



**U.S. Army Corps
Of Engineers**
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, VA 23510-1011

**CENAO-WRR
19-RP-11**

REGIONAL PERMIT

Effective Date: September 20, 2019

Expiration Date: September 20, 2024

I. AUTHORIZED ACTIVITIES:

19-RP-11, Regional Permit 11 (RP), authorizes certain Virginia Department of Transportation (VDOT) roadway and railway projects, in waters of the U.S., within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District Army Corps of Engineers (Corps).

VDOT is hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to 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) to proceed with roadway and railway projects involving work, structures, and filling (both temporary and permanent) in the waters of the U.S. of the Commonwealth of Virginia. VDOT is the only entity that may qualify for authorization under this RP. RP-11 authorization received by VDOT may not be transferred to any other entity.

The purpose of this RP is to authorize projects that qualify for the conditions and thresholds of a Nationwide Permit (NWP) but require a Pre-construction Notification (PCN) in accordance with NWP General Condition 18(c), i.e., because any federally listed endangered or threatened species or designated critical habitat might be affected or is in the vicinity of the activity.

II. AUTHORITIES:

VDOT is hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the River and Harbors Act of 1899 (33 U.S.C. § 403) and/or Section 404 of the Clean Water Act (33 U.S.C. § 1344) to perform the aforementioned work in navigable waters and waters of the U.S. of the Commonwealth as further described herein and pursuant to the terms and conditions of the RP-11, as well as the terms and conditions of the applicable NWP. This RP does not authorize any work other than that which complies with those conditions.

Activities receiving authorization under this RP do not require further authorization under the provisions contained in 33 CFR Part 325 unless the District Engineer

determines, on a case-by-case basis, that additional review is necessary in the public interest. This Regional Permit shall not be interpreted as authorizing any work other than that which is outlined below and in the applicable NWP. All work undertaken outside those terms, conditions, standards, and limitations will require separate Department of the Army authorization.

III. STATE AND LOCAL APPROVALS:

1. A permit from the Virginia Marine Resources Commission (VMRC) to encroach upon State bottom and/or a local wetlands board permit may also be required for work authorized by this RP.
2. The State Water Control Board provided conditional §401 Water Quality Certification for the 19-RP-11. As such, the activities that qualify for this RP meet the requirements of Department of Environmental Quality's (DEQ) Virginia Water Protection Permit Regulation, provided that the permittee abides by the §401 Water Quality Certification condition, below, and all of the terms and conditions of 19-RP-11.

§401 Water Quality Certification Condition: VDOT shall copy DEQ-Office of Wetland and Stream Protection, Central Office, on all documentation meeting the requirements of Part IV Notification Requirements of the 19-RP-11.

3. Pursuant to the Coastal Zone Management Act (CZMA) of 1972, the Virginia Department of the Environmental Quality, Virginia Coastal Zone Management Program, completed its review of the Federal Consistency Determination and issued its conditional concurrence on August 16, 2018. Specifically, DEQ concurs that the RPs and General Conditions are consistent to the maximum extent practicable with the Virginia CZMA Program provided that the following conditions are satisfied:
 - a) Prior to construction, applicants shall obtain all required permits and approvals for the activities to be performed that are applicable to the enforceable policies and that applicants adhere to all conditions contained therein.
 - b) The activities that qualify for the RPs meet the requirements of DEQ's Virginia Water Protection Permit Regulation and the permittee abides by the conditions of the RP as certified under Section 401 of the Clean Water Act.
4. Those activities on the Potomac River extending beyond the mean low water line may require authorization by VMRC and/or the Maryland Department of Natural Resources. Authorization may also be needed from the Tennessee Valley Authority for projects constructed on the Clinch and Holston Rivers.
5. VDOT should ensure that its projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act ("the Act") (Virginia Code 10.1-2100 *et seq.*) and the

Chesapeake Bay Preservation Area Designation and Management Regulations
(9 VAC 10-20-10 *et seq.*).

6. Authorizations under this RP do not supersede state or local government authority or responsibilities pursuant to the Chesapeake Bay Preservation Act, the Virginia Tidal Wetlands Act, or to any State or local laws or regulations.

IV. NOTIFICATION REQUIREMENTS:

VDOT shall provide a monthly table of projects which VDOT has determined qualify for this RP. The table will include for each authorized project the VDOT project number, VRMC number (if one exists), Corps project number (if one exists), project location center coordinates (latitude/longitude), NWP number for which the work otherwise qualifies for, lead Federal agency, and attach the Species Conclusion Table for the project.

V. PERMIT SPECIFIC CONDITIONS:

1. VDOT shall utilize the US Fish and Wildlife Service (USFWS) Online Project Review system and National Marine Fisheries Service (NMFS) data to determine whether any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat. If any species or critical habitat is identified, then VDOT will prepare a Species Conclusion Table, including effect determination(s), and coordinate with USFWS or NMFS (as appropriate) following currently accepted procedures. If USFWS or NMFS concurs with a determination of No Effect or Not Likely to Adversely Affect, then VDOT may begin work and is not required to submit a PCN provided VDOT complies with any mitigation measures identified by USFWS or NMFS as necessary to support the effect determination. If USFWS or NMFS does not respond to a submittal via the Online Project Review system within the established timeline, then their concurrence with the effect determination may be assumed. If concurrence is obtained, VDOT may begin work on the activity under RP-11, but must report the activity in its monthly report, as outlined above. Reporting is allowed before or after the activity has been initiated.
2. Any project for which formal Endangered Species Act consultation is required will not qualify for this RP and VDOT must follow PCN requirements for the NWP.

Exceptions:

- i. For activities affecting any species where a programmatic formal consultation has been completed (such as for the Northern Long-eared bat) and where VDOT is complying with any conditions and terms of the programmatic biological opinion, as well as Permit Specific Condition 2 (iii) below, VDOT may proceed as in Permit Specific Condition 1 above.

- ii. For activities where the Federal Highway Administration or another federal agency is the lead federal agency, VDOT may begin work on the activity following completion of formal consultation. The terms and conditions of the Biological Opinion become conditions of this authorization and VDOT shall report the projects in accordance with the Notification Requirements section above.
3. VDOT must comply with all general and regional conditions and thresholds of the NWP for which the project would qualify [except for NWP General Condition 18(c), as outlined above].

VI. DISTRICT ENGINEER'S DECISION:

1. In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the RP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific RP, the District Engineer should issue the RP verification for that activity if it meets the terms and conditions of that RP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual or cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity.
2. When making minimal adverse environmental effects determinations the District Engineer will consider the direct and indirect effects caused by the RP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The District Engineer will also consider site specific factors, such as the environmental setting in the vicinity of the RP activity, the type of resource that will be affected by the RP activity, the functions provided by the aquatic resources that will be affected by the RP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the RP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the District Engineer. The District Engineer may add case-specific special conditions to the RP authorization to address site-specific environmental concerns.
3. If the District Engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the District Engineer will notify the applicant that the activity does not qualify for authorization under the RP and instruct the applicant on the procedures to seek authorization under an individual permit or process to modify the proposed activity and/or the mitigation plan to reduce the adverse environmental effects so that they are no more than minimal. In addition, if the District Engineer determines on a case-by-case basis that concerns for the aquatic environment so indicate, the District Engineer may

exercise discretionary authority to override the regional permit and require and individual application and review.

VII. ADDITIONAL INFORMATION:

1. District Engineers have the authority to determine if an activity complies with the terms and conditions of the RP.
2. Limits of This Authorization:
 - a. Regional permits do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
 - b. Regional permits do not grant any property rights or exclusive privileges.
 - c. Regional permits do not authorize any injury to the property or rights of others.
 - d. Regional permits do not authorize interference with any existing or proposed Federal project (see General Condition 32).
 - e. Regional permits do not authorize the impingement upon Federal Lands.
 - f. Regional permits do not grant any Corps or Federal real estate rights. If real estate rights are needed from the Corps, you must contact the appropriate U.S. Army Corps of Engineers District's Real Estate Office.
3. Limits of Federal Liability: In issuing this RP, 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 RP;
 - 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 Permittee'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: The District Engineer may reevaluate the 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. The permittee fails to comply with the terms and conditions of this permit.
 - b. The information provided by the permittee in support of your permit application proves to have been false, incomplete, or inaccurate.

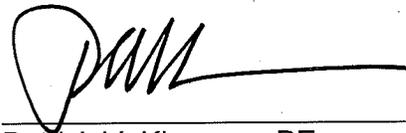
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

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. Binding Effect: The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.

Expiration: Unless further modified, suspended, or revoked, this RP will be in effect until September 12, 2024. Activities which have commenced (i.e. under construction) or are under contract to commence in reliance upon this RP will remain authorized provided the activity is completed within twelve (12) months of the date of the RP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization. Activities completed under the authorization of the RP which was in effect at the time the activity was completed continue to be authorized by that RP.

20 SEPT 2019
DATE



Patrick V. Kinsman, PE
Colonel, U.S. Army
Commanding