



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

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

**CENAO-WRR  
18-RP-11**

## **REGIONAL PERMIT**

**Effective Date: *August XX, 2018***

**Expiration Date: *August XX, 2023***

### **I. AUTHORIZED ACTIVITIES:**

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

VDOT is hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the Clean Water Act (33 U.S.C. § 1344) to proceed with roadway and railway projects involving work, structures, and filling (both temporary and permanent) in the waters of the United States of the Commonwealth of Virginia. VDOT is the only entity that may qualify for authorization under RP-11. RP-11 authorization received by VDOT may not be transferred to any other entity.

The purpose of RP-11 is to authorize projects that qualify for the conditions and thresholds of a Nationwide Permit (NWP) but require a Pre-Construction Notification (PCN) in accordance with General Condition 18(c), i.e., because any federally listed endangered or threatened species or designated critical habitat might be affected or is in the vicinity of the activity.

### **II. AUTHORITIES**

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

Activities receiving authorization under RP-11 do not require further authorization under the provisions contained in 33 CFR Part 325 unless the District Engineer determines, on a case-by-case basis, that additional review is necessary in the public interest. This Regional Permit shall not be interpreted as authorizing any work other than that which is outlined below. All work undertaken outside the following terms, conditions, standards, and limitations will require separate Department of the Army authorization.

### **III. STATE AND LOCAL APPROVALS:**

1. Prospective permittees may be required to obtain additional state and/or local approvals prior to commencement of work in waters of the United States from the Virginia Marine Resources Commission (VMRC).
2. To assure preservation of water quality, VDOT must comply with the §401 Water Quality Certification issued by the Virginia Department of Environmental Quality (DEQ) for the NWP for which the work otherwise qualifies.
3. *The Corps is coordinating separately with DEQ Coastal Zone Management Program (VCP) regarding its review of the Federal Consistency Determination pursuant to the Coastal Zone Management Act (CZMA) of 1972.*
4. Those activities on the Potomac River extending beyond the mean low water line may require authorization by VMRC and/or the Maryland Department of Natural Resources. Authorization may also be needed from the Tennessee Valley Authority for projects constructed on the Clinch and Holston Rivers.
5. Permittees should ensure that their projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (Virginia Code 10.1-2100 et seq.) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 et seq.).
6. Authorizations under this RP do not supersede state or local government authority or responsibilities pursuant to the Chesapeake Bay Preservation Act, the Virginia Tidal Wetlands Act, or to any State or local laws or regulations.

### **IV. NOTIFICATION REQUIREMENTS:**

VDOT shall provide a monthly table of projects which VDOT has determined qualify for RP-11. The table will include for each authorized project the VDOT project number, any VRMC number, locality, coordinates (lat/long), NWP # for which the work otherwise qualifies, identification of any listed species, lead Federal agency, and a brief summary of the coordination conducted in accordance with the Endangered Species Act, including the effect determination, form and date of USFWS concurrence, and any required mitigative measures.

## **V. SPECIAL CONDITIONS:**

1. VDOT shall utilize the US Fish and Wildlife Service (USFWS) Online Project Review system to determine whether any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat. If any species or critical habitat is identified in IPAC, then VDOT will prepare a Species Conclusion Table, including effect determination(s), and coordinate with USFWS following currently accepted procedures. If USFWS concurs with a determination of No Effect or Not Likely to Adversely Affect, then VDOT may begin work and is not required to submit a PCN provided VDOT complies with any mitigative measures identified by USFWS as necessary to support the effect determination. If USFWS does not respond to a submittal via the Online Project Review system within 30 days, then their concurrence with the effect determination may be assumed. If concurrence is obtained, VDOT may begin work on the activity under RP-11, but must report the activity in its monthly report, as outlined above. Reporting is allowed before or after the activity has been initiated.
2. Any project for which formal consultation is required will not qualify for RP-11 and VDOT must follow PCN requirements for the NWP.

### Exceptions:

i/ For activities affecting any species where a programmatic formal consultation has been completed (such as for the Northern Long-eared bat) and where VDOT is complying with any conditions and terms of the programmatic biological opinion, as well as Special Condition 3 below, VDOT may proceed as in Special Condition 1 above.

ii/ For activities where the Federal Highway Administration or another federal agency is the lead federal agency, VDOT may begin work on the activity following completion of formal consultation, and must comply with terms and conditions of the Biological Opinion and Special Condition iii below, and proceed as in Special Condition 1 above.

iii/ VDOT must comply with all general and regional conditions and thresholds of the NWP for which the project would qualify [except for General Condition 18(c)].

## **DISTRICT ENGINEER'S DECISION**

1. In reviewing any application for the proposed activity, the district engineer will determine whether the activity authorized by the RP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific RP, the district engineer should issue the RP verification for that activity if it meets

the terms and conditions of that RP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual or cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity.

2. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant that the activity, as proposed, does not qualify for authorization under the RP. The district engineer will instruct the applicant on the procedures to seek authorization under an individual permit or modify the proposed activity and/or the mitigation plan to reduce the adverse environmental effects so that they are no more than minimal.

## **ADDITIONAL INFORMATION**

1. District engineers have the authority to determine if an activity complies with the terms and conditions of the RP.
2. **Limits of this authorization.**
  - a) Regional permits do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
  - b) Regional permits do not grant any property rights or exclusive privileges.
  - c) Regional permits do not authorize any injury to the property or rights of others.
  - d) Regional permits do not authorize interference with any existing or proposed Federal project (see General Condition 28).
  - e) Regional permits do not authorize the impingement upon Federal Lands.
  - f) Regional permits do not grant any Corps or Federal real estate rights. If real estate rights are needed from the Corps, you must contact the appropriate U.S. Army Corps of Engineers District's Real Estate Office.
3. **Limits of Federal Liability.** In issuing this RP, the Federal government does not assume any liability for the following:
  - a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
  - b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
  - c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this RP;
  - d) Design or construction deficiencies associated with the permitted work;
  - e) Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data.** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. **Reevaluation of Permit Decision.** The district engineer may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a) The permittee fails to comply with the terms and conditions of this permit.
  - b) The information provided by the permittee in support of your permit application proves to have been false, incomplete, or inaccurate.
  - c) Significant new information surfaces which this office did not consider in reaching the original public interest decision.Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.
6. **Binding effect.** The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.
7. **Duration of Activity's Authorization.** Activities authorized under 18-RP-11 must be completed by *August XX, 2023*. If the RP is reissued at that time, and if this work has not been started or completed, but the project continues to meet the terms and conditions of the revalidated RP, then the project will continue to be authorized. The Corps will issue a special public notice announcing any changes to the Regional Permits when they occur; however, it is incumbent upon you to remain informed of changes to the RPs. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon this RP that do not meet the terms and conditions of the revalidated RP will remain authorized provided the activity is completed within twelve months of the date of this RP's expiration, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.7(a-e). If work cannot be completed by *August XX, 2024*, you must reapply for separate permit authorization in order to meet current permit criteria.
8. **Expiration.** Unless further modified, suspended, or revoked, this RP will be in effect until *August XX, 2023*. Upon expiration, it may be considered for revalidation. Activities completed under the authorization of an RP which was in effect at the time the activity was completed continue to be authorized by that RP.