

**DEPARTMENT OF THE ARMY  
REGIONAL GENERAL PERMIT:  
SWG-1998-02413**



**A. AUTHORIZATION:**

**Permit:** Horizontal Directional Drill (HDD) and/or Directional Drilling (DD) under Navigable Waters of the United States (US) for the installation and/or relocation of utility lines.

**Issuing Office:** U.S. Army Corps of Engineers, Southwest Division (SWD), Galveston District (SWG) Regulatory Division (Corps).

**Effective Date:**

**Expiration Date:**

**Permittee:** General Public

**Geographic Limits:** Navigable waters of the (US) within the regulatory jurisdiction of Galveston District, excluding waters in the State of Louisiana.

**Completion of Activity:** Work authorized under this permit for a project-specific verification must be completed by the RGP expiration date. However, if the project-specific verification is issued within two years prior to the RGP expiration date, the verification expires two years from the verification date.

**Notification to Agencies:** Copies of each verification issued under this permit will be furnished to the Department of Defense Siting Clearinghouse, U.S. Coast Guard (USCG), National Oceanic and Atmospheric Administration (NOAA) – National Ocean Service (NOS), and the Bureau of Safety and Environmental Enforcement (BSEE).

**B. REGIONAL GENERAL PERMIT (RGP) APPLICABILITY:**

1. **RGP Regulatory Statutes:** Work in/or affecting navigable waters of the US authorized under this general permit is subject to jurisdiction pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, Section 10).
2. **RGP Regulated Activities Description:** This general permit authorizes HDD and/or DD activities under navigable waters of the US for the installation and/or relocation of utility lines. Specific depth requirements are dependent on the type of navigable water:
  - a. HDD and/or DD Activities below Deep Draft Federal Channels: Utility lines placed beneath deep draft project channels shall be placed a minimum of 50 feet below the maximum dredge depth of the channel (authorized project depth

+ advanced maintenance + allowable overdepth). In addition, the pipeline must maintain a minimum depth of 50 feet below the maximum dredge depth for a horizontal distance of 50 feet on each side of the channel prism measured from the bottom edge cut (toe of the channel) and perpendicular to the centerline. The pipeline under the channel side slopes shall rise on a gradient no steeper than the theoretical channel side slopes.

In cases where the natural bottom of the deep channel is more than 50 feet below the maximum dredge depth, the utility line will be placed a minimum of 20 feet below the natural bottom.

Utility lines shall be placed at the greatest depth that meets the above requirements over the entire channel bottom width plus a distance of 50 feet on each side of the channel measured from the bottom edge of cut and perpendicular to the centerline. The pipeline under the channel side slopes shall rise on a gradient no steeper than the theoretical channel side slope.

Refer to the below figure for a typical schematic demonstrating these utility line placement requirements:

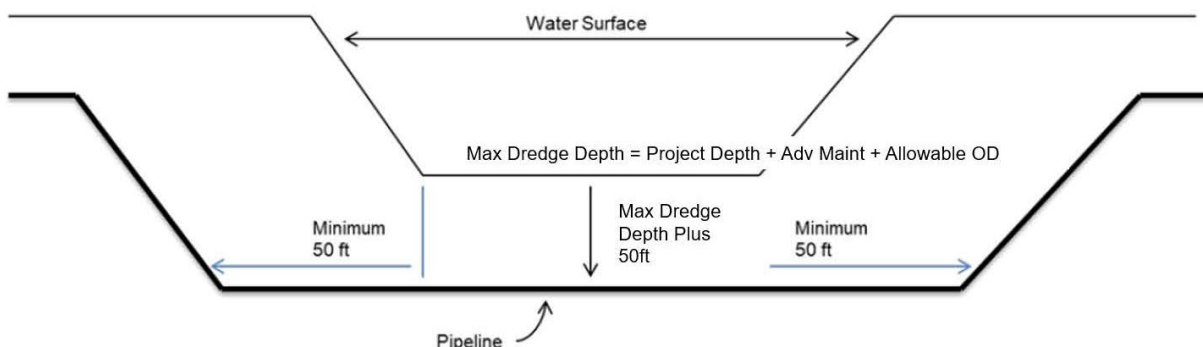


Figure A. Typical schematic for Deep Draft Federal Channels demonstrating utility line placement requirements.

- b. HDD and/or DD below Shallow Draft Federal Channel: For the Gulf Intracoastal Waterway (GIWW) and other shallow draft project channels, the utility lines shall be 20 feet below the authorized project depth. Utility lines shall meet the minimum clearance distance of 50 feet on each side of the channel measured from the bottom edge of the cut and perpendicular to the centerline.

However, in cases where the natural bottom of the waterway is more than 20 feet below the authorized project depth, the utility line they will be placed a minimum of 15 feet below the natural bottom. Utility lines shall be placed at the greatest depth that meets the above requirement over the entire channel bottom width plus a distance of 50 feet on each side of the channel measured from the bottom edge cut and perpendicular to the centerline. The utility lines under the channel side slopes shall rise on a gradient no steeper than the theoretical channel side slope.

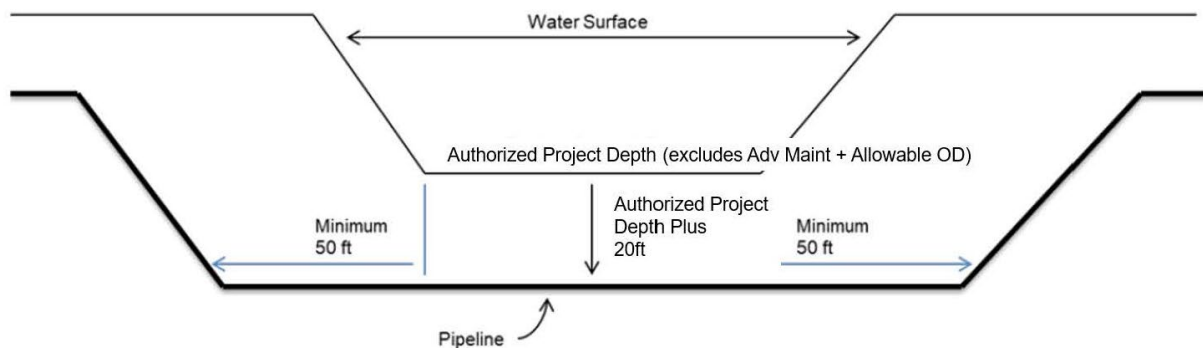


Figure B. Typical Schematic for Shallow Draft Federal Channels demonstrating utility line placement requirements.

- c. HDD and/or DD under Private Channels and Open Bay: Utility lines placed beneath private channels or open bay shall be placed at a minimum depth of 5 feet below the bottom depth. The gradient of the utility line under the slopes must be no steeper than the theoretical side slope of the private channel.

Refer to the below figure for a typical schematic demonstrating these utility line placement requirements:

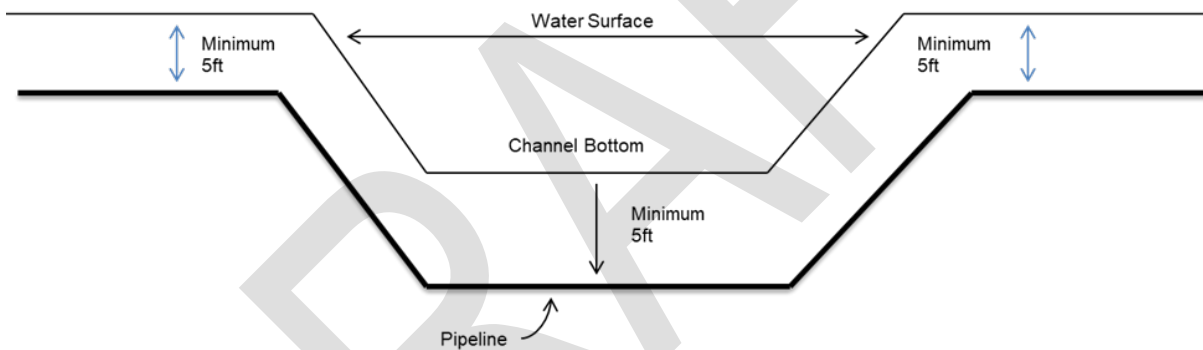


Figure C. Typical schematic for Private Channels and Open Bays demonstrating utility line placement requirements.

- d. Navigable Rivers and Streams without Maintained Channel: Utility lines placed beneath navigable rivers and streams that do not have a maintained channel shall be placed 10 feet below the thalweg depth of the river or stream. Utility lines shall be placed at the greatest depth which meets the above requirements over the entire channel bottom width plus a distance 12.5 feet on each side of the stream channel measured from the ordinary high water mark (OHWM) of the stream or river. Refer to the below figure for a typical schematic for these utility line placement requirements:

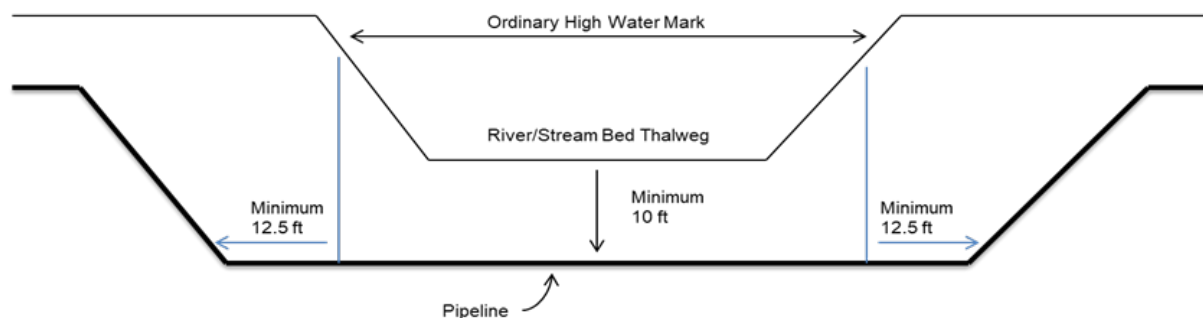


Figure D. Typical schematic for Navigable Rivers and Streams without channels demonstrating utility line placement requirements.

3. **RGP Restrictions:** This general permit **does not** authorize:
  - a. Open-Cut Trenching and backfilling for utility line installation or relocation;
  - b. The discharge of dredged and/or fill material into navigable waters of the US;
  - c. Temporary or permanent impacts to seagrasses, oyster reefs, or other special aquatic sites defined in 40 CFR 230;
  - d. Temporary workspaces; or
  - e. Access roads.
4. **Single and Complete Project:**
  - a. Each individual crossing authorized under this general permit shall be considered a single and complete project;
  - b. For multiple utility line crossings in a single navigable water of the US that occur more than one time at separate and distant locations, each crossing shall be considered a single and complete project; and/or
  - c. For utility line crossings under multiple navigable waters of the US at separate and distant locations, each crossing shall be considered a single and complete project; and
  - d. Other regulated work in waters of the US, including navigable waters, associated with the installation and/or relocation of utility lines authorized under this general permit can be authorized under other applicable general permits, as long as those associated activities meets the terms and conditions of those general permits and are c. Those activities consist of, but not limited to:
    - i. Temporary Workspaces;
    - ii. Access Roads; and
    - iii. Other single and complete linear projects leading up to and beyond the activities authorized under this general permit.
5. **Regulatory Discretion:** If the determination is made that the adverse effects of the proposed work are more than minimal, the applicant will then be notified that either:
  - a. The project does not qualify for authorization under the general permit and instruct the applicant on the procedures to seek authorization under an individual permit;
  - b. The project is verified under the general permit subject to the applicant's submission of an approved mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or,
  - a. The project is verified under the general permit with specific modifications or conditions.

## **C. PRECONSTRUCTION NOTIFICATION (PCN):**

1. **Application Review Process:** A PCN is a request submitted by the project proponent (applicant) to the Corps for confirmation that a particular activity is authorized by a general permit. The request may be a permit application (DA Form 4345), letter, or similar document that includes information about the proposed work and its anticipated environmental effects. A PCN is required by the terms and conditions of this general permit. Work in waters of the US, including navigable waters, cannot begin until written approval has been obtained by the applicant from

the Corps.

All applicants shall submit a complete PCN to <https://rrs.usace.army.mil/rrs>

- 2. Completeness Determination:** If the application is determined to be incomplete, the applicant will be notified requesting specific information surrounding the activity. The applicant will have a 30 day period to gather and submit the requested information back to the Corps. If the requested information is not submitted in full after that 30 day period, the Corps will withdraw the permit application without prejudice for the applicant's right to reapply at a later date. However, once the application has been withdrawn, the Corps will only accept a resubmitted application if the applicant can provide all of the information previously requested.
- 3. Requirements for a Federally Complete PCN:** In order to be considered federally complete, the PCN shall include:
  - a. A completed and signed DA application (Form ENG 4345), or other suitable means of submittal (i.e. letter, report, etc.) that has the following information detailed:
    - i. Name (Point of Contact), Address, Telephone, email (if applicable) of the applicant and consultant (if applicable);
    - ii. Signed statement acknowledging the use of a consultant if applicable;
    - iii. Location of the proposed activity(s) in decimal degrees;
    - iv. Description of the proposed activity, detailed description of construction methods in the order of commencement, purpose and need, direct and indirect adverse environmental effects the activity may cause in linear feet, acres, cubic yards, or other suitable means;
    - v. Detailed description of avoidance and minimization measures, including approved Texas Commission of Environmental Quality (TCEQ) Best Management Practices, and/or other mitigation measures the project will implement;
    - vi. A copy of all DA authorizations previously issued for the work area.
  - b. A vicinity map, plan view, typical cross section, and a description of the proposed method of construction. Drawings shall include:
    - i. A vicinity map with the precise location of the project so that its geographic coordinates (in decimal degrees) can be determined. When possible this should be submitted digitally in .kmz format.
    - ii. A plan view of the entire utility line route and a separate plan view identifying the including entrance and exit location, any navigable channels in the immediate project vicinity and all appurtenances required for its installation.
    - iii. A cross section drawing showing applicable dimension of the existing water and dimensions of all channel bottom, channel slope, mean low water depth, mean high tide depth, ordinary high water mark, thalweg, burial depth of utility line, navigation channels and entry and exit locations.
    - iv. Mapped location of any special aquatic resources (i.e. oyster reefs, seagrass, wetlands, etc.) located within 100 feet of any portion of the proposed project. The size of each special aquatic resource and its distance edge of the project boundary must be depicted on this map.
  - c. A statement that the work will be conducted in compliance with the terms and conditions of this RGP.
  - d. A statement of estimated start and completion dates.
  - e. An inadvertent return remediation plan for temporary structures, fills, and work

necessary for remediation activities located within navigable waters of the US.

4. **Pre-Construction Notification Coordination:** Where the utility line is constructed or installed in navigable waters of the US within the coastal areas of the Galveston District, a copy of the general permit verification letter will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

#### **D. GENERAL CONDITIONS:**

1. **Utility Line:** The term *utility line* is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, water, sewage, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, as well as internet, radio, and television communication.
2. **Compliance:** The permittee is responsible for ensuring that whomever performs, supervises, or oversees any portion of the physical work associated with the construction of the project has a copy of and is familiar with all the terms and conditions of the general permit and any special permit-specific conditions included in any written verification letter from the Corps. The permittee is ultimately responsible for ensuring compliance with all the terms and conditions of the general permit. Any authorized utility line installed and/or relocated under this general permit shall be properly maintained, including maintenance to ensure public safety and compliance with applicable permit conditions, as well as any activity-specific conditions added by the Corps to the general permit verification.
3. **Preconstruction and Post Construction Requirements:** Preconstruction surveys are required to be conducted and shall be submitted to the Corps 10 days prior to commencing work in jurisdictional areas that demonstrate the physical pre-work baseline conditions. Post construction surveys for the utility line installation and/or relocation areas are also required to be conducted and submitted to the Corps no more than 14 days after completing activities authorized under this general permit.
4. **Site Inspection:** The permittee shall allow representatives from the Corps to inspect the proposed project site and the authorized activity to ensure that it is being, or has been, constructed and maintained in accordance with the general permit conditions.
5. **Clean Construction Equipment:** All construction equipment must be clean prior to entering and before leaving the work site in order to prevent the spread of invasive species.
6. **Cultural and Historic Resources:** The Corps will review all activities proposed under this general permit for cultural resources requirements, and, when appropriate, coordinate these activities with the Texas State Historic Preservation Officer (SHPO).
  - 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. If potential historic properties are located in the project area, permit specific conditions may be implemented for additional protection to avoid these resources by a sufficient margin as designated by the Corps and the SHPO. If avoidance of the potential historic property is not feasible further investigations may be required.
- c. The activity shall not begin until the Corps notifies the prospective permittee that the activity has no potential to cause effects to historic properties and/or that NHPA Section 106 consultation has been completed and that the activity is authorized.

- 7. Unknown Historic and Archeological Remains:** If any previously unknown historic or archeological remains are discovered while accomplishing the activity authorized by this general permit, the permittee must immediately cease and desist any activity on the project and notify the SWG Regulatory Division of what was found. The Corps will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places. No work shall continue until all required coordination has been completed and written notification by the Corps has been provided.
- 8. Tribal Rights:** Any activity proposed under this general permit may not cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
- 9. Essential Fish Habitat:** Applications proposed under this general permit will be evaluated on a case by case basis for activities that may or may not adversely affect essential fish habitat (EFH); and if warranted, the Corps will consult with National Marine Fisheries Service (NMFS) Habitat Conservation Division (HCD) on a case by case basis for project specific EFH recommendations.
- 10. Threatened and Endangered Species:** Work authorized under this general permit will not directly or indirectly jeopardize the continued existence of a listed threatened and/or endangered (T&E) species and/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.
  - a. The Corps will review all proposed activities authorized under this general permit for ESA requirements, and, when appropriate, coordinate these activities with the US Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS) Southeast Regional Office (SERO) Protected Resources Division (PRD).
  - b. No activity authorized under this general permit “may affect” a listed species and/or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed.
    - i. Direct effects are the immediate effects on listed species and critical habitat caused by the activity.

- ii. Indirect effects are those effects on listed species and critical habitat that are caused by the activity and are later in time, but still are reasonably certain to occur.
  - c. Authorization of an activity by this general permit does not authorize the *take* of a threatened or endangered species as defined under the ESA. The ESA prohibits any person subject to the jurisdiction of the US to take a listed species:
    - i. “*Take*” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.
    - ii. “*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.
  - d. Work shall not begin on the activity until the Corps has notified the permittee that the requirements of the ESA have been satisfied and that the activity is authorized.
  - e. As a result of formal or informal consultation with the USFWS and/or NMFS, the Corps may add species specific permit conditions to the general permit authorization.
- 11. Piping Plover and Red Knot:** All structures, construction equipment and utility lines must maintain a distance of 1,000 feet from Piping Plover (*Charadrius melodus*) and Red Knot (*Calidris canutus rufa*) habitat.
- 12. Whooping Crane:** For projects located in Aransas, Capano, St. Charles, Mesquite, San Antonio, Espiritu Santo & Matagorda Bays or are in a secondary or tertiary bay of these systems:
- a. Coordination with the USFWS Corpus Christi Ecological Field Office must be completed prior to application to consider potential impacts to the federally listed, endangered whooping cranes (*Grus americana*).
  - b. All activities, including routine maintenance, are prohibited from October 15<sup>th</sup> to April 15<sup>th</sup> to protect whooping cranes which winter in the Aransas National Wildlife Refuge area. Activities seeking authorization during this timeframe may seek a standard permit from the Corps. Monitoring of authorized structures and response to oil spill are not prohibited.
  - c. All permanent structures in whooping crane habitat areas must be no greater than 15 feet in height.
- 13. Migratory Bird Act and Bald and Golden Eagle Protection Act:** For any activity proposed under this general permit, the applicant is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The applicant is responsible for contacting appropriate local office of the USFWS to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.
- 14. Migratory Bird Rookery Areas:** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.



- a. Work is prohibited within 1000 feet of an identified bird rookery between February 14th and September 1st.
  - b. Any work within 1,000 feet of a known wading bird or seabird rookery shall be restricted to the non-nesting period of the species comprising that rookery.
- 15. Navigation:** No structures or fill will be allowed to obstruct any navigation channels or impact any federal properties.
- 16. Crossing of Federal Channels:** All utility lines crossing Federal project channels shall be identified by signs in accordance with the following minimum requirements:
- a. The signs shall be placed a minimum of 50 feet beyond the beacon lines in bays and in landlocked channels. The signs shall be placed on both sides of the channel.
  - b. The signs shall be placed parallel to the channel and supported on two single piles with at least 2-inch butts, one on each side of the utility line.
  - c. The signs shall have lettering of sufficient size that can be read easily from the center of channel by a person with normal vision.
- 17. Activities Affecting Structures or Works Built by the United States:** If the activity authorized by this general permit requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) Federally authorized Civil Works project (a "USACE project"), the activity is not authorized by this general permit until the appropriate Corps office issues the Section 408 permission to alter, occupy, or use the USACE project, and the District Engineer or assigned designee sends a written notice to the applicant of approval.
- 18. Future Operations by the U.S. Corps of Engineers:** The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure and/or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, 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.
- 19. Abandoned Structures and/or Work:** When structures and/or work authorized by this permit are determined by the District Engineer to have become abandoned, or obstructive to navigation, or cease to be used for the purpose for which they were permitted, such structures or other work must be removed and the area cleared of all obstructions, and written notice given to the Chief of Compliance, Galveston District Regulatory Branch within 30 calendar days of completion.
- 20. Claims against the United States:** Any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the US.

- 21. Coastal Zone Management Act:** The activity authorized by this General Permit will be conducted in a manner that is consistent and complies with the Texas Approved Coastal Management Program.
- 22. RGP Terms and Conditions:** All activities identified and authorized herein shall be consistent with the terms and conditions of this permit. Any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit.
- 23. Other Authorizations:** This general permit will not be valid without all other state, local or regional authorizations required by law.

#### **F. FURTHER INFORMATION:**

- 1. Limits of this Authorization:**
- a. This general permit does not obviate the need to obtain other federal, state, or local authorizations required by law;
  - b. This general permit does not grant any property rights or exclusive privileges;
  - c. This general permit does not authorize any injury to the property or rights of others; and
  - d. This general permit does not authorize interference with any existing or proposed federal project.
- 2. Limits of Federal Liability:** In authorizing a project under this general 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 US 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; or
  - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
- 3. Reliance on Applicant's Data:** The determination of this office to authorize the activity under this general permit as not contrary to the public interest will be made in reliance on the information provided by the applicant.
- 4. Re-evaluation of Permit Decision:** This office may re-evaluate its decision to authorize an activity under this general permit at any time the circumstances warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:
- a. The applicant fails to comply with the terms and conditions of this permit;
  - b. The information provided by the applicant to support their 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; or

- d. Such a re-evaluation 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 the permittee to comply with the terms and conditions of their permit and for the initiation of legal action where appropriate. The permittee will be required to pay for any corrective measures ordered by this office, and if the permittee fails 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 the permittee for the cost.

**5. Transfer of Regional General Permit Verifications:** If the permittee sells the property associated with this general permit authorization, the permittee may transfer the authorization to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the permit authorization must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

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

**FOR THE DISTRICT ENGINEER:**

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**ROBERT W. HEINLY**  
**CHIEF, POLICY ANALYSIS BRANCH**  
**REGULATORY DIVISION, GALVESTON DISTRICT**  
**FOR COLONEL RHETT BLACKMON**

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