



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



PERMIT: Horizontal Directional Drill under Navigable Waters of the United States

ISSUING OFFICE: U.S. Army Corps of Engineers, Southwest Division, Galveston District Regulatory Division (Corps)

EFFECTIVE DATE: January 1, 2019

EXPIRATION DATE: December 31, 2023

A. AUTHORIZATION

Permittee: General Public

Project Location: Regulated activities conducted in accordance with all applicable terms and conditions of this Regional General Permit (RGP, or permit) are authorized in navigable waters of the United States (US) within the boundary of the Galveston District's Area of Responsibilities, excluding those areas located in the State of Louisiana.

RGP Expiration: Unless otherwise specified in the Corps letter verifying a project complies with the terms and conditions of this RGP, the time limit for completing work authorized by the permit ends upon the expiration date of the RGP. Activities authorized under this RGP that have commenced construction or are under contract to commence construction in reliance upon this RGP, will remain authorized provided the activity is completed within 12 months of the date of the RGP expiration, suspension, or revocation; whichever is sooner.

B. REGIONAL GENERAL PERMIT APPLICABILITY

1. **Regional General Permit Regulatory Authorities:** Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403, Section 10) for work and/or structures that are located in/or navigable waters of the US.
2. **Eligible Activities:** Regulated activities associated with this RGP are limited to the installation of pipelines by means of horizontal directional drilling (HDD) or directional drilling (DD) below navigable waters of the US. Specific depth requirements are dependent on the type of navigable water:
 - A. HDD and/or DD Activities below Deep Federal Draft Channels: Pipelines placed beneath deep draft project channels shall be placed a minimum of 20 feet below the authorized project depth of the channel. However, in cases where the natural bottom of the waterway is more than 20 feet below the

authorized project depth, the pipeline will be placed a minimum of 5 feet below the natural bottom. Pipelines will be placed at the greatest depth, which meets the above requirements over the entire channel bottom width, plus a distance of 50 feet on each side of the channel measured normal to the centerline. A gradient of the pipeline under the slopes must be no steeper than the theoretical side slope. Refer to the below figure for a typical schematic demonstrating these pipeline placement requirements:

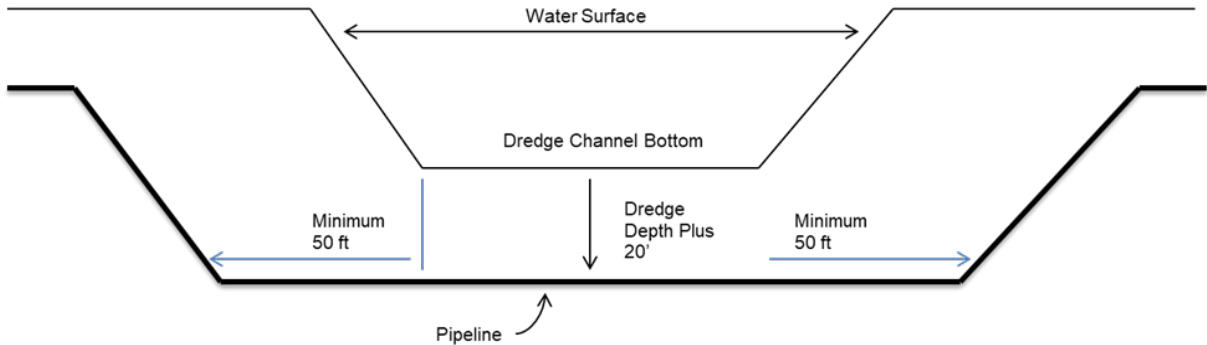


Figure A. Typical schematic for Deep Draft Channels demonstrating pipeline placement requirements.

- B. HDD and/or DD below Shallow Draft Federal Channel: For the Gulf Intracoastal Waterway (GIWW) and other shallow draft project channels, the pipelines shall be 10 feet below the dredged depth of the channel. However, in cases where the natural bottom of the waterway is more than 10 feet below the dredged depth they will be placed a minimum of 5 feet below the bottom. For pipelines placed beneath the main channel of the GIWW from Sabine River to Brownsville the minimum placement shall be a of 25 feet below mean lower low water (MLLW) or 10 feet below the dredged depth, whichever is greater. Pipelines 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 channel measured normal to the centerline. A gradient of the pipeline under the side slopes must be no steeper than the theoretical channel side slope. Refer to the below figure for a typical schematic demonstrating these pipeline placement requirements:

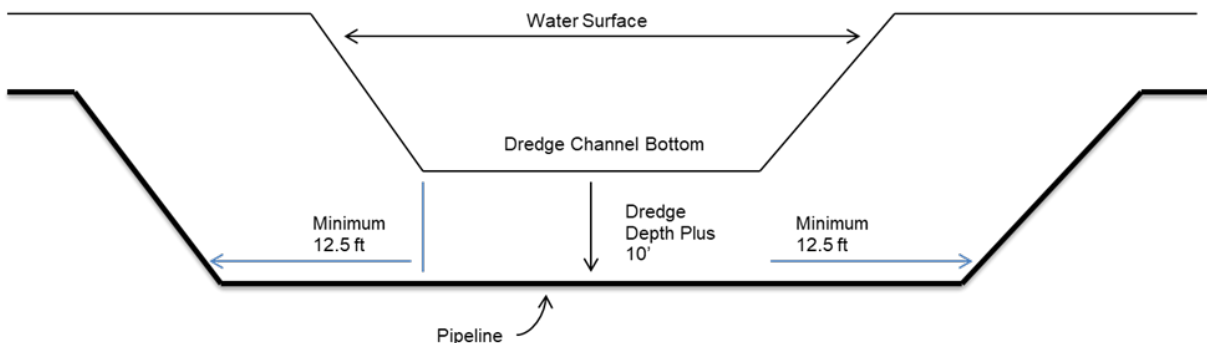


Figure B. Typical Schematic for Shallow Draft Channels demonstrating pipeline placement requirements.

- C. HDD and/or DD under Private Channels and Open Bay: Pipelines placed beneath private channels or open bay shall be placed a minimum depth of 5 feet. The gradient of the pipeline 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 pipeline placement requirements:

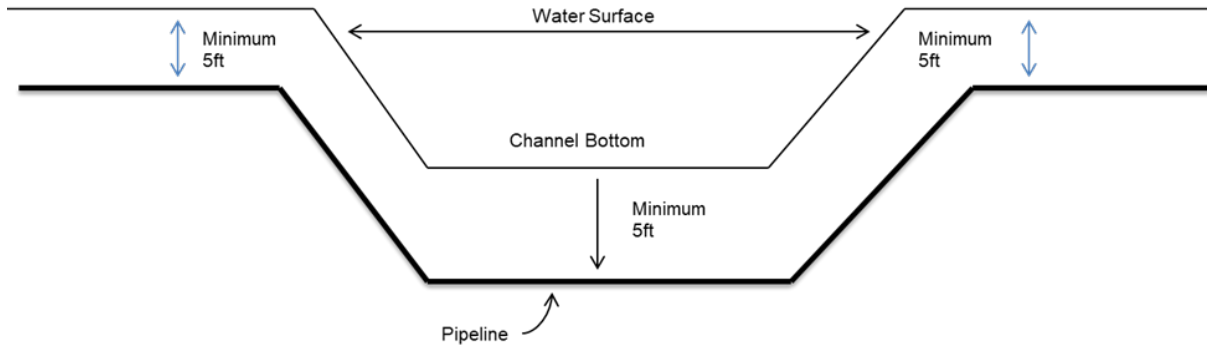


Figure C. Typical schematic for Private Channels and Open Bays demonstrating pipeline placement requirements.

- D. Navigable Rivers and Streams without Maintained Channel: Pipelines 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. Pipelines 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 pipeline placement requirements:

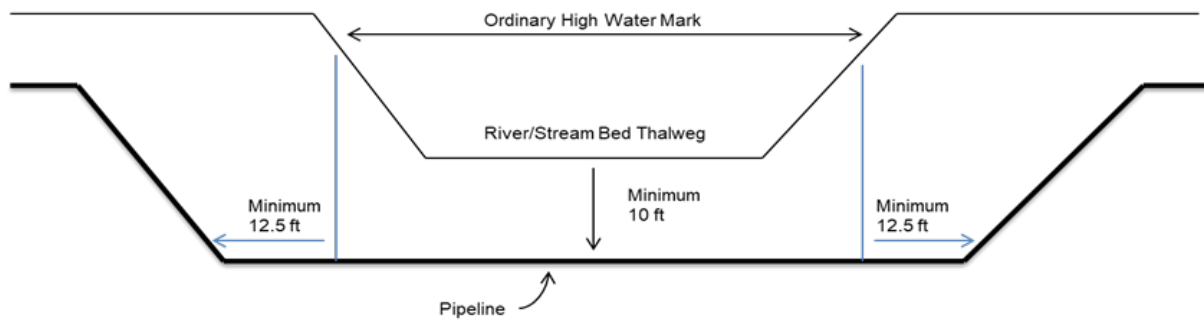


Figure D. Typical schematic for Navigable Rivers and Streams without channels demonstrating pipeline placement requirements.

3. **RGP Restrictions:**

- a. Regulated activities for each single and complete project does not authorize the discharge of dredged and/or fill material into navigable waters of the US.
- b. No impacts or other disturbances to seagrasses, oyster reefs, or other special aquatic sites defined in 40 CFR 230.4(q-1) are authorized by this RGP.
- c. Temporary workspaces and/or access roads are not authorized by this RGP.

4. **Use of Multiple General Permits:** Other projects in waters of the US associated with the activity authorized under this RGP can be permitted with other General Permits, as long as those activities meets the terms and conditions of those General Permits. Those activities consist of, but not limited to:

- a. Temporary Workspaces
 - b. Access Roads
 - c. Other single and complete linear projects leading up to and beyond the activity authorized under this RGP
5. **Multiple Crossings:** For pipeline activities crossing a single navigable water of the US more than one time at separate and distant locations, or multiple navigable waters of the US at separate and distant locations, each crossing is considered a single and complete project for purposes of this RGP authorization.
6. **Pre-Construction Notification Coordination:** Where the pipeline is constructed or installed in navigable waters of the United States within the coastal areas of the Galveston District, a copy of the RGP verification 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.
7. **Regulatory Discretion:** If the determination is made that the adverse effects of the proposed work are more than minimal, then the applicant will be notified that either:
- a. That the project does not qualify for authorization under the RGP and instruct the applicant on the procedures to seek authorization under an individual permit; or,
 - b. That the project is authorized under the GP with specific modifications or conditions.

C. PRE-CONSTRUCTION NOTIFICATION (PCN) REQUIREMENTS

1. All applicants shall submit a PCN to the appropriate Galveston District Regulatory Office, as early as possible, prior to initiation of work in navigable waters of the United States subject to Section 10.
2. 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. 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. 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.
 - ii. A plan view of the entire pipeline 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 pipeline, 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 waters of the United States.

D. MITIGATION

After all practicable steps to avoid and minimize adverse effects to waters of the United States have been considered, the Corps may require compensatory mitigation to ensure that the regulated activity results in no more than minimal adverse environmental effects, or will not be contrary to the public interest. In reviewing the complete PCN for the proposed activity, the Corps will determine whether the activity authorized by the permit will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The Corps will issue the permit verification for that activity if it meets the terms and conditions of that permit, unless the Corps determines, after considering compensatory mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest. When this occurs, the Corps will exercise discretionary authority to require an individual permit evaluation for the proposed regulated activity.

E. GENERAL CONDITIONS

1. **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 RGP 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 RGP. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the Corps to an RGP authorization.
2. **Commencement of Work:** The permittee shall notify the Corps, in writing, of the date the work started in jurisdictional areas.
3. **Post-Construction Notification:** The permittee must provide notification of project completion of the authorized activity to the Corps within 30 days of completion of the authorized activity. This notification should include an as-built survey of the pipeline.
4. **Inadvertent Return:** In the event of an inadvertent return, the permittee will cease all drilling operations and will implement the inadvertent return restoration plan submitted with the PCN to limit the impacts to the aquatic environment. The permittee will also report the event to the Corps immediately detailing the specifics surrounding the inadvertent return.
5. **Site Restoration:** All areas impacted by the placement of pipelines and associated activities shall be restored to pre-project conditions.
6. **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 RGP.
7. **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.
8. **Cultural and Historic Resources:** The Corps will review all activities proposed under this RGP for cultural resources requirements, and, when appropriate, coordinate these activities with the Texas Historical Commission (THC).
 - 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 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 THC. If avoidance of the potential historic is not feasible, further archeological

investigations shall be required.

- c. The activity shall not begin until the Corps has notified 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.
9. **Unknown Historic and Archeological Remains:** If any previously unknown historic or archeological remains are discovered while accomplishing the activity authorized by this permit, you must immediately cease and desist any activity on the project to the maximum extent practicable that will avoid construction activities that may affect the remains and artifacts, notify the Galveston District Regulatory Division of what you have 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.
 10. **Tribal Rights:** Any activity proposed under this RGP may not cause no more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
 11. **Threatened and Endangered Species:** No activity proposed under this RGP is authorized that is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species.
 - a. No activity is authorized under this RGP which “may affect” a listed species 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 General Permit activity.
 - ii. Indirect effects are those effects on listed species and critical habitat that are caused by the General Permit activity and are later in time, but still are reasonably certain to occur.
 - b. Authorization of an activity by this RGP does not authorize the “take” of a threatened or endangered species as defined under the ESA. The Endangered Species Act prohibits any person subject to the jurisdiction of the United States 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.
 - c. 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.
 - d. As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species specific conditions to the authorization.

12. **Piping Plover and Red Knot:** All structures, construction equipment and pipelines must maintain a distance of 1,000 feet from Piping Plover (*Charadrius melodus*) and Red Knot (*Calidris canutus rufa*) habitat.
13. **Whooping Crane:** For projects located in Aransas, Capano, St. Charles, Mesquite, San Antonio, Espiritu Santo & Matagorda Bays or an secondary or tertiary bay of these systems:
 - a. Coordination with the U.S. Fish and Wildlife Service 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 15th to April 15th 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.
14. **Migratory Bird Act and Bald and Golden Eagle Protection Act:** For any activity proposed under this RGP, 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 U.S. Fish and Wildlife Service 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.
15. **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.
16. **Spawning Areas:** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.
17. **Navigation:** No structures or fill will be allowed to obstruct any navigation channels or impact any federal properties.
18. **Crossing of Federal Channels:** All pipelines 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 pipeline.
 - 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.
19. **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 sends a written notice to the applicant of approval.
20. **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.
21. **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.
22. **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.

F. FURTHER INFORMATION

- 1. **Congressional Authorities:** The permittee has been authorized to undertake the activity described above pursuant to Section 10 of the Rivers and Harbors Act.
- 2. **Discretionary Authority:** The Corps retains discretionary authority to require an individual permit for any activity eligible for authorization by an RGP based on concern for the aquatic environment or for any other factor of the public interest.
- 3. **Limits of this authorization:**
 - a. This RGP does not obviate the need to obtain other federal, state, or local

- authorizations required by law;
 - b. This RGP does not grant any property rights or exclusive privileges;
 - c. This RGP does not authorize any injury to the property or rights of others; and
 - d. This RGP does not authorize interference with any existing or proposed federal project.
4. **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 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.
5. **Reliance on Applicant's Data:** The determination of this office to authorize the activity under this RGP as not contrary to the public interest will be made in reliance on the information provided by the applicant.
6. **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 reevaluation 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.
 - d. Significant new information surfaces which this office did not consider in reaching the original decision. 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.
7. **Transfer of Regional General Permit Verifications:** If the permittee sells the property associated with a regional general permit verification, the permittee may transfer the regional general permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the

regional general permit verification must be attached to the letter, and the letter must contain the following statement and signature:

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

(Transferee)

(Date)

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

FOR THE GALVESTON DISTRICT ENGINEER:

ROBERT W. HEINLY
GALVESTON DISTRICT REGULATORY DIVISION
DEPUTY CHIEF, CHIEF OF POLICY ANALYSIS BRANCH
FOR COLONEL LARS N. ZETTERSTORM

DATE