



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, NEW ORLEANS DISTRICT
7400 LEAKE AVENUE
NEW ORLEANS, LOUISIANA 70118
June 26, 2017

Operations Division
Regulatory Branch

SUBJECT: MVN-2001-1267-WKK
(General Permit) GP-159

SPECIAL PUBLIC NOTICE

ANNOUNCEMENT OF MODIFICATION AND TIME EXTENSION TO GENERAL PERMIT (GP)-159 FOR DREDGING/EXCAVATING IN EXISTING WATER BODIES, INCLUDING DEBRIS REMOVAL FROM WITHIN CHANNELS (e.g., storm debris, downed trees and log rafts) FOR THE PURPOSE OF MAINTAINING DRAINAGE WITHIN THE BOUNDARIES OF THE NEW ORLEANS DISTRICT (CEMVN).

The New Orleans District, Corps of Engineers is hereby issuing a public notice announcing a time extension for GP-159. All available information and comments were considered in determining whether the overall public interest would be best served by modifying and extending this general permit. A copy of the proposed extended general permit is attached.

In response to the Joint Public Notice dated February 4, 2013, advertising the proposed modification and time extension, there were no recommendations made by state or federal agencies. The modifications made for GP-159 are as follows: (1) the permittee shall utilize the least environmentally damaging alternative route to gain access to the work site, (2) access routes must be clearly shown on the permit drawings and shall be confined to 10 feet in width or less, (3) trees less than 6 inches DBH (diameter at breast height) shall be chipped and the cuttings broadcasted over the area, (4) chipping of storm debris, log rafts or downed trees in the waterway shall be broadcasted over the area so as not to exceed 4-inches in thickness, (5) the permittee shall maintain a record/log each time a maintenance event is conducted, (6) work must be suspended if cultural artifacts are uncovered, (7) and authorization to perform work under the general permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and it does not authorize any injury to property or invasion of rights or any infringement of federal, state or local laws or regulations nor does it obviate the requirement to obtain state or local assent required by law for the activity. These modifications have been included in this time extension. Additionally, the time extension is being granted on 5 year intervals.

We have reserved the right to modify, suspend, or revoke this general permit any time we determine it is in the public's interest to do so.

BY THE AUTHORITY OF THE SECRETARY OF THE ARMY:

Martin S. Mayer
Chief, Regulatory Branch

Attachment



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DEPARTMENT OF THE ARMY GENERAL PERMIT

Authorization No.: General Permit (GP)-159
MVN 2001-01267 WKK

Original Effective Date: March 30, 2011

Proposed Expiration Date: July 31, 2022

Under authorization granted by applicable sections of Parts 320 through 332 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 water bodies, including debris removal from within channels (e.g., fallen trees, log rafts, woody vegetation, storm debris, appliances, metal objects, and beaver dams) for the purpose of maintaining drainage within the boundaries of the New Orleans District (CEMVN).

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 excludes any activity:

- a. Within 1,500 feet of a known colonial bird nesting site.
- b. Within an area where the activity 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.
- c. Work authorized under General Permit GP-159 may not be performed in areas where the activity is likely to result in a "disturbance" to bald eagles. Applicants are advised to review the National Bald Eagle Management (NBEM) Guidelines to make this determination. A copy of the NBEM Guidelines is available at: <http://www.fws.gov/southeast/es/baldeagle/> or contact the U.S. Fish and Wildlife Service (337-291-3100) for further assistance.

d. Within 1,500 feet of the Mississippi River and Tributaries levees centerline and/or 300 feet of the levee centerline or 250 feet from the visible levee or berm toe of a federal hurricane risk reduction project to include natural or man-made waterways which are components of Corps of Engineers flood control Hurricane and Storm Damage Risk Reduction System (HSDRRS), or navigation projects until reviewed and approved by the appropriate elements of the New Orleans District.

e. At or within one mile of a site listed or eligible to be listed on the National Register of Historic Places, within one-half mile of a known archaeological site, or within one-half mile of any known cultural resource site, without the written approval or waiver from the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO) or the appropriate authority.

f. Within any area leased by the Louisiana Department of Wildlife and Fisheries for harvesting oysters without the specific authorization of the lease holder. Additionally, no work may be performed in public oyster grounds or seed beds.

g. Within a component of a National Wild and Scenic River System or state scenic river system without the written approval from the appropriate authority.

h. 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.

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

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

k. In water bodies which have not been previously dredged or otherwise channelized. In general, excavation under this general permit will not be authorized without evidence of, or documentation evidencing, previous maintenance dredging activities in the water body.

l. Increases the drainage capacity of the previously authorized, documented, or permitted drainage feature (i.e., deeper, wider, or realigned).

m. In wetland areas where the maintenance will harmfully sever or fragment the wetland or water body, 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.

n. That would reduce the reach of the waters of the U.S., including wetlands. 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 authorized 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 Commander (dpw), Eighth Coast Guard District, Hale Boggs Federal Building, 500 Poydras Street, Room 1230, New Orleans, Louisiana 70130, about 1 month before you plan to start work. Telephone inquiries can be directed to the Eighth Coast Guard District, Waterways Management, at (504) 671-2107.
- 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 pre-project 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 pre-project conditions, and replanted in accordance with recommendations from the CEMVN as determined in coordination with appropriate resource agencies.

i. When work is done over land, the permittee shall utilize the least environmentally damaging alternative route to gain access to the work site. This will include existing access points/routes that result in minimal adverse impacts to wetlands such as road crossings, rights-of-way or other servitudes. Also, the least damaging work method shall be utilized (e.g., working from within the stream/ditch/canal), if applicable. If work is done by heavy equipment in wetland areas that are not a part of the authorized project area, mats will be utilized and activities confined to matted areas. When work is completed, mats must be removed and the area restored to natural elevations. Heavy work equipment shall be confined to the smallest sized vehicle(s) possible and must be the minimum number required to perform the activity.

j. An access route through wetlands is only authorized when it is the least environmentally damaging, practicable alternative to gain access to a site, as mentioned above. The permit application must include an explanation of need for an access route once all less damaging alternatives have been considered and why those alternatives cannot be utilized. A proposed access route must clearly be shown on the permit drawings and shall be confined to 10 feet in width or less. Mechanized land clearing, excavation, and deposition of fill for access road construction are not authorized. However, removal of shrubs and herbaceous vegetation to clear a path may be done through bush hogging. Trees less than 6 inches DBH (diameter at breast height), may be chipped and the cuttings broadcasted over the area (see condition k on chipping). Removal of any native trees greater than 6 inches DBH is prohibited. However, tree removal restrictions do not apply to noxious and invasive species (e.g., Chinese tallow, black willow, etc.). Access route maintenance is not authorized. .

k. Chipping of storm debris, log rafts, downed trees in the waterway, including for access as described above in condition J, is authorized and the cuttings may be broadcasted over the area so as not to exceed 4-inches in thickness.

l. 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.

m. 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.

n. 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 native 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.

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

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. In addition, the stockpiling of vegetative material in streams and wetland areas is not authorized.

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. Any additional conditions added to the general permit will be announced by public notice.

s. This general permit may be suspended, in whole or part, modified, and/or revoked if the District Engineer determines such action to be in the public interest. If the permit is revoked, suspended, and/or modified, the action will be announced by public notice.

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.

u. The permittee shall maintain a record/log each time a maintenance event is conducted. These records shall be made available anytime at the request of CEMVN permitting office.

v. If cultural artifacts are uncovered by work authorized by this general permit, the work must be suspended and modification given to this District and the State Archeologist or Historic Preservation Officer. Work may not be resumed until provisions for study, recovery, and/or preservation of the artifacts have been made.

w. The authorization to perform work under the general permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and it does not authorize any injury to property or invasion of rights or any infringement of federal, state or local laws or regulations nor does it obviate the requirement to obtain state or local assent required by law for the activity authorized herein.

Reporting/Acknowledgement Procedures

Applying for permit approval under General Permit 159 is identical to applying for an individual permit for work within CEMVN. If located within the Coastal Zone of Louisiana (CZ) (see enclosure 1), the Joint Permit Application request must be submitted electronically to the Louisiana Department of Natural Resources, Office of Coastal Management (OCM) and will consist of an application form and a set of drawings with a \$100.00 application fee for commercial and \$20.00 for noncommercial. The OCM 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 CEMVN. If the project is not located within the CZ, the ENG Form 4345 application is required and should be sent directly to the U. S. Army Corps of Engineers, New Orleans District, ATTN: Regulatory Branch, 7400 Leake Avenue, New Orleans, Louisiana 70118 or, as a convenience (but not mandatory), can be sent electronically to: CEMVNRegulatoryApplication@usace.army.mil. Be sure to include OCZ, the parish the project is located in and applicant name on the email subject line. For oversized attachments, contact our office for further instructions.

A complete application includes ALL of the following:

(1) A completed application form 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.

(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 projects requiring authorization under Section 404 of the Clean Water Act, in reference to 33 CFR 325.1 (d)(7), the applicant is required to submit a statement explaining how impacts to the waters of the United States are to be avoided and minimized. The application must also include either a statement describing how impacts to waters of the United States are to be compensated for or a statement explaining why compensatory mitigation should not be required for the proposed impacts. Unavoidable project related impacts will be assessed on a case-by-case basis to determine if compensatory mitigation will be required. If required, proposed compensatory mitigation should be located within the appropriate watershed for the permitted impact, to the extent practicable, and follow the preferential hierarchy established in 33 CFR 332.3(b): 1) Mitigation bank credits; 2) Existing in-lieu fee programs; 3) permittee-responsible mitigation (PRM).

(4) Documentation from the local Consolidated Farm Service Agency as required by exclusion n. above (pg. 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 GP-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 GP-159 will be evaluated under individual permit procedures, to include a public notice, if applicable.

Electronic copies of the permit application will be sent to the U.S. Fish & Wildlife Service, National Marine Fisheries Service, U.S. Environmental Protection Agency 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. Agencies may request additional information needed to complete their reviews during the comment period. If additional time is needed, the agencies may request an additional 20 days, commencing upon their receipt of the requested information. 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.

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 a standard individual permit to include a public notice following receipt of federal and state agency comments and completion of all required coordination. The applicant will be notified of our decision by letter or electronic format, if applicable.

Approval of work under (General Permit) GP-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, or any other permits, licenses, or certifications required by law, prior to commencement of work.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Martin S. Mayer
Chief, Regulatory Branch
for
Michael N. Clancy
Colonel, U.S. Army
District Commander