DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

AUG - 2 2005

REPLY TO
ATTENTION OF
Operations Division
Eastern Evaluation Section

SUBJECT: (General Permit) NOD-130
MVN 2000-2158 EKK

PUBLIC NOTICE

TIME EXTENSION AND MODIFICATION FOR A
GENERAL PERMIT AUTHORIZING APPROVED MITIGATION PROJECTS
IN THAT PART OF THE NEW ORLEANS DISTRICT
WITHIN THE LOUISIANA COASTAL ZONE

Interested parties are hereby notified that (General Permit) NOD-130 for approved mitigation projects within the Louisiana Coastal Zone is being extended until May 31, 2010.

The proposed time extension was advertised for public comment on April 29, 2005.

Although the general permit is being extended, persons who become aware of problems or adverse impacts are required to notify the Regulatory Branch of this District at the above address. The general permit will be suspended, revoked, or modified if it is shown to be in the public's interest to do so.

A copy of the general permit is attached. Additional copies are available upon written request to the Regulatory Branch of this District at the above address.

[redacted]

Ronald J. Ventola for
Chief, Regulatory Branch

Enclosure

DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P.O. BOX 60267
NEW ORLEANS, LOUISIANA 70160-0267

REPLY TO
ATTENTION OF

AUG - 2 2005

Operations Division
Regulatory Branch

SUBJECT: CEMVN-OD-SE(General Permit)NOD-130

DEPARTMENT OF THE ARMY
GENERAL PERMIT

Authorization No.: (General Permit)NOD-130
MVN 2000-2158 EKK

Under authorization granted by applicable sections of Parts 320 through 330 of Title 33, Code of Federal Regulations, and delegated authority from the Commander, U.S. Army Corps of Engineers, the District Engineer at New Orleans has determined that it is in the public interest to issue a general permit to:

Dredge for material and/or install and maintain fill material and structures associated with mitigation activities required by a Department of the Army (DOA) authorized project.

Specific legislation requiring DOA permits for work of this nature:

a. Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403) and

b. Section 404 of the Clean Water Act (33 U.S.C. 1344).

"Waters of the United States" are defined in Part 328.3(a) of Title 33, Code of Federal Regulations.

Prior to written approval from the New Orleans District (NOD), each request for work covered by this general permit will be reviewed to consider impacts to the environment and other areas of concern to determine if approval is not contrary to the public interest.

This general permit will authorize work in those areas which are located within the boundaries of the U.S. Army Engineer District, New Orleans. A map attached to this approval shows the approximate boundaries of the district (Attachment 1).

The District Engineer will review each application to determine that provisions for siting, constructing, monitoring, operating, maintaining, and/or managing the mitigation projects are consistent with the following standards:

a. The purpose of the work is to compensate for unavoidable adverse impacts to wetlands associated with implementation of a DOA authorized project by constructing, enhancing and/or restoring the "natural" wetland hydrology, vegetation, and/or other functions of altered and/or degraded wetlands;

b. The stated goals of the mitigation plan are practicable and achievable;

c. Conflicts among competing uses of the navigable waters of the United States and of the resources in such waters are minimized;

d. The environmental risk and risks to personal health and property are minimized; and

e. Any unreasonable obstruction to navigation is prevented.

This general permit is also subject to the following special conditions:

a. The work covered by this general permit must be part of a mitigation plan developed to compensate for unavoidable impacts associated with implementation of a permitted activity.

b. Federal, state and local agencies commenting on the permitted project must have reviewed and been allowed to provide input into the mitigation plan as a prerequisite for consideration under this general permit.

c. This general permit does not authorize the conversion of natural wetlands to another aquatic use.

d. For work to be performed under authority of this general permit, applicants must provide the following:

(1) A copy of the Department of the Army permit with approved mitigation plan.

(2) A letter from the landowner approving the mitigation plan.

e. Wetlands that are not specifically part of the authorized project but are disturbed during construction, including the temporary crossing of wetland areas, will be restored to their preproject elevations and conditions, including replanting.

f. When work is done by heavy equipment in wetland areas, mats will be utilized and activities confined to matted areas. When work is completed, the mats will be removed.

g. All work authorized by this general permit must be made visible to the boating public both day and night by installing and maintaining, at the permittee's expense, any safety lights, signs and/or signals prescribed by the U.S. Coast Guard, through regulations or otherwise.

h. This general permit may be revised, suspended, modified or revoked by the District Engineer any time such action is found to be in the public interest.

i. The District Engineer reserves the right to withhold approval under this general permit for specific proposals and require an individual permit be processed.

j. The District Engineer may include additional conditions to this permit at any time and as necessary to protect the public interest.

k. Additional public notice will be given to advise the interested public of major revisions to this general permit or of its suspension or revocation.

l. Issuance of this general permit does not relieve the permittee from obtaining any required permits or licenses from local, state or other federal agencies before commencing work on any project authorized by this general permit; this includes but is not limited to:

(1) A Coastal Use Permit or letter stating that a Coastal Use Permit is not required for the activity signed by the Secretary of the Louisiana Department of Natural Resources or his designee;

(2) A water quality certification from the Louisiana Department of Environmental Quality, Office of Environmental Services; and

(3) A determination from the Louisiana Department of Natural Resources, Division of State Lands that work authorized by this GP does not affect any state-owned water bottoms.

m. Inclusions: The following are examples of work that will likely be eligible under this permit:

(1) Earthen plugs with or without armor in man-made canals or dredged material banks; this includes the dredging for construction material from adjacent waterways;

(2) Dredging of "splays" and/or breaks in natural levees or dredged material banks for the purpose of introducing freshwater or reestablishing "natural" wetland hydrology. Dredged material would be deposited on adjacent dredged material banks or in open water at elevations conducive to establishment of wetland vegetation where practicable;

(3) Sediment and vegetation retention fences along shorelines of navigable waterways and man-made canals and/or across man-made canals;

(4) Breakwaters constructed in open water along eroding shorelines; such structures would not block navigable waterways;

(5) Dredging in open water areas for fill material to be deposited in shallow open water areas or broken marsh areas for the purpose of marsh construction, restoration or enhancement; work would include the dredging for material

to be used for constructing retention dikes to control the flow of material;

(6) Construction of small nesting islands;

(7) Clearing and grading for preparation of a site for planting with wetland vegetation; work includes filling of ditches and/or contouring to establish required hydrological gradients needed for wetland construction.

(8) Additional water control structures, not previously authorized, on permitted or "grandfathered" marsh management areas where the structure is required to improve water exchange or aquatic resource passage;

n. The permittee shall take all appropriate and practicable steps to minimize potential adverse effects of the discharge on the aquatic ecosystem including the use of nonwetland disposal sites when practicable.

o. Dredged and/or fill material for the work authorized by this general permit shall be clean and free of waste material, metal products, chemical pollutants, and unsightly debris.

p. Activities at or in close proximity to any known historic or archeological site or within the boundaries of an historic district are not authorized by this general permit without the written approval or waiver from the State Historic Preservation Officer or the appropriate authority. Should a cultural resource site be discovered during construction, the permittee or his contractor shall cease activities and notify the State Historic Preservation Office.

q. No activity is authorized under this general permit within 1,000 feet of a levee or other flood control facilities constructed or maintained with federal funds, or owned and operated by agencies of state and local governments without written consent of the appropriate agency or governing body.

r. No activity that is likely to adversely affect federally listed threatened or endangered species, or that is likely to destroy or adversely modify the critical habitat of such species, is authorized under this general permit.

s. This general permit does not authorize any work within 1,500 feet of a colonial bird nesting site.

t. This general permit does not authorize any work within 3,000 feet of a bald eagle nesting site.

To perform work or install structures under authority of this general permit, the permittee must provide a completed ENG Form 4345 or Joint Permit Application form*, sufficient maps and drawings, 8.5 inch by 11 inch, to clearly describe the proposed work and location including the following:

a. The location of the work, i.e., latitude and longitude; section, township, range, or other physical description.

b. Size and configuration of the structure(s) and/or quantity, source and a description of the dredged or fill material to be used.

c. The location of any pipelines and/or structures within the immediate vicinity of the work area.

No work shall begin prior to receiving written notice from this office that it may proceed. This notice to proceed will usually be provided within 10 to 20 working days.

Authorizations by this general permit are subject to applicable conditions of our standard permit, ENG Form 1721 (see Attachment 2).

* For work within the Louisiana Coastal Zone, the Joint Permit Application form may be obtained by calling 1-800-267-4019 or downloaded at http://dnr.louisiana.gov/crm/coastmgt/cup/cup.asp

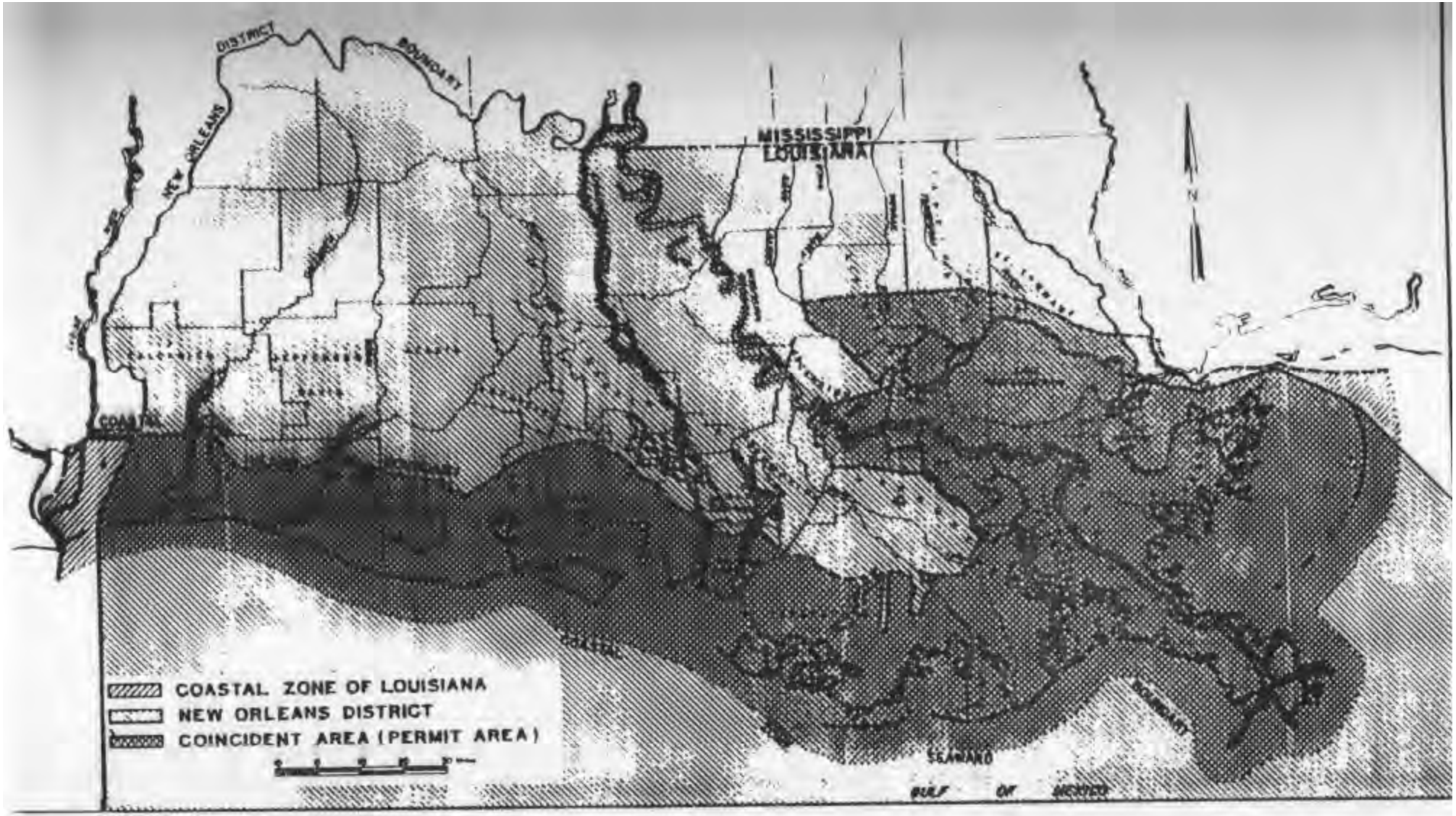
Individual approvals granted to applicants under this general permit allow 3 years, from the date of the approval letter, for completion of the project.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

[redacted]

Ronald J. Ventola
Chief, Regulatory Branch
For
Richard P. Wagenaar
Colonel, U.S. Army
District Engineer

ATTACHMENTS
1. New Orleans District and Coastal Zone Boundary map
2. ENG Form 1721


DISTRICT
BOUNDARY
NEW ORLEANS
MISSISSIPPI
LOUISIANA
COASTAL
COASTAL
SEAWARD
BOUNDARY
GULF OF MEXICO
COASTAL ZONE OF LOUISIANA
NEW ORLEANS DISTRICT
COINCIDENT AREA (PERMIT AREA)

DEPARTMENT OF THE ARMY PERMIT

Permittee _____

Permittee No. _____

Issuing Office _____

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:

Project Location:

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on _____. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

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 4 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 discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. 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.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. 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:

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

( ) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

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 project.

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 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 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.

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)*

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)*

(REVERSE OF ENG FORM 1721)