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

REPLY TO
ATTENTION OF:

JUL 03 2006

Operations Division
Western Evaluation Section

SUBJECT: (General Permit)NOD-159
MVN 2001-1267 WB

PUBLIC NOTICE

TIME EXTENSION AND MODIFICATION
FOR
A GENERAL PERMIT AUTHORIZING DREDGING IN EXISTING WATERBODIES
FOR DRAINAGE MAINTENANCE INSIDE AND OUTSIDE OF THE
LOUISIANA COASTAL ZONE

Interested parties are hereby notified that (General Permit)NOD-159, originally issued by this office on March 30, 1996, authorizing dredging in existing waterbodies for the purpose of maintaining drainage inside and outside of the Louisiana Coastal Zone is being extended until March 30, 2011.

The proposed time extension was advertised for public comment on March 10, 2006.

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 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
Chief, Regulatory Branch

Enclosures

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

JUL

REPLY TO
ATTENTION OF:
Operations Division
Regulatory Branch

DEPARTMENT OF THE ARMY GENERAL PERMIT

Authorization No.: (General Permit)NOD-159
MVN 2001-1257

Original Effective Date: March 30, 1996

Proposed Expiration Date: March 30, 2011

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, District Engineer at New Orleans has determined that it is in the public interest to issue a general permit for dredging in existing waterbodies for the purpose of maintaining drainage inside and outside of the Louisiana Coastal Zone (CZ) within the boundaries of the New Orleans District (NOD). A map showing the boundaries of the NOD and CZ is attached as enclosure 1.

Specific legislation requiring Department of the Army permits for work of this nature are:

a. Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 USC 403), and/or

b. Section 404 of the Clean Water Act (33 USC 1344).

This general permit <u>excludes</u> any activity:

a. Which is likely to adversely affect federally listed threatened or endangered species, a species proposed for such designation, or which is likely to destroy or adversely modify the critical habitat of such species. This includes activities within 3,000 feet of a bald eagle nesting site unless written concurrence is obtained from the U. S. Fish & Wildlife Service that the specific individual activity proposed for authorization will not adversely affect that species.

b. Within 1,500 feet of colonial bird nesting sites.

c. In navigation channels constructed or maintained with federal funds.

d. Within 1,000 feet of any mainline flood control or hurricane protection levee constructed and/or maintained with federal funds without prior coordination with, and the approval of, the New Orleans District.

e. At or in close proximity to any known historic or archeological site or within the boundaries of a historic district.

f. That would impinge upon the value (habitat, hydrology, etc.) of any National Wildlife Refuge, National Forest, or areas administered by the National Park Service, Louisiana Departments of Natural Resources or Wildlife & Fisheries, or other similar publicly held areas administered by federal, state, or local government authority, unless special permission from these agencies is submitted with the application for this general permit.

g. Within areas of concentrated shellfish production.

h. Within the vicinity of water supply intakes.

i. Which would result in new channel excavation, excavation for fill material, sand and gravel mining activities, or dredging for navigational purposes.

j. Which would modify the effectiveness of an existing, functional water control structure.

k. Within a component of the National or Wild and Scenic River System or state scenic river system.

l. In waterbodies which have not been previously excavated or otherwise channelized. In general, excavation under this general permit will not be authorized where the previous maintenance dredging activities occurred more than 40 years from the date of the request.

m. Where the previously authorized, documented, or permitted excavation depths and specifications are proposed to be exceeded (i.e., deeper, wider, or realigned).

n. In wetland areas where the functions and values of the wetland habitat being impacted are determined to be high, and/or reasonable and practicable less environmentally damaging alternatives exist such that an evaluation of the project impacts under the individual permit procedure is warranted.

o. That would permanently drain or facilitate the drainage of a jurisdictional wetland. In the case of USDA program participants, the activity must not permanently drain or facilitate the drainage of jurisdictional wetlands such that a participant may lose benefits (i.e., swampbusting). To insure this, the applicant shall contact the local Consolidated Farm Service Agency and provide documentation that such activities will not occur as a result of the proposed maintenance dredging. This documentation must be submitted as part of the complete permit application.

Work authorized by this general permit is subject to the applicable standard conditions of permit form ENG Form 1721 (enclosure 2), and the following special conditions:

a. The work must not interfere with the public's right to free navigation on all navigable waters of the United States.

b. Any safety lights and signals prescribed by the U. S. Coast Guard, through regulations or otherwise, must be installed and maintained at the applicant's expense.

c. 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. Any modification, suspension, or revocation of this general permit, or any individual authorization granted under this general permit, will not be the basis of any claim for damages against the United States.

d. If the proposed project, or future maintenance work, involves the use of floating construction equipment (barge mounted cranes, barge mounted pile driving equipment, floating dredge equipment, dredge discharge pipelines, etc.,) in the waterway, you are advised to notify the U.S. Coast Guard so that a Notice to Mariners, if required, may be prepared. Notification, with a copy of your permit approval and drawings, should be mailed to the U.S. Coast Guard, Sector New Orleans Command Center, 201 Hammond Highway, Metairie, Louisiana 70005, about 1 month before you plan to start work. Telephone inquiries can be directed to (504) 846-5923.

e. When the activity authorized herein involves a discharge of any pollutant (including dredged or fill material) into waters of the U. S. during its construction operation, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this general permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer periods of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.

f. The permittee agrees to make every reasonable effort to prosecute the construction or operation of the work authorized herein in a manner so as to minimize any degradation of water quality or any adverse impact on fish, wildlife, special aquatic sites, and natural environmental values.

g. This general permit cannot be used for piecemeal dredge or fill activities or other piecemeal work, nor is this general permit valid for any activity that is part of an overall project for which the Corps has determined that an individual permit is required.

h. Wetlands that are not part of the authorized project site, but that are disturbed during construction, including the temporary crossing of wetland areas, will be restored to their preproject elevations and conditions, and may include replanting. Following project completion, those jurisdictional areas not required for future maintenance of the waterway, but which suffered disturbance as a result of construction activities, shall be restored to preproject conditions, and replanted in accordance with recommendations from the NOD as determined in coordination with appropriate resource agencies.

i. When work is done by heavy equipment in wetland areas that are not a part of the authorized project area, or heavy materials are temporarily stored in such wetland areas, mats will be utilized and activities confined to matted areas. When work is completed, mats must be removed.

j. Material discharged into wetlands must be clean dredged material, must be contained or stabilized, must be compatible with existing soils, and must not otherwise constitute a non-point pollution source.

k. Misrepresentation of the proposed project or falsification of facts may be cause to exclude the project from further general proceedings. If the misrepresentation or falsification was intentional, the applicant shall forfeit the right to conduct work at the proposed project site under this general permit.

l. No work may be performed under this general permit unless and until all required local, state, and other federal permits, licenses, authorizations, and certifications are obtained. This includes, but is not limited to, a coastal use permit or waiver from the Louisiana Department of Natural Resources, and a water quality certification from the Louisiana Department of Environmental Quality.

m. Appropriate measures to minimize a proposed activity's impact on the aquatic ecosystem may be required such as limiting removal of woody vegetation to that necessary for spoil deposition; limiting work to one side of the channel; protecting trees with a breast height diameter greater than 16 inches from construction activities; confining deposition of dredged material to existing spoil banks, prior converted cropland, and upland areas whenever possible; depositing dredged material in a manner which could create or enhance wetland habitat; and including gaps in spoil banks.

n. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction and all deposited material shall be stabilized within 2 weeks following completion or disturbance.

o. If there is a reason to believe that dredged material may contain contaminated sediments, a sediment analysis developed in coordination with the NOD will be required.

p. Unless designated otherwise, all existing streams and sloughs shall remain open and unimpeded. Culverts shall be placed in all streams and sloughs to maintain water circulation and flow.

q. Individual approvals granted to applicants under this general permit allow 5 years from the date of the individual approval letter for completion of the project. Activities approved under this general permit and completed within the above time limit may be maintained for 10 years from the date of the individual authorization.

r. Additional conditions may be added to this general permit by the District Engineer if it is found to be in the public interest to do so.

s. This general permit may be suspended, in whole or part, by the District Engineer if it is found to be in the public interest to do so.

t. The District Engineer may choose not to grant approval under this general permit and require the applicant to go through individual permit evaluation procedures when he finds that such action is in the public interest.

## Reporting/Acknowledgement Procedures

Applying for permit approval under General Permit (NOD-159) is identical to applying for an individual permit for work within the CZ or NOD. If located within the CZ (see enclosure 1), the application request must be submitted electronically which consists of an application form and a set of drawings with a $100.00 application fee for commercial and $20.00 for non-commercial. The Coastal Management Division will review the application for completeness and, if complete, will assign it a coastal use permit number and forward an electronic copy of the application to the NOD. If the project is not located within the CZ, the application required should be sent directly to the New Orleans District, ATTN: Regulatory Branch, Post Office Box 60267, New Orleans, Louisiana 70160-0267.

A complete application includes ALL of the following:

(1) A Department of the Army application form (ENG Form 4345) that includes the signature of the applicant; latitude and longitude; section, township and range; a statement indicating the need for the project; a clear description of the proposed work and intended use; the date and specifications of previously permitted or documented dredging operations; and a discussion of alternatives considered and details supporting the chosen alternative. The application must also include a statement that the fill material will be free of contaminants, to the best of the applicant's knowledge. A joint application form must be completed for projects that occur within the Coastal Zone.

(2) A vicinity map on which the project site is clearly indicated, and accurately scaled drawings (plan view and cross section with mean high and low water lines) with all dimensions clearly labeled and the number of cubic yards of dredged or fill material involved. When project works will be constructed with, be adjacent to, or otherwise in proximity to other works conducted under this general permit, drawings MUST show the relationship of such work to the proposed activity and their appropriate permit numbers.

(3) For most projects requiring authorization under Section 404 of the Clean Water Act, a compensatory mitigation plan to offset unavoidable wetland losses will generally be required. This plan will adhere as closely as possible to the requirements of the Memorandum of Agreement between the

Department of the Army and the Environmental Protection Agency (i.e., compensatory mitigation will generally be in-kind, performed within the same geographical area as the project site, etc.). The compensatory mitigation plan will generally provide a minimum of 1 to 1 acreage replacement, with each plan evaluated on the basis of conditions existing at the proposed project site. Compensatory mitigation may consist of wetland restoration, enhancement of degraded wetlands, wetland creation, or participation in an approved mitigation bank. The plan should be designed to replace the functions and values of the affected project site. It may be performed in federal wildlife refuges, state wildlife management areas, and parish or private lands. The plan must include a letter from the refuge or land manager agreeing to the proposed plan. Compensatory mitigation shall be commenced within 90 days (or the first planting season of December 15th through March 15th, if applicable) of commencement of work under the general permit, and shall be completed no later than 2 years from the date of commencement of work authorized under this general permit.

(4) Documentation from the local Consolidated Farm Service Agency as required by exclusion o. above (pgs. 2 and 3).

Upon receipt of a copy of the application form, drawings, and additional information described above, we will review the application for completeness and eligibility for processing under NOD-159. Incomplete applications will be returned to the applicant and/or the applicant will be advised of the application deficiencies. Work not eligible for evaluation under NOD-159 will be evaluated under individual permit procedures, to include a public notice, if applicable.

Applicants whose proposals meet the requirements of NOD-159 will be notified by letter that their project is being considered for approval under the general permit. Copies of the letter will be sent to the U. S. Fish & Wildlife Service, National Marine Fisheries Service, and the Louisiana Department of Wildlife & Fisheries for review and comment. These agencies will have 5 days in which to comment. Concurrences may be forwarded to the Corps via telephone; however, non-concurrences must be made in writing with an information copy sent to the applicant and must include a description of the impact(s) considered to be more than minimal. These agencies may comment on the project or request additional information needed for

their analysis during the comment period. If additional time is needed for this evaluation, they may make a written request for a time extension of up to 20 days. Lack of response within 5 days by these agencies will be considered as no objection or no position by those agencies. Corps of Engineers' decision of non-concurrence with reviewing agencies' objections and/or recommendations will be made in writing by the District Engineer to the respective agency.

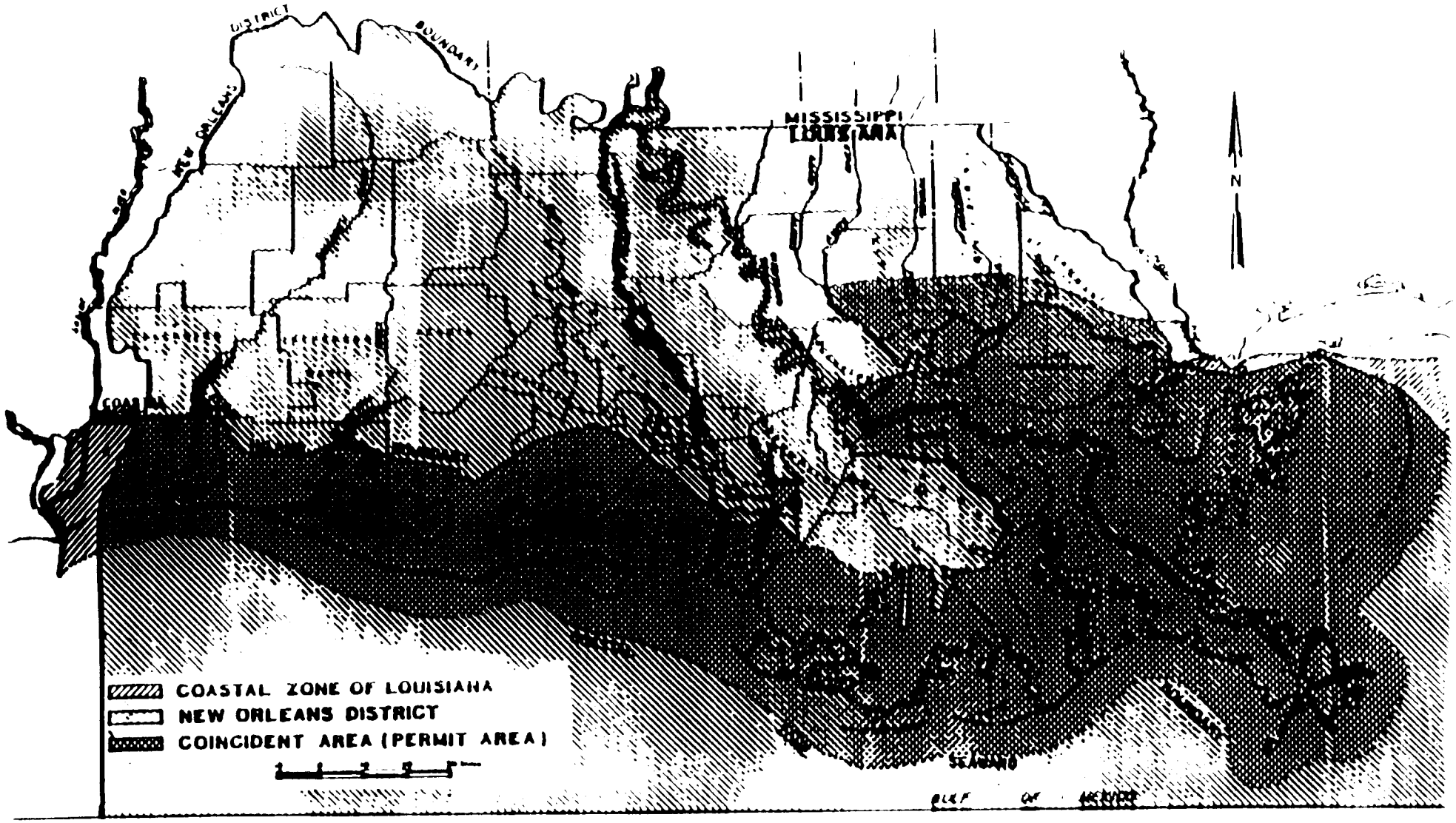
After receipt of comments from the agencies or after 5 days from the start of the comment period, the proposal will be evaluated in consideration of the comments from the federal and state agencies and a decision will be made to issue the general permit approval as requested, issue the general permit approval with modification, or require the project to be evaluated as an individual permit to include a public notice. The applicant will be notified of our decision by letter.

Approval of work under (General Permit)NOD-159 only indicates authorization from the New Orleans District, Corps of Engineers. It does not relieve the applicant from obtaining a coastal use permit or waiver (if required) signed by the Secretary of the Louisiana Department of Natural Resources or his designee, and/or a water quality certification from the Louisiana Department of Environmental Quality, or any other permits, licenses, or certifications required by law, prior to commencement of work.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

[redacted]

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


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

FNCL

# DEPARTMENT OF THE ARMY PERMIT

Permittee:

Permit No.:

**Issuing Office:** New Orleans District

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 1 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.

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

ENCL 2

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 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.

~~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)