

Regional General Permit 20-02 (20-RGP-02)

Effective Date: September 17, 2020

Expiration Date: September 16, 2025

**DEPARTMENT OF THE ARMY  
REGIONAL GENERAL PERMIT 20-02  
AUTHORIZING THE INSTALLATION OF STRUCTURES AND DISCHARGES OF FILL  
MATERIAL INTO WATERS OF THE UNITED STATES ASSOCIATED WITH  
MANAGEMENT OF EXOTIC INVASIVE AQUATIC SPECIES WITHIN THE US ARMY  
CORPS OF ENGINEERS NASHVILLE DISTRICT REGULATORY BOUNDARIES.**

A. On the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 United States Code (U.S.C.) § 403) (Section 10) and Section 404 of the Clean Water Act (CWA, 33 U.S.C. § 1344) (Section 404), authority is hereby given under Regional General Permit 20-02 (20-RGP-02) for installation of structures and discharges of fill material into waters of the United States associated with management of exotic invasive aquatic species within the US Army Corps of Engineers Nashville District regulatory boundaries.

B. Regional General Permit 20-02 authorizes activities which are considered to be minor in nature and would cause no more than minimal individual and cumulative adverse environmental impacts. All proposals must be in accordance with the guidelines and limitations set forth in the conditions of 20-RGP-02. Activities not authorized by 20-RGP-02 and activities that exceed the limitations of the RGP require individual review by the Corps and authorization under another general permit or an individual permit. Where the impacts of the proposed activities will have more than minimal adverse impacts, the Nashville District Commander will exercise discretionary authority and require an individual application and review.

C. Prior to conducting work under the authority of 20-RGP-02, a written verification must first be obtained from the Nashville District Regulatory Division.

**D. APPLICATION PROCEDURES:**

1. To receive consideration under this Regional General Permit, the applicant will be required to submit an application to construct a particular project to:

U.S. Army Corps of Engineers  
Nashville District  
Regulatory Division  
3701 Bell Road  
Nashville, TN 37214  
Phone: (615)-369-7500

-Or-

[NashvilleRegulatory@usace.army.mil](mailto:NashvilleRegulatory@usace.army.mil)

2. The application can be submitted by the applicant using the Corps ENG Form 4345 or the Joint Corps/TVA application form (for activities within the Tennessee River

Basin). The application or other written submittal must clearly describe the proposed work in order for the Corps District to determine whether or not the proposed work complies with the terms, conditions, and limitations of this General Permit. The aforementioned application forms can be obtained on-line at:

<https://www.lrn.usace.army.mil/Missions/Regulatory/Forms-and-Publications/>

3. Projects that otherwise meet the terms of this Regional General Permit will not be authorized if:
  - a) They would cut off or block tributaries, oxbows, side channels, chutes or other backwater areas unless such blockage is designed to isolate exotic invasive aquatic species populations for beneficial aquatic ecosystem management purposes; or,
  - b) They are located on federally designated Wild and Scenic Rivers, unless written approval is granted by the managing agency.
4. This Regional General Permit is subject to reevaluation at the discretion of the District Engineer at any time, but will be reevaluated at least every five (5) years.

#### GENERAL CONDITIONS:

1. Authorized activities must be completed by the expiration date of RGP 20-02. Activities authorized by RGP 20-02, but not completed prior to the expiration date of the RGP, may be authorized by subsequent re-issuance of the RGP, if and when the RGP is re-authorized by the Corps. Permits from other State and Federal agencies may have different expiration dates.
2. The Permittee must maintain structures or fills authorized by this RGP in good condition and in compliance with the terms and conditions of this RGP. 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 3 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 the permittee sells the property associated with this RGP, the permittee may transfer the permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the RGP verification must be attached to the letter, and the letter must contain the following statement and signature: "When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this RGP and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."
4. Representatives of the Corps must be allowed to inspect the authorized activity at any time deemed necessary to ensure the work is accomplished in accordance with the terms and conditions of the RGP. It is the Permittee's responsibility to obtain other federal, state or local approvals required for the work.

5. Navigation:

(a) No attempt shall be made by a Permittee to prevent the full and free use by the public of all navigable waters at or adjacent to an activity authorized by this RGP. The work authorized under this RGP must not cause an adverse impact to navigation and must not interfere with the public's right to free navigation on all navigable waters of the U.S.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

6. Endangered Species.

(a) No activity is authorized under the RGP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any RGP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). The Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the non-Federal permittees must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination. For activities where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species or critical habitat, or until ESA section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS the district engineer may add species-specific permit conditions to the RGP.

(e) Authorization of an activity by an RGP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed RGP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the application. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed RGP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed RGP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed RGP activity. The district engineer will notify the non-federal applicant whether the ESA section 10(a)(1)(B) permit covers the proposed RGP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS or their world wide Web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and

## 7. Historic Properties.

(a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). The Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must state which historic properties might have the potential to be affected by the proposed RGP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing the application, the district engineer will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the application and these identification efforts, the district engineer shall determine whether the proposed RGP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed RGP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee upon receipt of a complete application whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and

other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

8. Where the certifying authority (state) has not previously certified compliance of the RGP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying agency for the issuance of the RGP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by the RGP. The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

9. All construction debris will be disposed of on land in such a manner that it cannot enter a waterway, wetland, or other aquatic area.

10. Equipment for handling and conveying materials during construction must be operated to prevent unplanned and unapproved dumping or spilling of material into the waterway. All equipment must be cleaned of any oil, grease and debris prior to entering waterway.

11. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

12. Perform all work in the waterway in a manner that minimizes suspended solids and turbidity.

13. Utilize only clean material free from excessive fine material in order to avoid excessive local turbidity, unless the approved and necessary fill material is fine-grained.

14. All erosion control blanket or fabric used in or adjacent to waters of the U.S. must be biodegradable to ensure decomposition. Do not use material that includes a stabilized netting or open mesh, as those products take a long time to degrade and trap small animals, birds, amphibians and fish. This prohibition also applies to mesh materials used for wattles, rolled materials, and bank wraps. Erosion control blanket or fabrics must break down within 24 months. Use of non-degradable fabric can be allowed on a case-by-case basis if it is buried and is unlikely to be exposed.

15. Limit clearing of riparian or wetland vegetation to the absolute minimum necessary. Where temporary riparian or wetland vegetation impacts are unavoidable, it must be mowed or cut off above the ground and the topsoil and root mass must be left intact. The ground must then be restored to its original contours. Utilize seeding and planting as necessary to re-establish desirable vegetative cover, utilizing native species in areas where native species were impacted.

16. Mitigation will be required for unavoidable adverse impacts to jurisdictional wetlands and streams to ensure that the individual and cumulative adverse environmental effects are no more than minimal. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the

maximum extent practicable at the project site (i.e., on site). Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

17. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

18. The Permittee shall ensure that contractors, subcontractors, and other personnel performing permitted work are aware of the terms and conditions of 20-RGP-02.

19. The District Commander may, by following the procedures outlined in Corps regulations (33 C.F.R. § 325.7), modify, suspend or revoke this RGP for an individual activity, a category of activities, or a geographic area if the District Commander determines it to be in the public interest. The general public would be notified of such action by public notice.

20. If the Secretary of the Army or an authorized representative of the Secretary of the Army determines there has been a violation of the terms and conditions of this RGP, he or she may suspend or revoke the authorization for an individual project under this RGP. In addition, failure to comply with the terms and conditions of this RGP may result in removal of the structures, site restoration, and/or imposition of penalties, as provided by law.

#### FURTHER INFORMATION:

1. Congressional Authorities. Authorization to undertake the activities described above are issued pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the CWA (33 U.S.C. § 1344).

2. Limits of This Authorization.

- a. This RGP does not obviate the need to obtain other Federal, State or local authorizations required by law.
- b. This RGP does not grant any property rights or exclusive privileges.
- c. This RGP 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. The Permittee agrees that, if future operations by the Federal Government 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 or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of navigable waters of the U.S., the Permittee will be required, upon due notice from the Corps, 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.

3. Limits of Federal Liability. In issuing this RGP, 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 activities, 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 U.S. in the public interest.
- c. Damages to persons, property, to other permitted or unpermitted activities, or structures caused by the activity authorized by this RGP.
- 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. Reevaluation of Permit Decision. The Corps may re-evaluate its decision on an activity authorized by this RGP at any time that circumstances warrant re-evaluation. Circumstances that may require a re-evaluation include, but are not limited to, the following:

- a. The Permittee's failure to comply with the terms and conditions of the RGP.
- b. The information provided by the Permittee in support of a permit application proves to have been false, incomplete or inaccurate.
- c. Significant new information surfaces that the Corps did not consider in reaching the original public interest decision.

Such a re-evaluation may result in a determination that it is appropriate to use the modification, suspension and revocation procedures contained in 33 C.F.R. § 325.7 or enforcement procedures in 33 C.F.R Part 326. The referenced enforcement procedures provide for the issuance of an administrative order requiring the Permittee to comply with the terms and conditions of the applicable permit authorization and for the initiation of legal action where appropriate. The Permittee will be required to pay for any corrective measures ordered by the Corps, and, if the Permittee fails to comply with such directive, the Corps may, in certain situations (such as those specified in 33 C.F.R § 209.170), accomplish the corrective measures by contract or otherwise and bill the Permittee for the cost.

This RGP becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

\_\_\_\_\_  
Todd N. Tillinger  
Chief, Regulatory Division

for Sonny B. Avichal, P.E.  
Lieutenant Colonel, U.S. Army  
District Engineer

September 17, 2020  
\_\_\_\_\_  
(Date)