



US Army Corps
of Engineers®
New England District

U.S. Army Corps of Engineers
Vermont Project Office
11 Lincoln Street, Room 210
Essex Junction, Vermont 05452

**IF YOU ARE PLANNING TO PLACE
DREDGED OR FILL MATERIAL OR
PERFORM MECHANIZED LANDCLEARING
IN A WATERWAY OR A WETLAND, YOU MAY
NEED A PERMIT FROM THE U.S. ARMY
CORPS OF ENGINEERS.**

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**IF YOU ARE PLANNING TO INSTALL A
STRUCTURE, EXCAVATE, OR PERFORM
OTHER WORK IN A NAVIGABLE WATER OF
THE UNITED STATES, YOU MAY NEED A
PERMIT FROM THE U.S. ARMY CORPS OF
ENGINEERS.**

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**PLEASE CALL MARTY ABAIR, MIKE ADAMS,
OR ANGELA REPELLA AT THE CORPS
VERMONT PROJECT OFFICE FOR
FURTHER INFORMATION
802-872-2893**

**NOTE: THE ABOVE APPLIES EVEN DURING
DECLARED FEDERAL, STATE AND LOCAL
EMERGENCIES**

Please visit the New England District Website at <http://www.nae.usace.army.mil/> for more information, including a list of Navigable Waters of the U.S. located in Vermont.



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
696 VIRGINIA ROAD
CONCORD MA 01742-2751

SEP - 5 2013

11 Lincoln Street, Room 210
Essex Junction, Vermont 05452
September 3, 2013

Regulatory Division
CENAE-R-PEC

Ladies and Gentlemen:

The purpose of this letter is three-fold: to advise you of Corps of Engineers regulations as they pertain to work in waterways and wetlands; to advise you of the Corps permitting process after natural disasters; and to notify you that our office has moved.

In an effort to more effectively serve the public and to educate local governmental bodies, I'd like to first mention that the Corps is available to meet with towns, property owners, contractors, and developers to more fully explain Federal regulations and requirements. Additional information can also be found on the New England District website at <http://www.nae.usace.army.mil/> or by calling (802) 872-2893.

There are a number of municipalities throughout Vermont that may not be aware of the Federal role in regulating navigable waters of the United States and inland waters and wetlands. As a result, many developers, landowners, consultants, engineers, and contractors may have had local regulatory agencies review projects that involve work within Corps of Engineers jurisdiction, but may never have been informed of potential Federal jurisdiction over their proposed activity. Unfortunately, this sometimes results in inadvertent violations of Federal law which may have been prevented if project proponents contacted the Corps early in the planning process. Although we cannot require the local governmental bodies to advise project proponents of the specifics of our regulations, it would be of benefit if you could advise them to contact us to inquire about permit requirements.

A Corps of Engineers permit is required for all work in, under or over navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403). A complete list of navigable waters in Vermont can be found on the New England District Regulatory website noted above.

Permits are also required under Section 404 of the Clean Water Act for those activities involving the discharge of dredged or fill material in all waters of the United States, including not only navigable waters of the United States but also inland rivers, lakes, streams and wetlands. Corps jurisdiction extends landward to the ordinary high water mark or the landward limit of any wetlands. The term "discharge" in this context

may include the redepositing of wetlands soils such as occurs during mechanized landclearing activities, including grubbing, grading and excavation. Please refer to the enclosed Corps of Engineers Jurisdiction Fact Sheet for more details and definitions.

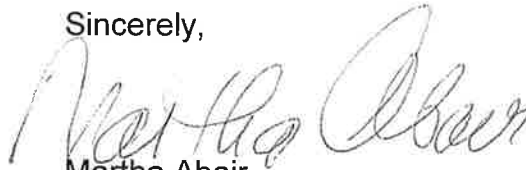
The Corps' regulatory requirements do not change in the wake of a natural disaster or the declaration of an emergency by any level of government.

Emergency provisions are outlined in the Vermont General Permit, and provide guidance to individuals or communities proposing work in waters of the United States. Many of the activities undertaken by communities and individuals after a natural disaster, such as bridge and culvert repair, are exempt from regulation under Section 404, provided there is no change in the character, scope or size of the work. A fact sheet describing permit requirements after natural disasters is enclosed.

Our new address is 11 Lincoln Street, Room 210, Essex Junction, Vermont 05452. Our phone numbers remain the same.

A small poster summarizing permit requirements is also attached. Please display this poster and the Jurisdiction Fact Sheet on a public bulletin board for the benefit of the community. If you have any questions or would like to schedule a meeting, please contact Mike Adams, Angela Repella, or myself at (802) 872-2893.

Sincerely,

A handwritten signature in cursive script, appearing to read "Martha Abair".

Martha Abair
Senior Project Manager
Regulatory Division

Attachments



**US Army Corps
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JURISDICTION FACT SHEET

Under **Section 404 of the Clean Water Act (CWA)** (33 U.S.C. 1344) a Department of the Army (DA) permit from the U.S. Army Corps of Engineers is required for activities which involve the **discharge of dredged or fill material** into waters of the United States (U.S.), including not only navigable waters of the U.S. but also inland rivers, lakes, streams, and **wetlands**. In inland waters, Corps jurisdiction under the CWA extends landward to the **ordinary high water mark** or the **landward limit** of any wetlands, whichever is more extensive.

The term **“wetlands,”** as used above, is defined by Federal regulations as “... those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions... (33 CFR 328.3(b), November 13, 1986 Federal Register). Wetlands generally include swamps, marshes, and bogs. Forested and meadow areas that lack standing water can also be wetlands. The Corps uses a three-parameter method to define the wetland/upland boundary. Please note that such boundaries might not be the same as wetland boundaries determined by state or local regulations, since those agencies sometimes use different criteria to delineate wetlands.

The term **“discharge”** is defined as the addition of dredged or fill material into waters of the U.S. This may include the redeposition of wetland soils such as occurs during mechanized land clearing activities, including grubbing, grading, and excavation.

The term **“fill material”** is defined by Federal regulation as “...material placed in waters of the United States where the material has the effect of: (i) Replacing any portion of a water of the U.S. with dry land; or (ii) Changing the bottom elevation of any portion of a water of the U.S. Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the U.S. The term fill material does not include trash or garbage.” (33 CFR 323.2 (e), May 9, 2002 Federal Register). The Environmental Protection Agency is responsible for regulating discharges of wastes and other pollutants.

Under **Section 10 of the Rivers and Harbors Act of 1899** (USC 403), a Corps permit is required for all work, including structures, seaward of the mean high water line in navigable waters of the U.S. In New England, for purposes of Section 10, navigable waters of the U.S. are those subject to the ebb and flow of the tide, as well as a few of the major rivers used to transport interstate or foreign commerce.

You must obtain authorization for any work within Corps jurisdiction before you can legally undertake such work. Corps permits are a limited form of authorization containing a stated set of terms and conditions which must be complied with. Before starting any work in waters of the U.S., people doing such work or having such work done for them should: (1) be certain that a DA permit has been obtained or is not needed and (2) familiarize themselves and their contractor with the terms and conditions of the permit. Performing any work which requires, but is not authorized by, a Corps permit, or failing to comply with the terms and conditions of a Corps permit, may subject the developer, the landowner or other responsible party, including the contractor, to criminal and/or civil liability.

General Permits (GPs) have been issued for each New England state. The GPs are located at <http://www.nae.usace.army.mil/> >> Regulatory/Permitting>>State General Permits. Projects in Corps jurisdiction either fit Category 1 or Category 2 of the GP, or require an Individual Permit (IP). An application to the Corps isn't required for activities meeting the Category 1 definition (see appendix at the back of the GP) and all the terms and conditions of the GP. See the GP for more details. Those performing work under the assumption that the work is authorized under Category 1 are responsible for any errors in that assumption. They should carefully check the GP or consult our office for verification. The same situation applies if someone incorrectly determines that a project is outside Corps jurisdiction. Activities described under Category 2 and the IP category require project-specific authorization from the Corps in writing. The difference between Category 2 and the IP is the information required and the extent of public-interest review.

Violations of the CWA are punishable by civil and/or criminal fines and possible imprisonment. In addition, an order may be issued for (1) complete removal of the unauthorized work or fill and (2) restoration of the area to pre-construction conditions.



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FACT SHEET FEDERAL PERMITTING AFTER NATURAL DISASTERS

When natural storm events cause damage to property, it is recognized that land owners will seek to stabilize and/or repair the damage as soon as possible. However, when land stabilization/repair involves work in or affecting navigable waters, or the discharge of dredged or fill material (including the use of earth moving equipment) into any water or wetland, **federal environmental permit requirements are not waived**. In some cases, permits are not required, and in others, expedited permitting is possible. Examples are provided below.

Failure to obtain necessary permits results in a violation of federal environmental law(s), and could lead to enforcement actions by the Corps of Engineers (Corps) or the Environmental Protection Agency. It is always advisable to check with the Corps office nearest you to discuss permit requirements.

Exempted Activities Maintenance activities are exempted from the need for a permit when the following applies: the maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures (such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures) does not involve modification that changes the character, scope or size of the original fill design. Emergency reconstruction must occur within a reasonable time after the damage occurs in order to qualify. There are circumstances, covered in the recapture provisions, which may negate an exemption and thereby necessitate a permit. Corps staff can review your project with you and quickly advise you whether or not the maintenance exemption applies.

General Permits The New England District has a General Permit in each state. The Vermont General Permit has two categories: Category 1 and Category 2 Permits. A Self-Verification Notification Form is required for projects meeting the Category 1 criteria and which are in full compliance with the general conditions of the permit. An application to and written verification from the Corps is required for Category 2 permits. Projects exceeding the limits of these categories require an Individual Permit. A copy of the Vermont General Permit and application forms can be found on the New England District Website at <http://www.nae.usace.army.mil/>.

Emergency Permits When a project neither meets the exemption provisions, nor qualifies for the Vermont General Permit, and an emergency situation exists (defined as a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate unforeseen, and significant economic hardship) the Corps District office can work with its Division office to issue an emergency permit. This process must be initiated at the nearest Corps office.

Individual Permit When an exemption or general permit do not apply, and the situation is not considered an emergency, the Corps will evaluate the project under its normal individual permit process. These processing times vary depending on the nature and complexity of the project, but normally take 4-6 months.