serviceable bulkheads.

**PROJECT LOCATION:** This General Permit is applicable to navigable waters of the United States located within the State of Delaware except as noted in the Terms of Authorization Number 17 "a" and "e" below.

**TERMS OF AUTHORIZATION:**

1. 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) 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 any review period mandated by State Law and/or regulation 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.
3. This general permit legalizes previously existing structures provided the structures meet all terms and conditions of this permit.
4. 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.).

5. The structures subject to this general permit shall be constructed a minimum of 50 feet outside of any authorized Federal navigation channel/project.
6. The work and/or structures authorized by the general permit may be used for non-commercial purposes only. This general permit authorizes work and/or structures used for non-commercial municipal and residential community structures provided the project complies with all terms of authorization and special conditions of this permit, below.
7. No more than one pier/dock and other mooring structures constructed for a maximum of four (4) permanent slips/mooring spaces per buildable lot or municipal project. A buildable lot is defined as a single parcel or multiple contiguous parcels of land, which supports a residential building. A jet ski dock is considered a slip/mooring space for the purpose of this general permit.
8. For individual lots the maximum width of piers shall be four (4) feet, the maximum width of docks shall be five (5) feet, except when boat lifts are constructed, then, the maximum width shall be six (6) feet and the maximum width of structure shall be three (3) feet when crossing wetlands, seasonally vegetated mudflats and submerged vegetation. Jet ski docks, lifts and jet ski platforms are considered to be docks for the purpose of this general permit.
9. For municipal projects the maximum width of piers shall be six (6) feet, the maximum width of docks shall be eight (8) feet. The maximum width of any structure shall be four (4) feet when crossing wetlands, seasonally vegetated mudflats and submerged vegetation. Jet ski docks, lifts and jet ski platforms are considered to be docks for the purpose of this general permit.
10. Residential community structures such as piers and docks are authorized to serve the water access needs of more than two waterfront lots or residences. Residential community structures (piers and docks) shall not exceed 8 feet in width. No more than two (2) community structures shall be permitted per residential community development.
11. A minimum width of  $\frac{3}{8}$ ",  $\frac{1}{2}$ ",  $\frac{3}{4}$ " or 1" space shall be provided for 4", 6", 8-10", or 12" wide planks, respectively. 12" is maximum plank width allowed under this general permit.
12. This permit authorizes the replacement of bulkheads on natural bodies of water in Delaware within 18" of an existing serviceable bulkhead in addition to the placement of stone rip-rap in front of replacement bulkheads to prevent undermining of the new bulkhead. Natural bodies of water are intended to include all tidal and non-tidal waters except for artificial lagoons.
13. 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.
14. 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.
15. 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.

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. This general permit does not authorize the following:

- a. Any structure or fill in areas named in Acts of Congress or Presidential Proclamations as 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.
- b. Any dredging, or any other activity not specified in this general permit.
- c. 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 Philadelphia District Engineer and issuance of an Individual Department of the Army Permit.
- d. The storage of petrochemicals, pollutants, or hazardous products on docks or piers.
- e. Any structures or work within the Chesapeake and Delaware Canal or the Lewes and Rehoboth Canal. Proposed work/structures within these waterways will require submission of a separate permit application to the Philadelphia District Engineer and issuance of an Individual Department of the Army Permit.
- f. Floating docks in submerged aquatic vegetation habitat.

#### **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, above, specifically addresses those circumstances where this time limit may be extended beyond December 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.
3. If you sell the property associated with this 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 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 permit.

**Special Conditions:**

1. All construction equipment working in wetlands shall be supported on mats. Any wetlands disturbed during construction shall be restored to pre-project conditions upon completion of authorized work.
2. The permittee 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, the he/she shall immediately notify the District Engineer.
3. 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-20 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.
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. 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.
7. 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.
8. Floating docks shall be designed and operated to prevent them from resting on the bottom at low tide.
9. All materials used in authorized construction (structures and fill) must be free 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.
10. The permittee shall notify the Corps District Office 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 permittee shall notify the Corps District Office 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.

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.)

**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 permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal projects.

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

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

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

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

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

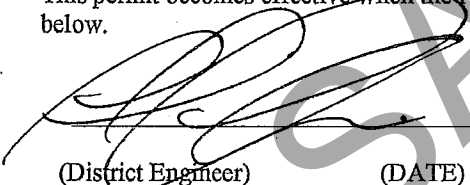
Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

\_\_\_\_\_  
(PERMITTEE)

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

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

  
(District Engineer)

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

Frank J. Cianfrani, Chief, Regulatory Branch  
Philip M. Secrist, Lieutenant Colonel  
Corps of Engineers, District Engineer

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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.

\_\_\_\_\_  
(TRANSFEREE)

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

NOTIFICATION/CERTIFICATION OF WORK COMMENCEMENT FORM

Permit Number: CENAP-OP-R-SPGP-20 (DELAWARE)  
State Permit No. \_\_\_\_\_

Name of Permittee: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Waterway: \_\_\_\_\_  
County: \_\_\_\_\_

TO: Department of the Army  
U.S. Army Corps of Engineers, Philadelphia District  
Delaware Field Office  
1203 College Park Drive, Suite 103  
Dover, Delaware 19904  
Attention: Kevin Faust

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 minimum of 10 days prior to commencing work.

Enclosure 1



NOTIFICATION/CERTIFICATION OF WORK COMPLETION/COMPLIANCE  
FORM

Permit Number: CENAP-OP-R-SPGP-20 (DELAWARE)

State Permit No. \_\_\_\_\_

Name of Permittee: \_\_\_\_\_

Project Name: \_\_\_\_\_

Waterway: \_\_\_\_\_

County: \_\_\_\_\_

Within 10 days of completion of the activity authorized by this permit, please sign this certification and return it to the following address:

Department of the Army  
U.S. Army Corps of Engineers, Philadelphia District  
Delaware Field Office  
1203 College Park Drive, Suite 103  
Dover, Delaware 19904  
Attention: Kevin Faust

Please note that the permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to return this notification form or fail to perform work in compliance with the permit, you are subject to administrative, civil and/or criminal penalties. Further, the subject permit may be suspended or revoked.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of the above noted permit.

The authorized work was commenced on \_\_\_\_\_

The authorized work was completed on \_\_\_\_\_

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Signature of Permittee

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Enclosure 2