

Amended SPGP-01 Summary Sheet

RCI Development Projects in Certain Nontidal Waters & Wetlands

Category A	Category B	Category C
Losses of up to 1/10 of nontidal wetlands or certain waters (lakes, ponds, etc.) or no more than 300 linear feet of stream bed. <u>No</u> Corps confirmed delineation required prior to submission of a JPA. Corps receives copy of JPA & reviews it to insure -impacts do not exceed limits -no T/E species are affected -no eligible/listed historic properties are affected. If clean, Corps PM sends email to DEQ PM & close file. When DEQ issues their permit, they will include a statement that the work satisfies the Corps' SPGP.	Losses of up to 1/2 of nontidal wetlands or certain waters (lakes, ponds, etc.) or no more than 300 linear feet of stream bed. Corps confirmed delineation is required prior to submission of a JPA. Corps receives copy of JPA & reviews it to insure -impacts do not exceed limits -no T/E species are affected -no eligible/listed historic properties are affected. If clean, Corps PM sends email to DEQ PM & close file. When DEQ issues their permit, they will include a statement that the work satisfies the Corps' SPGP.	Losses of up to 1 acre of nontidal wetlands or certain waters (leakes, ponds, etc.) or no more than 2,000 linear feet of stream bed. Corps confirmed delineation is required prior to submission of a JPA. Corps receives copy of JPA, reviews it & coordinates it with EPA & FWS (15 day comment period) & VDHR (30 day comment period). Corps PM conducts avoidance & minimization review & determines required mitigation. Both Corps & DEQ take permit actions within 45 days of receipt of a complete application.

Other Changes

- amends language to enhance our ability to assess cumulative impacts;
- changes notification requirements for projects affecting T/E species in SW VA; and
- instructs applicants to submit JPAs directly to DEQ & the Corps.

CENAO-TS-G



U.S. Army Corps
Of Engineers
Norfolk District

Fort Norfolk, 803 Front Street
Norfolk, Virginia 23510-1096

SPGP-01

Effective Date: September 25, 2003

Expiration Date: November 1, 2007

Authorized Activities: The discharge of dredged and/or fill material in nontidal waters of the United States associated with residential, commercial and institutional developments and linear transportation projects within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District, Corps of Engineers (Corps) that have minimal individual and cumulative impacts and meet the terms and conditions outlined herein. The use of this State Program General Permit (SPGP) shall be restricted to those projects that have first avoided and minimized impacts to waters of the United States, including wetlands, to the maximum extent practicable. The Clean Water Act Section 404(b)(1) guidelines state that no discharge of dredged or fill material shall be permitted if there is a practicable on-site alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

The people of the Commonwealth of Virginia are 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 perform the aforementioned work in nontidal waters and wetlands of the Commonwealth as described herein. The Corps' authority and guidance to develop general permits is contained in 33 U.S.C 1344(e) and 33 CFR 325.2(e)(2), 33 CFR 325.3(b), and Corps Regulatory Guidance Letter 83-7.

Prior to the submission of a permit application for any Residential, Commercial, or Institutional Development Activity, Category B or C project covered by this SPGP, a proponent must first obtain a Corps confirmed delineation of all State and federal waters and wetlands on the property either at the time of the field review or at a later date, but prior to the submission of a permit application. Exceptions: 1) Residential, Commercial, or Institutional Development Activity, Category A and 2) Linear Transportation projects do not require a confirmed delineation.

To obtain, a Corps confirmed delineation, the following information must be submitted to the Corps:

1. the names and addresses of the project proponent and landowner;
2. an 8 1/2" by 11" copy of an accurate topographic map or the appropriate portion of a U.S. Quadrangle sheet of the property boundary and site survey/property plat;
3. A wetland delineation map (prepared in accordance with the Corps 1987 delineation and subsequent applicable guidance) including handwritten or typed wetland delineation data sheets for each "vegetative community" and the location of the data points and

- transect lines on a map along with a sufficient number of data points to document the proposed nontidal waters and wetland boundary;
4. data points up and down slope of the location of the wetland or waters boundary;
 5. the proposed nontidal wetland and waters boundaries must be flagged and numbered in the field; and
 6. a distinction between the wetlands and waters (streams, etc.).

Each request for a confirmed delineation will be assigned to a Corps project manager. At the time of the delineation site review, the Corps project manager will provide advice to the project proponent on measures to avoid, minimize, and compensate for unavoidable impacts to State and federal jurisdictional waters and wetlands. The project manager's advice can be more specific if the project proponent shares available information on the project's purpose, any preliminary plans, and on-site and off-site alternatives considered. Prior to the field review of the delineation, the Corps project manager will check the Virginia Department of Conservation and Recreation's Database for any federally designated or proposed critical habitat or federally listed or proposed threatened or endangered species and the Virginia Department of Historic Resources' Data Sharing System for any known historic properties located on the project site. This avoidance, minimization, and compensation advice and the results of the database searches will be included in the Corps' delineation confirmation letter.

1. RESIDENTIAL, COMMERCIAL AND INSTITUTIONAL DEVELOPMENT ACTIVITIES

Category A: Discharges of dredged and/or fill material associated with residential, commercial, and institutional projects causing the loss (e.g., filling, excavating, flooding, drainage, or placed in pipes or other water conveyances) of up to 1/10 of an acre of nontidal wetlands or certain waters (e.g., lakes, ponds and other non linear systems) or the filling, excavation, or placement in pipes or other water conveyances of no more than 300 linear feet of stream bed unless otherwise excluded by the SPGP. (Linear transportation activities not directly associated with residential, commercial, and institutional developments cannot be authorized under the Residential, Commercial and Institutional Development Activity. However, they may qualify under the Linear Transportation Project Activity.)

For Category A impacts, no additional authorization will be required from the Corps provided:

1. The applicant submits one (1) copy of the pertinent portions of the Joint Permit Application, three (3) large-scale drawings with a scale no smaller than 1" = 200', and one (1) 8 1/2" by 11" drawings (with match lines if needed) to the appropriate Corps office. The applicant also submits one (1) copy of the pertinent portions of the Joint Permit Application, one (1) copy of the large-scale drawings and one (1) copy of the 8 1/2" by 11" drawings to the appropriate DEQ office and the Virginia Marine Resources Commission. These drawings will show the Corps' confirmed limits of waters and wetlands and the extent of proposed impacts to waters and wetlands. The drawings will also show the location of all known historic properties and all federally designated or proposed critical habitat or listed or proposed threatened or endangered species. The Corps will determine if they need to coordinate the project with either the Fish and

Wildlife Service or the Virginia Department of Historic Resources due to effects of the project on federally listed species or historic properties. The extra copies of the drawings will be used by the Corps if they need to coordinate the project with either the Fish and Wildlife Service or the Virginia Department of Historic Resources due to effects of the project on federally listed species or historic properties.

2. DEQ determines if the proposed work satisfies the requirements of their regulations (including incorporation of all appropriate and practicable avoidance and minimization) and the conditions of one of their general permits or an individual permit and issues the appropriate DEQ authorization; and

3. the work satisfies all of the general and special conditions listed below.

The DEQ's authorization will include a statement that the work satisfies the conditions of the Corps' SPGP-01.

Category B: Discharges of dredged and/or fill material associated with residential, commercial, and institutional projects causing the loss (e.g., filling, excavating, flooding, drainage, or placed in pipes or other water conveyances) of greater than 1/10 of an acre but no more than 1/2 acre of nontidal wetlands or certain waters (e.g., lakes, ponds and other non linear systems) or the filling, excavation, or placement in pipes or other water conveyances of no more than 300 linear feet of stream bed unless otherwise excluded by the SPGP. (Linear transportation activities not directly associated with residential, commercial, and institutional developments cannot be authorized under the Residential, Commercial and Institutional Development Activity. However, they may qualify under the Linear Transportation Project Activity.)

For Category B impacts, no additional authorization will be required from the Corps provided

1. The applicant submits one (1) copy of the pertinent portions of the Joint Permit Application, three (3) large-scale drawings with a scale no smaller than 1"=200' and one (1) copy of the 8 1/2" by 11" drawings (with match lines, if needed) to the appropriate Corps office. The applicant submits one (1) copy of the application, one (1) copy of the large-scale drawings and one (1) copy of the 8 1/2" by 11" drawings to the appropriate DEQ office and the Virginia Marine Resources Commission. These drawings will show the Corps' confirmed limits of waters and wetlands and the extent of proposed impacts to waters and wetlands. The drawings will also show the location of all known historic properties and all federally designated or proposed critical habitat or listed or proposed threatened or endangered species. The extra copies of the drawings will be used by the Corps if they need to coordinate the project with either the Fish and Wildlife Service or the Virginia Department of Historic Resources due to effects of the project on federally listed species or historic properties.

2. DEQ determines the proposed work satisfies the requirements of their regulations (including incorporation of all appropriate and practicable avoidance and minimization and compensatory mitigation) and the conditions of one of their general permits or an individual permit and issues the appropriate DEQ authorization; and

3. the work satisfies all of the general and special conditions listed below.

The DEQ's authorization will include a statement that the work satisfies the conditions of the Corps' SPGP-01.

Category C: Discharges of dredged and/or fill material associated with residential, commercial, and institutional projects causing the loss (e.g., filling, excavating, flooding, drainage, or placed in pipes or other water conveyances) of up to 1 acre of nontidal wetlands or certain waters (e.g., lakes, ponds and other non linear systems) or the filling, excavation, or placement in pipes or other water conveyances of no more than 2000 linear feet of stream bed unless otherwise excluded by the SPGP. (Linear transportation activities not directly associated with residential, commercial, and institutional developments cannot be authorized Residential, Commercial and Institutional Development Activities under this Activity. However, they may qualify under Linear Transportation Projects Activity.)

The applicant must submit three (3) copies of the pertinent portions of the Joint Permit Application, four (4) large-scale drawings with a scale no smaller than 1"=200', and one (1) copy of the 8 1/2" by 11" drawings (with match lines, if needed) to the appropriate Corps office. The applicant submits one (1) copy of the pertinent portions of the Joint Permit Application, one (1) copy of the large-scale drawings, and one (1) copy of the 8 1/2" by 11" drawings (with match lines, if needed) to the appropriate DEQ office and the Virginia Marine Resources Commission.

These drawings will show the Corps' confirmed limits of waters and wetlands and the extent of proposed impacts to waters and wetlands. The drawings will also show the location of all known historic properties and all federally designated or proposed critical habitat or listed or proposed threatened or endangered species. The extra copies of the application and drawings will be used by the Corps to coordinate the project with the Fish and Wildlife Service, the Environmental Protection Agency, and the Virginia Department of Historic Resources.

The Corps will forward a copy of the Joint Permit Application and drawings to the U.S. Fish and Wildlife Service and the Environmental Protection Agency and provide them with 15 day to submit any comments and a copy of the drawings and associated materials to the Virginia Department of Historic Resources and provide them with 30 days to submit any comments as part of the 45 day review period. The Corps will conclude its review and issue a written SPGP verification within 45 days of the receipt of a complete Joint Permit Application provided:

1. it determines the project satisfies the general and special conditions of the SPGP;
2. the applicant has incorporated into the project plans all appropriate and practicable avoidance and minimization measures and compensatory mitigation for all unavoidable impacts to the aquatic environment so that the individual and cumulative impacts are minimal;
3. the aforementioned agencies have no objection within the allotted comment period, and
4. the applicant complies with all the conditions of the DEQ permit as required by the Code of Virginia and their implementing regulations.

If the Environmental Protection Agency or the United States Fish and Wildlife Service respond within the allotted time frame and submit project-specific objections to

authorizing the proposed work under the SPGP due to its impact on the aquatic environment, or the Corps determines the aforementioned four requirements have not been met, the Corps will notify the applicant and the processing time clock will stop to provide the applicant with the opportunity to address the objections if they so choose. If the applicant modifies the project to the satisfaction of the objecting federal resource agency(ies) and the Corps and the project meets the remaining three requirements, the Corps will authorize the work under this SPGP. In those cases, no work in jurisdictional waters or wetlands may begin until the Corps issues an SPGP verification. If the applicant chooses not to address the objections or cannot address the objections to the satisfaction of the objecting federal agency(ies) or the Corps, an individual permit will be required by the Corps and will include the issuance of a public notice and a full public interest review.

Discharges of dredged or fill material associated with residential, commercial, and institutional activities causing the loss (e.g., filling, excavating, flooding and/or drainage) of more than 1 acres of nontidal jurisdictional wetlands or waters or the filling, excavating, or placement in pipes or other water conveyances of more than 2000 linear feet of stream bed will require an individual permit, including issuance of a public notice and full public interest review.

Proponents of residential, commercial, or institutional subdivisions are subject to the Corps' guidance dated March 15, 1993 and June 2, 1999. To minimize the individual and cumulative impacts on the aquatic environment, applicants proposing residential subdivisions must provide evidence (such a plat or similar document) with the date of the most recent subdivision of the subject property.

Discharges authorized associated with Residential, Commercial and Institutional Development Activities would include those outlined in DEQ's General Permits and are associated with the following: construction or expansion of residential, commercial, or institutional building foundations and building pads, and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreational facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. For residential, commercial, and institutional developments, the aggregate total loss of nontidal waters of the United States cannot exceed 1 acre of nontidal wetlands or more than 2000 linear feet of stream bed. This includes the loss of waters or wetlands associated with development of individual lots.

WORK AND RESOURCE AREAS NOT INCLUDED IN THE RESIDENTIAL, COMMERCIAL AND INSTITUTIONAL ACTIVITIES:

1. tidal waters and wetlands;
2. tidal shoreline stabilization projects;

3. tidal beach nourishment;
4. conversion of waters and/or wetlands for agricultural production and agriculture-related activities (crop fields or pasture); farm buildings, grain storage facilities, grassed waterways, low water crossings, impoundments for irrigation, livestock watering, and fire prevention purposes, animal feeding operations or waste storage facilities, and farm access roads. (These activities will potentially be addressed through the development of a separate Corps general permit);
5. projects involving channelization;
6. wetland areas composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic White Cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*). Percentages may be based upon stem counts, basal area or % aerial cover;
7. wetland areas underlain by histosols. Histosols are organic soils that are often called mucks, peats, or mucky peats, etc. The list of histosols includes but is not limited to the following soils series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock.;
8. any water withdrawal projects;
9. maintenance of drainage ditches. However, such work may be authorized under Norfolk District Regional Permit Number 15 or 40, or an individual permit; or a 404(f) exemption; and
10. any stormwater management facilities located in perennial streams or in waters designated as oxygen impaired or temperature impaired waters as listed in the Commonwealth of Virginia's publication dated July 27, 1999, or the most recent publication.

SPECIAL CONDITIONS FOR AUTHORIZED RESIDENTIAL, COMMERCIAL AND INSTITUTIONAL DEVELOPMENT ACTIVITIES :

1. Discharges into Native Trout Waters and anadromous fish spawning areas will be conditioned by DEQ to prohibit stream work within the time frames recommended by the Virginia Department of Game and Inland Fisheries.
2. If the Corps determines that an authorized activity may affect federally designated critical or proposed critical habitat or a federally listed or proposed threatened or endangered species, it will initiate consultation with the United States Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act. Note as part of their review process, DEQ consults with both the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries' databases. If a federally listed species is located in the Corps' permit area of any Category A activity, DEQ will advise the Corps project manager by email who in turn will advise the applicant that work cannot begin work in jurisdictional waters or wetlands until the Corps provides written notification that such work may proceed and includes any project specific special conditions concerning federally listed species. Activities proposed in the following waterways will require the Corps to consult with the Fish and Wildlife Service:

Powell River: From the Virginia State Line to the Route 58 Bridge in Big Stone Gap and one mile upstream of the mouth of any tributary adjacent to this portion of the River.

Clinch River: From the Virginia/Tennessee State Line upstream to Route 632 at Pisgah in Tazewell County, Virginia and one mile upstream of the mouth of any

tributary adjacent to this portion of the River, the Little River to its confluence with Maiden Spring Creek and one mile upstream of the mouth of any tributary adjacent to this portion of Little River.

Indian Creek: From its confluence with the Clinch River upstream to the fourth Norfolk and Western Railroad bridge at Van Dyke in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek.

Copper Creek: From its confluence with the Clinch River to the Route 58 Bridge at Dickensonville in Russell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek.

North Fork Holston River: From the Virginia State Line to the Smyth County/Bland County line and one mile upstream and one mile upstream of the mouth of any tributary adjacent to this portion of the River.

Middle Fork Holston River: From the Virginia State Line to the confluence of Walker Creek in Smyth County near Marion, Virginia.

South Fork Holston River: From the confluence of the Middle Fork Holston River upstream to the confluence of Beech Creek in Washington County.

3. If the Corps determines that an authorized activity may affect a listed property or property eligible for the National Register of Historic Places, it will initiate consultation with the Virginia Department of Historic Resources pursuant to Section 106 of the National Historic Preservation Act. The applicant will be advised by the Corps when this occurs. In these cases, the applicant may not begin work in jurisdictional waters or wetlands until the Corps provides written notification that such work may proceed and includes any project specific special conditions concerning historic resources.

4. For the purposes of this SPGP, the acreage loss of waters of the United States includes the filled area and any other waters of the United States that are permanently adversely affected by flooding, excavation, drainage, or piping as a result of the regulated activity. Permanent adverse effects include mechanized land clearing, permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is the threshold measurement of the impact to existing waters for determining whether a project may qualify for this SPGP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss includes the linear feet of stream bed that is filled or excavated or placed in pipes or other water conveyances.

5. The term stream bed is defined as the substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered to be part of the stream bed. The fill is limited to the minimum necessary.

6. For Category B and C activities, compensatory mitigation ratios for impacts and waters will generally be as follows: 2:1 for forested wetlands, 1.5:1 for scrub-shrub wetlands, 1:1 for emergent wetlands, and 1:1 for stream impacts. In addition this can include, but are not limited to, wetland preservation, associated upland buffers, and in-lieu fee contributions to the Virginia Wetland Restoration Trust Fund to mitigate for unavoidable impacts to the aquatic environment.

7. Any crossing must be culverted, bridged or otherwise designed to prevent the restriction of, and to withstand expected high flows, and to prevent the restriction of low flows and to allow the movement of aquatic organisms. All pipes or culverts (with bottoms) shall be depressed at least 6 inches below the invert of the natural stream at both the inlet and outlet of the structure.

Multiple pipes or culverts (with bottoms) shall provide at least one pipe or culvert to convey low flows by restricting the entrance invert of the non-low flow pipes or culverts to an elevation at least 6 inches higher than the stream bed elevation at the inlet of the low flow pipes(s) or culvert(s). This does not apply to pipe or culvert maintenance or extensions.

8. If the Corps determines that the adverse effects of the proposed work are more than minimal, the District Engineer or his designated representative may exert discretionary authority to require the application to be processed as an individual permit, including issuance of a public notice and a full public interest review.

9. The use of more than one Corps Nationwide Permit or this SPGP for a single and complete project is prohibited, except when the acreage loss of waters of the United States, including wetlands does not exceed the acreage limit or stream length of the permit with the highest specified acreage limit or stream length.

10. The crossing is a single and complete project for crossing of waters of the United States. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use discretionary authority to require an individual permit.

2. LINEAR TRANSPORTATION PROJECTS

Category A: Discharges of dredged and/or fill material in nontidal waters and wetlands related to the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, and airport runways, and taxiways) proposed by the VDOT, localities, public private partnerships pursuant to the Public-Private Transportation Act of 1995 or individuals. These discharges cannot cause the loss (e.g., filling, excavating, flooding and/or drainage, or placed in pipes or other water conveyances) of more than 1/10 acre of waters and wetlands per crossing. The authorized work would include any relocation of utility lines within the right-of-way and easements within the termini of the roadway.

For permanent unavoidable losses to less than or equal to 1/10 acre of nontidal waters and wetlands, no additional authorization from the Corps will be required (except for paragraph e below) for VDOT, localities, public-private partnerships, or individuals provided they

- a. submit the pertinent portions of the Joint Permit Application and drawings to the Virginia Marine Resources Commission who will send a copy to the DEQ for all temporary and permanent impacts to waters and wetlands;
- b. comply with all of the conditions of the DEQ permit authorization;
- c. restore all temporarily disturbed nontidal wetlands and waters to their pre-construction contours, mechanically loosen to a depth of 12 inches, and seed and/or sprig with appropriate native vegetation;
- d. mitigate for all unavoidable impacts to nontidal wetlands through either the purchase of credits from an approved wetland mitigation bank or a contribution to the Virginia Wetland Restoration Trust Fund based on a cost estimate from the Corps. The credits/contribution will be based on the following mitigation ratios: 2:1 for forested wetland impacts, 1.5:1 for shrub-scrub wetland impacts, and 1:1 for emergent wetland impacts. Proof of purchase of credits or of a contribution to the Trust Fund must be submitted prior to construction; and
- e. mitigate for all stream impacts (e.g., pipes, culverts, relocated streams constructed without natural stream channel design, riprap, and other fills) of more than 300 linear feet of stream bed for any single crossing and the Corps reviews and approves the conceptual mitigation plan. No work in nontidal waters or wetlands can commence until the final mitigation plan is submitted to and approved by the Corps.

Category B: Discharges of dredged and/or fill material in nontidal waters and wetlands related to the construction, expansion, modification, or improvement of linear transportation **crossings** (e.g., highways, railways, trails, and airport runways, and taxiways) proposed by VDOT, localities, public-private partnerships pursuant to Public-Private Transportation Act of 1995 or individuals. These discharges may cause the loss (e.g., filling, excavating, flooding and/or drainage, or placed in pipes or other water conveyances) of greater than 1/10 but no more than 1/3 acre of waters and wetlands per crossing. The authorized work would include any relocation of utility lines within the right-of-way and easements within the termini of the roadway provided Special Condition 9 is met.

For permanent unavoidable losses to greater than 1/10 and no more than 1/3 acre of nontidal waters and wetlands, no additional authorization from the Norfolk District will be required (except for paragraph d below) for VDOT, localities, public-private partnerships, and single family residents provided they

- a. submit the pertinent portions of the Joint Permit Application and drawings to the Virginia Marine Resources Commission who will send a copy to the DEQ for all temporary and permanent impacts to waters and wetlands. Restore all temporarily disturbed nontidal wetlands and waters to their pre-construction contours, mechanically loosen to a depth of 12 inches, and seed and/or spring with appropriate native vegetation;
- b. satisfy the conditions of any permit issued by the DEQ;

c. mitigate for all unavoidable impacts to nontidal wetlands through either the purchase of credits from an approved wetland mitigation bank, creation or restoration, or a contribution to the Virginia Wetland Restoration Trust Fund based on a cost estimate from the Corps. The credits/contribution will be based on the following mitigation ratios: 2:1 for forested wetland impacts, 1.5:1 for shrub-scrub wetland impacts, and 1:1 for emergent wetland impacts. Proof of purchase of credits or of a contribution to the Trust Fund must be submitted prior to construction; and

d. mitigate for all stream impacts (e.g., pipes, culverts, relocated streams constructed without natural stream channel design, riprap, and other fills) to more than 300 linear feet of stream bed and the Corps reviews and approves the conceptual mitigation plan. No work in nontidal waters or wetlands can commence until the final mitigation plan is submitted to and approved by the Corps.

Projects causing the loss of more than 1/3 acre of nontidal waters and wetlands or that the Corps determines will have more than minimal individual and cumulative impacts will require an individual Department of the Army permit and submission of a joint permit application, and it will be processed as an individual permit. This will include the issuance of a public notice and a full public interest review. In the case of VDOT, such projects may qualify for LOP-1.

WORK AND RESOURCE AREAS NOT INCLUDED IN LINEAR TRANSPORTATION PROJECTS:

1. non-linear features commonly associated with transportation projects such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangers;
2. tidal waters and wetlands;
3. wetland areas composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic White Cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*). Percentages may be based upon stem counts, basal area or % aerial cover;
4. maintenance of drainage ditches. However, such work may be authorized under Corps Regional Permit Number 15 or 40, Nationwide Permit Number 43, or an individual permit; or a 404(f) exemption;
5. any stormwater management facilities located in perennial streams or in waters designated as oxygen impaired or temperature impaired waters as listed in the Commonwealth of Virginia's publication dated July 27, 1999, or the most recent publication; and
6. projects involving channelization.

SPECIAL CONDITIONS FOR AUTHORIZED LINEAR TRANSPORTATION PROJECTS:

1. Discharges into Native Trout Waters and anadromous fish spawning areas will be conditioned by DEQ to prohibit stream work within the time frames recommended by the Virginia

Department of Game and Inland Fisheries. (The Corps has a Memorandum of Agreement with the Virginia Department of Game and Inland Fisheries and the Virginia Department of Transportation to address VDOT projects.)

2. If the Corps determines that an authorized activity may affect federally designated critical or proposed critical habitat or a federally listed or proposed threatened or endangered species, it will initiate consultation with the United States Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act. As part of their review process, DEQ consults with both the Virginia Department of Conservation and Recreation and the Virginia Department of Game and Inland Fisheries' databases. If a federally listed species is located in the Corps' permit area of any Category A activity, DEQ will advise the Corps project manager by email who in turn will advise the applicant that work cannot begin in jurisdictional waters or wetlands until the Corps provides written notification that such work may proceed and includes any project specific special conditions concerning federally listed species. (The Virginia Department of Transportation can continue to use their existing coordination procedures concerning endangered species.) Activities proposed in the following waterways will require the Corps to consult with the Fish and Wildlife Service:

Powell River: From the Virginia State Line to the Route 58 Bridge in Big Stone Gap and one mile upstream of the mouth of any tributary adjacent to this portion of the River.

Clinch River: From the Virginia/Tennessee State Line upstream to Route 632 at Pisgah in Tazewell County, Virginia and one mile upstream of the mouth of any tributary adjacent to this portion of the River, the Little River to its confluence with Maiden Spring Creek and one mile upstream of the mouth of any tributary adjacent to this portion of Little River.

Indian Creek: From its confluence with the Clinch River upstream to the fourth Norfolk and Western Railroad bridge at Van Dyke in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek.

Copper Creek: From its confluence with the Clinch River to the Route 58 Bridge at Dickensonville in Russell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek.

North Fork Holston River: From the Virginia State Line to the Smyth County/Bland County line and one mile upstream and one mile upstream of the mouth of any tributary adjacent to this portion of the River.

Middle Fork Holston River: From the Virginia State Line to the confluence of Walker Creek in Smyth County near Marion, Virginia.

South Fork Holston River: From the confluence of the Middle Fork Holston River upstream to the confluence of Beech Creek in Washington County.

3. If the Corps determines that an authorized activity may affect a listed property or property eligible for the National Register of Historic Places, it will initiate consultation with the Virginia Department of Historic Resources pursuant to Section 106 of the National Historic Preservation Act. The applicant will be advised by the Corps when this occurs. In these cases, the applicant may not begin work in jurisdictional waters or wetlands until the Corps or DEQ provides written notification that such work may proceed and includes any project specific special conditions concerning historic resources. (The Virginia Department of Transportation can continue to use their existing coordination procedures concerning historic properties.)

4. Any stream crossing must be culverted, bridged or otherwise designed to prevent the restriction of and withstand expected high flows, and to prevent the restriction of low flows and to allow for the movement of aquatic organisms. Pipes should be adequately sized to allow for sufficient hydraulic opening with the countersinking and invert restrictions taken into account. This requirement does not apply to pipe/culvert extensions or maintenance that does not involve replacement of a pipe/culvert (such as repairing cracks, adding material to prevent/correct scour, etc.). This requirement does not apply to any pipe/culvert placed above ordinary high water, such as those placed to allow for floodplain flows. All single pipes or culverts (with bottoms) shall be depressed at least 6 inches below the natural stream bed at both the inlet and outlet of the structure. Multiple pipes or culverts (with bottoms) shall provide more than one pipe/culvert to convey low flows. When installing multiple pipes, providing for low flow shall be done in one of two ways, depending on whether one pipe or more than one pipe will be countersunk: (a) if only one pipe of a set is countersunk 6 inches, then a restriction (baffle, board, concrete lip, etc.) of 6 inches shall be placed in all of the non-countersunk pipes; or (b) if all pipes will be countersunk 6 inches (as in the case of a triple box culvert, for example), then a restriction (baffle, board, concrete lip, etc.) of 12 inches shall be placed in all but the low-flow pipe(s).

5. Any project, including all attendant features, both temporary and permanent, must be part of a single and complete project in a water of the United States. For linear projects, the phrase will apply to each crossing of a separate water of the United States (i.e., a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations. Each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly-shaped wetland or lake, etc., are not separate waterbodies.

6. The term stream bed is defined as the substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered to be part of the stream bed. The fill is limited to the minimum necessary.

7. This SPGP may not be combined with any Corps Nationwide Permit or Norfolk District Regional Permit or SPGP for the purpose of increasing the footprint of the road crossing. Some road fills may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

8. For the purposes of this SPGP, the acreage loss of waters of the United States includes the filled area and any other waters of the United States that are permanently adversely affected by flooding, excavation, drainage, or piping as a result of the regulated activity. Permanent adverse effects include mechanized land clearing, permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is the threshold measurement of the impact to existing waters for determining whether a project may qualify for an SPGP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of perennial or intermittent stream that is filled or excavated. A stream bed is defined as the substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

9. If the Corps determines that the adverse effects of the proposed work are more than minimal, the District Engineer or his designated representative may exert discretionary authority to require the application to be processed as an individual permit, including issuance of a public notice and a full public interest review.

10. The use of more than one Corps Nationwide Permit or this SPGP for a single and complete project is prohibited, except when the acreage loss of waters of the United States, including wetlands does not exceed the acreage limit or stream length of the permit with the highest specified acreage limit or stream length.

11. The crossing is a single and complete project for crossing of waters of the United States. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use discretionary authority to require an individual permit.

GENERAL CONDITIONS FOR THE STATE PROGRAM GENERAL PERMIT:

1. Certificate of Compliance: Everyone (except for Linear Transportation Projects, Category A) who receives a verification under this State Program General Permit will submit a signed certification of compliance (Enclosure) following the completion of the work and any required mitigation. The statement will include the following:

- a. The authorized work has been performed in accordance with the Corps' authorization;
- b. A statement that any required mitigation has been completed in accordance with the permit conditions; and
- c. The signature of the permittee, certifying the completion of the work and mitigation.

2. A copy of this SPGP and any verification letter must be provided to the person or contractor performing the work and made available at the project site to any regulatory representative.

3. Navigation: No activity may cause more than a minimal adverse effect on navigation.

4. Proper Maintenance: Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

5. **Soil Erosion and Sediment Controls:** Appropriate 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.
6. **Aquatic Life Movements:** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
7. **Equipment:** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
8. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
9. **Water Quality:** Permittees are expected to fully comply with Virginia Regulation 9 VAC 25-260-00, Water Quality Standards and all other appropriate laws and regulations of the Commonwealth of Virginia pertaining to water quality.
10. **Endangered Species:** No activity is authorized under this SPGP which may affect a threatened or endangered species or a species proposed for such designation, as identified under the federal Endangered Species Act (ESA) or which is likely to destroy or adversely modify designated critical habitat of such species, or which would result in the "take" of any threatened or endangered species of fish or wildlife, or which would result in any other violation of Section 9 of the ESA protecting threatened or endangered species of plants. Applicant should notify the Norfolk District if any listed species or critical habitat is in the vicinity of the project and shall not begin work until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. General information on threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world web pages at: <http://www.fws.gov/> and http://kingfish.ssp.nmfs.gov/tmcintyr/prot_res.html#ES and recovery
11. **Historic Properties:** No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized until the Norfolk District has complied with the provisions of 33 CFR 325, Appendix C. The prospective permittee must notify the Norfolk District if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the Norfolk District that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the Virginia Department of Historic Resources and the National Register of Historic Places. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately stop work and notify the Norfolk District of what you have found. The Norfolk District will initiate the Federal and state coordination required.
12. **Water Supply Intakes:** No discharge of dredged or fill material may occur in the proximity of a public water supply intake.
13. **Suitable Material:** No discharge of dredged or fill material may consist of unsuitable material (e.g.: trash, debris, car bodies, asphalt, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

14. **Obstruction of High Flows:** To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water.
15. **Adverse Effect From Impoundments:** If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.
16. **Waterfowl Breeding Areas:** Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
17. **Fills:** Any fill authorized shall be properly maintained, including maintenance to ensure public safety.
18. **Environmental Justice:** Authorized activities must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".
19. **Floodplains:** The permittee will make every practicable effort to conduct the work authorized by this permit in a manner so as to avoid any adverse impact on the 100-year floodplain.
20. The permittee shall allow the District Engineer or his authorized representative(s) or designee(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.
21. Failure to comply with the terms and conditions of this permit can result in enforcement actions against the permittee and/or contractor.
22. The provisions of this permit shall be binding on any assignee or successor in interest of the permittee.
23. In order to transfer this permit, the transferee must supply the Norfolk District and DEQ with a written request.
24. Should you be unable to complete the authorized activity in the time limit provided, you must submit your request for a time extension to the Norfolk District and DEQ for consideration at least one month before the expiration of the permit verification.
25. In granting an authorization pursuant to this permit, the Norfolk District has relied on the information and data provided by the permittee. If, subsequent to notification by the Corps that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the Government may institute appropriate legal proceedings.
26. **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 projects.
 - e. This permit does not grant any Corps real estate rights. If real estate rights are needed from the Corps, please contact Norfolk District's Real Estate Division at the address listed on the front page or telephone (757) 441-7735.
27. 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.

28. The Norfolk District may reevaluate its decision on your authorization under 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 25 above).
- c. Significant new information surfaces which this office did not consider in reaching the original 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 accomplish the corrective measures by contract or otherwise and bill you for the cost. In addition, unpermitted work or violation of permit conditions may result in civil, criminal or administrative penalties (33 U.S.C. 1319 c, d, and g).

29. Any activity performed in any Federally regulated waters of the United States, including jurisdictional wetlands, that is not in compliance with the terms and conditions of this SPGP constitutes unauthorized work and is subject to an enforcement action by the Commonwealth of Virginia, the Corps of Engineers, and/or the U.S. Environmental Protection Agency.

30. No work authorized by the SPGP can be performed until the Virginia Marine Resources Commission permit is issued for the authorized activity, if one is required.

31. Authorization under the SPGP requires you to ensure that the project is designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (Virginia Code section 10.1-2100 et seq.) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20 et seq.). This authorization does not supercede state or local government authority and responsibilities pursuant to the Act.

32. Where local zoning ordinances provide for riparian and floodplain protection pursuant to the Chesapeake Bay Preservation Act (Virginia Code sections 10.1-2100 et seq.) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 1-20 et seq.), the use of buffers as a form of mitigation shall be allowed only (1) where the extent of the buffer exceeds the lateral extent already required by local ordinances pursuant to the Act an the Regulations. or (2) where the quality of the existing protected buffer area is enhanced to provide greater water quality protection benefits.

33. This SPGP, unless further modified, suspended or revoked, will be in effect until November 1, 2007. Upon expiration, it may be considered for revalidation.

September 25, 2003

Date

Yvonne J. Prettyman-Beck
Colonel, Corps of Engineers
Commanding

Amended SPGP-01 Summary Sheet

RCI Development Projects in Certain Nontidal Waters & Wetlands

Category A	Category B	Category C
Losses of up to 1/10 of nontidal wetlands or certain waters (lakes, ponds, etc.) or no more than 300 linear feet of stream bed. <u>No</u> Corps confirmed delineation required prior to submission of a JPA. Corps receives copy of JPA & reviews it to insure -impacts do not exceed limits -no T/E species are affected -no eligible/listed historic properties are affected. If clean, Corps PM sends email to DEQ PM & close file. When DEQ issues their permit, they will include a statement that the work satisfies the Corps' SPGP.	Losses of up to 1/2 of nontidal wetlands or certain waters (lakes, ponds, etc.) or no more than 300 linear feet of stream bed. Corps confirmed delineation is required prior to submission of a JPA. Corps receives copy of JPA & reviews it to insure -impacts do not exceed limits -no T/E species are affected -no eligible/listed historic properties are affected. If clean, Corps PM sends email to DEQ PM & close file. When DEQ issues their permit, they will include a statement that the work satisfies the Corps' SPGP.	Losses of up to 1 acre of nontidal wetlands or certain waters (lakes, ponds, etc.) or no more than 2,000 linear feet of stream bed. Corps confirmed delineation is required prior to submission of a JPA. Corps receives copy of JPA, reviews it & coordinates it with EPA & FWS (15 day comment period) & VDHR (30 day comment period). Corps PM conducts avoidance & minimization review & determines required mitigation. Both Corps & DEQ take permit actions within 45 days of receipt of a complete application.

Other Changes

- amends language to enhance our ability to assess cumulative impacts;
- changes notification requirements for projects affecting T/E species in SW VA; and
- instructs applicants to submit JPAs directly to DEQ & the Corps.