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## **Notable Changes for the Seven Reissued RPs and their General Conditions**

### **General Conditions**

- General Condition 10 (Historic Properties) – New wording was added to clarify Section 106 requirements.
- General Condition 14 (Endangered Species) - A web address was added for FWS Online Review Process.

**Regional Permit-01 (13-RP-01)** - for certain Virginia Department of Transportation (VDOT) roadway and railway projects.

- RP-01 is a reclassification of Letter of Permission-1 (08-LOP-01), which authorizes certain VDOT roadway and railway activities.
- Since this LOP was being utilized like a RP, the Norfolk District COE deemed it appropriate to reclassify this permit as a RP versus a LOP.
- There are no notable changes to the content of this permit beyond updated General Conditions.

**Regional Permit-02 (13-RP-02)** - for both new and maintenance dredging (channels and basins) for certain navigationally-related recreational and commercial dredging projects, by either mechanical or hydraulic method, in navigable waters of the United States. In addition, minor non-navigation related dredging/excavation (i.e. the combined amount of non-navigation related dredge/excavated material and associated discharge of dredge or fill material in wetlands/WOUS cannot exceed 5,000 cubic yards, nor can the combined area of fill and dredge/discharge exceed a surface area of two acres), and its associated discharges of fill in non-tidal, non-navigable waters is also authorized.

- RP-02 was developed to combine all navigationally-related dredging activities, commercial dredging projects and maintenance dredging project in waters of the United States. This permit combines dredging activities previously authorized under Regional Permit-19 (08-RP-19), Activity #3 for the maintenance dredging for previously authorized projects, Letter of Permission-2 (08-LOP-02) for certain navigationally-related recreational and commercial dredging projects, and Regional Permit-40 (08-RP-40) for maintenance dredging and/or excavation of non-tidal waters for sediment and debris removal associated with flooding and/or erosion.
- A condition was added to advise applicants that “Tier 1” or additional testing of the sediment to be dredged may be required to evaluate the potential for contaminants of concern in the dredged material.
- The requirement for coordination with Federal and State agencies was removed in order to provide for consistency with the procedures for other RPs and due to the limited number of agency comments received on dredging projects under LOP-2 in past years.
- Special conditions of the previous permits were incorporated as specific activity limitations, where applicable.
- Permit allows for periodic maintenance dredging with certain limitations.
- The requirements for use of Craney Island Dredged Material Management Area (CIDMMA) and Craney Island Rehandling Basin (CIRB) were updated.
- Permit allows for use of dredged material for sandy fill material, provided that activity qualifies under RP-19.
- Note that Regional Permit-40 (08-RP-40) will not be reissued, but instead has been incorporated into the new Regional Permit-2 (13-RP-02).



**Regional Permit-15 (13-RP-15)** - for the maintenance of existing drainage ditches originally constructed in and previously authorized in navigable waters and waters of the United States for either mosquito control purposes or to maintain drainage from upland areas for the purposes of storm water management.

- The permit includes additional phrases in main description for activities: not otherwise exempt; originally constructed in and previously authorized in; and for the purposes of storm water management.
- Permit activities were broken into two categories:
  - 1) Maintenance activities in *tidal* and *navigable waters* regulated under 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).
  - 2) Maintenance activities in *non-tidal* waters regulated only under Section 404 of the Clean Water Act (33 U.S.C. § 1344).
- The wording was changed to clarify that the discharge of fill was being regulated under Section 404 work, not excavation.
- Special Conditions were changed as follows:
  - 1) The restriction to excavate below the Ordinary High Water Mark (OHWM) in non-tidal areas was removed.
  - 2) The removal of material should be limited to the minimum necessary and the grade and depth of the ditch bottom will not exceed the previously maintained grade or depth.
- Any spoils or discharge of fill in wetlands should be spread as thinly and evenly as possible so as not to impede lateral flow.
- When re-shaping side slopes, the ditch banking/embankment should be left intact.
- The condition addressing the discharge of material onto berms was expanded and clarified.

**Regional Permit-17 (13-RP-17)** - for the installation and/or construction of open-pile piers, mooring structures/devices, certain covered boat houses, boat lifts, accessory pier structures, osprey poles/platforms, and devices associated with shellfish gardening, for private use.

- RP-17 has been updated to clarify the notification requirements and special conditions of the permit.
- The installation of osprey poles/platforms has been added as an approved activity under this permit.
- The FWS Online Review process information was added to Notification Requirement #1 and the notification requirements for sensitive joint vetch and the bald eagle were removed.
- Special Condition #3 was changed to clarify the limit of cumulative boat slips is two (2).
- Craney Island and Gathright Dam were added to Special Condition #6.
- Note that if a proposed project or work complies with all of the criteria and conditions described within 13-RP-17, then no other written authorization from the COE is required in order to proceed with the work. A Certificate of Compliance should be completed and a copy retained for the owner's records. The original Certificate should be mailed to the Norfolk District COE within 30 days of the completion of the project.

**Regional Permit-18 (13-RP-18)** - for the installation and/or construction of open-pile piers, mooring structures/devices, fender piles, covered boathouses/boat slips, boat lifts, osprey pilings/platforms, accessory pier structures, and devices associated with shellfish gardening, for private, commercial, community, and government use.

- RP-18 has been modified to include the installation of open-pile piers, mooring piles, mooring dolphins, fender piles, mooring camels, covered boathouses, boatlifts, osprey pilings/platforms, and devices associated with shellfish gardening, for private, commercial, community, and government use.

- Activity #5 (open-pile piers at community, commercial or government facilities for recreation or commercial use) and Activity #8 (mooring piles/dolphins, fender piles and camels) of the 08-RP-19 have been removed from the RP-19 and added to this permit in order to reduce redundancy in the RPs. The corresponding conditions have been added to the 13-RP-18, accordingly.
- A Joint Permit Application (JPA) is required and must be sent to the COE for review. No work is authorized until the COE issues written permit verification.
- Special Conditions for the construction or expansion of any private piers and structures:
  - 1) If the COE determines that the proposed activity does not adversely affect general navigation and/or the environment, the COE may authorize the proposed activity under this Regional Permit if it exceeds the limitation of 1/4<sup>th</sup> of the width of the waterway specified in the Norfolk COE's 13-RP-17, and
  - 2) The COE may determine that piers constructed over wetlands can exceed the 5 feet width restriction and/or that the work can be less than 4 feet above the wetland substrate restrictions of 13-RP-17.
- Piers can extend beyond 300 feet from mean high water or ordinary high water.


**Regional Permit-19 (13-RP-19)** - for the construction and/or installation of living shorelines, rip rap revetments, bulkheads, groins, jetties, spurs, baffles, aquaculture activities and boat ramps.

- Two new activities have been added (living shoreline activities have been added and closely follow those currently being considered for general permit by the Commonwealth of Virginia which is under development by the Virginia Marine Resources Commission (VMRC):
  - 1) Living Shoreline Group 1: Non-structural activities that provide substrate necessary to support wetland vegetation.
  - 2) Living Shoreline Group 2: Sill with tidal marsh.
- The following activities have been omitted from the RP-19:
  - #1-Aerial transmission lines: This activity is covered under the NWP-12.
  - #3-Maintenance dredging: This activity is included in the new 13-RP-02.
  - #5-Open-pile piers: This activity is included in 13-RP-18 revision.
  - #7-Boathouses and covered boatlifts: This activity is included in 13-RP-18 revision.
  - #8-Mooring piles/dolphins: This activity is included in 13-RP-18 revision.
  - #10-Submerged sills: This activity was replaced with activity #2-Living Shoreline Group 2.
  - #13-Temporary structures: This activity is covered under the NWP-33.
- Activity for crab pounds was combined with the Activity for aquaculture/mariculture.
- Changes have been made throughout the permit to achieve consistency in allowable impacts. For example:

The total amount of vegetated wetlands which may be filled, graded, or excavated, in square feet, may not exceed the length of the activity along the shoreline in linear feet. All impacts to sub-tidal, inter-tidal and/or wetland vegetation may require a wetland vegetation planting plan and must result in no net loss of aerial vegetated wetlands.
- Requirements for impacts to submerged aquatic vegetation (SAV) and shellfish are covered in Section VI Special Conditions for Discharges, so the special condition that read, "the beach nourishment material will not be placed in or affect submerged aquatic vegetation or shellfish beds" was removed from each activity.
- New wording was added to replace the term "beach nourishment" with "sandy fill material".

**Regional Permit-22 (13-RP-22)** - for certain activities within the Virginia portion of Lake Gaston including: construction of piers, boat docks, boat ramps and boathouses; construction and backfilling of





bulkheads and placement of riprap; excavation of boat slips and channels; and installation of submerged and aerial power lines and utility lines.

- RP-22 has been revised to clarify the activities authorized and now allows for two non-reporting activities provided the applicant obtains a valid permit from Dominion North Carolina Power. These activities include:
  - 1) Construction of piers, boat docks, boat ramps and boathouses using materials commonly acceptable for their construction such as unsinkable flotation materials, pressure treated lumber, pilings, and concrete.
  - 2) Construction and backfilling of bulkheads and placement of riprap or appropriate bioengineering technology along eroding shorelines for shoreline stabilization and erosion control.
- A COE permit will still be required for the following two activities:
  - 1) Excavation of boat slips and channels (channelward of the normal high pool elevation) for recreational boating.
  - 2) Installation of submerged and aerial power lines and utility lines where U. S. Coast Guard requirements for aerial lines are met and where bottom elevations are restored to pre-project contours for submerged lines.

### **DEQ State Water Control Board 401 Water Quality Certification**

After having advertised through a public notice on July 1, 2013 and accepted public comments for 30 days on their intent to provide certification, the State Water Control Board issued the final Section 401 Water Quality Certification on August 9, 2013, which proposes *unconditional* Section 401 Water Quality Certification for the eight Norfolk District COE RPs (RP-02, RP-05, RP-15, RP-17, RP-18, RP-19, RP-20, and RP-22). A copy of the final 401 Water Quality Certification can be found [here](#).


Note that although 11-RP-05 and 12-RP-20 were proposed to be reissued in the COE public notice in March 2013, the COE ultimately did not reissue 11-RP-05 and 12-RP-20, stating that the previously published versions are still in effect and still expire on October 5, 2016 and May 25, 2017, respectively. Thus, the recently issued unconditional Section 401 Water Quality Certification for RP-05 and RP-20 does not apply, and the previously issued Section 401 Water Quality Certification for 11-RP-05 and 12-RP-20 remains in effect.

Regarding RP-01 (formerly LOP-1) for Virginia Department of Transportation projects, the State Water Control Board will continue to process applications for individual 401 Water Quality Certification through a Virginia Water Protection (VWP) General or Individual Permit pursuant to 9VAC 25-210-10 et seq., with an exception (as noted in 9VAC25-210-220B) that the board may waive the requirement for VWP Individual Permit when the activity qualifies for a permit issued by the COE and receives a VMRC permit, and does not impact instream flows.

### **Coastal Zone Management Act (CZMA)**

The Norfolk District Corps of Engineers has received certification regarding water quality (WQC) under Section 401 of the Clean Water Act and the consistency determination under the Coastal Zone Management Act (CZMA) for these Regional Permits.





The COE Norfolk District submitted a federal consistency determination to the Virginia CZM Program that finds the proposed action (to reissue and/or modify the aforementioned RPs) consistent with the enforceable policies of the Virginia CZM Program. A public notice (#13-054F) was issued in the first quarter of 2013 by the Virginia CZM Program. The Virginia CZM Program completed its final review of the 2013 RPs for consistency with the federal CZMA of 1972, as amended, on May 10, 2013. A copy of the final CZMA federal consistency determination can be viewed [here](#).

***How do the reissued and/or modified RPs affect your project?***

If your project is currently authorized under one of the aforementioned RPs that expired on August 14, 2013 and the permitted work has not commenced or was not completed by August 14, 2013, but the project continues to meet the terms and conditions of the revalidated RPs, then the project will continue to be authorized through August 14, 2018.

If activities have commenced (i.e. under construction) or are under contract to commence in reliance upon the above-referenced RPs and they do not meet the terms and conditions of the revalidated RPs, then it will remain authorized provided the activity is completed within 12 months of the date of the RPs expiration (i.e. August 14, 2014).

Note that if the project does not continue to meet the terms and conditions of the revalidated RP and work cannot be completed by August 14, 2014, then it is necessary to reapply for a new RP with the COE.