

Report No. VTRC 88-R18	Report Date April 1988	No. Pages 56	Type Report: Final Period Covered: N/A	Project No. : Contract No.:
Title and Subtitle An Examination of the Virginia Department of Transportation's Section 404 General Permit Program			Key Words Section 404 General Permit Program Clean Water Act	
Author(s) Eric Paltell				
Performing Organization Name and Address Virginia Transportation Research Council Box 3817, University Station Charlottesville, Virginia 22903-0817				
Sponsoring Agencies' Names and Addresses Va. Dept. of Transportation 1221 E. Broad Street Richmond, Virginia 23219 University of Virginia Charlottesville Virginia 22903				
Supplementary Notes				
Abstract <p>Several state and federal statutes require that the Virginia Department of Transportation (VDOT) obtain permits for any road construction activity that impacts wetlands and other bodies of water. These "\$ 404 permits" are issued by the U.S. Army Corps of Engineers and the Virginia Marine Resources Commission after several state and federal agencies have had an opportunity to review the permit application.</p> <p>Prior to 1982, the VDOT had to wait two to nine months for approval of a \$ 404 permit application. In an effort to streamline the permit application process, the VDOT established a General Permit Program in 1982 to cover the relatively small, uncontroversial projects that comprise the bulk of VDOT construction activity. The goal of the Program was to expedite the permit application process through the use of monthly interagency coordination group meetings at which reviewing agency comments were transmitted directly to the VDOT.</p> <p>The scope of this preliminary study was threefold: (1) a survey of the state and federal laws and regulations that require the VDOT to obtain permits for activity affecting wetlands and water bodies; (2) an explanation of the process by which the VDOT obtains these permits; and (3) pinpointing potential and existing problem areas in the VDOT's General Permit Program.</p> <p>The results of this study show that the General Permit Program has theoretically met its goal of expediting the \$ 404 permit application process by removing several obstacles formerly encountered by the VDOT. The Program is free of several factors including public notice requirements and the public comment period that cause delays for other state transportation agencies.</p> <p>Additionally, those factors that do sometimes cause delay in the General Permit Program also cause problems in most other east coast states as well. Finally, representatives of the agencies that review \$ 404 permit applications generally feel that this Program has successfully streamlined the permit application process while still ensuring adequate environmental protection.</p>				

AN EXAMINATION OF THE VIRGINIA DEPARTMENT OF TRANSPORTATION'S
§ 404 GENERAL PERMIT PROGRAM

by

Eric Paltell
Research Scientist Assistant

(The opinions, findings, and conclusions expressed in this report
are those of the author and not necessarily those of
the sponsoring agencies.)

Virginia Transportation Research Council
(A Cooperative Organization Sponsored Jointly by the Virginia
Department of Transportation and the
University of Virginia)

Charlottesville, Virginia

April 1988
VTRC 88-R18

ENVIRONMENTAL RESEARCH ADVISORY COMMITTEE

- R. L. HUNDLEY, Chairman, Environmental Engineer, VDOT
- M. G. BOLT, District Environmental Manager, VDOT
- W. R. CLEMENTS, Agronomist, VDOT
- E. C. COCHRAN, JR., State Location & Design Engineer, VDOT
- J. E. GALLOWAY, JR., Assistant State Materials Engineer, VDOT
- C. D. GARVER, JR., Construction Engineer, VDOT
- S. J. LONG, Highway Management Engineer A, Management Services
Division, VDOT
- B. N. LORD, Research Environmental Engineer, FHWA
- K. MYERS, Environmental Coordinator, FHWA
- D. F. NOBLE, Highway Research Scientist, VTRC
- E. T. ROBB, Assistant Environmental Engineer, VDOT

TABLE OF CONTENTS

	Page
INTRODUCTION.....	1
STATE AND FEDERAL LAWS AND REGULATIONS.....	3
THE GENERAL PERMIT PROGRAM.....	10
PERMIT APPLICATION PROCESSES IN OTHER STATES.....	15
AGENCY EVALUATIONS OF THE GENERAL PERMIT PROGRAM.....	22
SUMMARY OF THE WORKINGS OF THE GENERAL PERMIT PROGRAM.....	26
APPENDIX A -- PARTICIPATING AGENCIES.....	31
APPENDIX B -- CORPS OF ENGINEERS GENERAL PERMIT, 82-GP-14.....	33
APPENDIX C -- VIRGINIA MARINE RESOURCES COMMISSION GENERAL PERMIT, VGP-1.....	41
APPENDIX D -- GENERAL PERMIT APPLICATION.....	45

AN EXAMINATION OF THE VIRGINIA DEPARTMENT OF TRANSPORTATION'S
§ 404 GENERAL PERMIT PROGRAM

by

Eric Paltell
Research Scientist Assistant

INTRODUCTION

Federal and state laws require that the Virginia Department of Transportation (VDOT) obtain permits for any road construction activity that affects rivers, streams, wetlands, or other bodies of water. These permits are often referred to generically as "\$ 404 permits" because of § 404 of the Clean Water Act, which requires a permit for any discharge of dredge or fill material into United States' waters. However, several other state and federal laws, including the River and Harbor Act of 1899 and § 62.1-3 of the Code of Virginia, also require that permits be obtained for highway construction activity that affects bodies of water. These permits are required to ensure that any adverse effects caused by road construction are minimized.

In 1982 the VDOT implemented what is known as the "General Permit Program" to expedite the application process for § 404 permits. Under the General Permit Program, the U.S. Army Corps of Engineers (COE) and the Virginia Marine Resources Commission (VMRC) (the two principal regulatory agencies involved with § 404 permits) issue the VDOT general permits authorizing a broad range of highway construction activities affecting wetlands and waterways. The terms of the general permits require that proposed highway construction projects be discussed at monthly permit coordination meetings by representatives of a variety of state and federal agencies. (A listing of the agencies involved can be found in Appendix A.) At these meetings, the agencies make recommendations to the VDOT regarding ways to minimize the adverse environmental impacts of the proposed activity. When the agencies and the VDOT agree on a construction plan, the VDOT may proceed with the project. If agreement cannot be reached, an individual permit must be obtained. The individual permit application process, which was required for every VDOT construction project prior to 1982, is more cumbersome and timeconsuming than the general permit application process.

The Commonwealth of Virginia has made a commitment to a substantial increase in road construction into the next century. As a result, attention has been focused on those factors that could potentially delay construction. Recently, several major highway construction projects

have been delayed because of the adverse impact they had on wetlands or streams. In Richmond, construction activity on the Powhite Parkway extension was delayed in September 1986 when the contractor allowed soil from cleared land to run off into the Powhite Creek after a heavy rain. The § 404 permit conditions for the project required that silt fences and other siltation measures be erected before construction in the creek area began, but the contractor did not comply with this requirement. The COE, which is responsible for issuing § 404 permits, ordered that work be halted until corrective steps were taken and imposed a \$15,000 fine on the VDOT, which passed the fine on to the contractor. In Northern Virginia, the proposed Springfield Bypass has run into problems because of a wetlands area in the proposed alignment of the road. A 1983 environmental impact statement concluded that the project would not impact any wetlands. However, in the summer of 1986, the United States Fish and Wildlife Service (USFWS) examined road plans and discovered that twenty acres of wetlands would be affected. Consequently, the VDOT is preparing a supplemental environmental document to assess the potential impact of the Bypass on these wetlands. Once the document is completed, engineers will have to develop a "mitigation plan" to minimize the impact on the wetlands. Mitigation measures could include building a bridge, a box culvert, or creating new wetlands. If the mitigation plan is unacceptable to environmental regulators, the road may have to be realigned, or a § 404 permit will not be issued.

Because of these and other recent controversies related to the § 404 permits, officials of the VDOT's Environmental Division requested a study of the process by which the Department obtains its permits. There has been some concern that the program has not worked as well as was hoped. To determine if this concern is a valid one, § 404 permit application processes in twelve east coast state transportation agencies were evaluated to ascertain the relative attributes of the General Permit Program. Additionally, representatives of the regulatory agencies that must approve the VDOT's permit applications were interviewed to determine their perspectives on the Program.

This report is divided into five parts. Part one presents an overview of the state and federal laws and regulations which require that permits be obtained for construction activity impacting wetlands and waterways. Part two explains how the VDOT's General Permit Program operates. Part three summarizes the results of the survey of other state transportation agencies, and part four presents the results of the survey of regulatory agency officials. Finally, part five summarizes existing problems and benefits of the General Permit Program on the basis of the information contained in previous portions of the report.

STATE AND FEDERAL LAWS AND REGULATIONS

Introduction

When the VDOT undertakes a project that impacts waterways or wetlands, the construction process is subject to regulation under several state and federal environmental protection laws. At the federal level, the River and Harbor Act of 1899 makes it illegal to build or excavate in U.S. waters without a permit. Additionally, the Clean Water Act of 1972 makes it unlawful to discharge dredge or fill material into U.S. waters unless the discharge is authorized by a permit. Under both statutes, the permit must be obtained from the COE. At the state level, § 62.1-3 of the Code of Virginia requires the Department to obtain a permit from the VMRC if a project will affect state-owned streambeds or wetlands. Additionally, the Virginia Water Control Board (VWCB) must certify that any discharge of fill into waters of the U.S. meets applicable water quality standards.

There are several different ways in which to obtain the necessary permits under these laws. Generally, applicants must apply for a separate permit for each proposed project. Some types of activities, such as minor road crossing fills, are authorized by nationwide permits. The COE has granted a nationwide blanket authorization for such activities provided that certain conditions are adhered to. Other activities may be authorized on a regional level so long as certain conditions are met. These regional and nationwide permits are classified as general permits.

The VDOT has developed a unique method of obtaining permits for highway projects. In 1982, the COE issued the VDOT a general permit for highway projects involving work activities, construction of structures, and material filling in state or federal waters. Similarly, the VMRC has issued the VDOT a general permit for certain highway projects that cross state-owned waters and would otherwise qualify for a nationwide or regional general permit from the COE. Under what the Department calls its "General Permit Program," the VDOT presents proposed projects to a group of state and federal agencies that meet monthly. Each project is evaluated on a case-by-case basis, with the VDOT and agencies working together to develop a method of construction that will minimize adverse environmental impacts. When agency concerns can be resolved, the VDOT may proceed with the project. If objections to the proposal cannot be resolved, the VDOT must seek authorization through the individual permit process. Additionally, those projects that are extremely controversial in nature must be authorized by an individual permit from the COE.

Federal Statutes

The two federal statutes that regulate projects affecting wetlands or waterways are the River and Harbor Act of 1899 and the Clean Water Act of 1977. Under both statutes, the Department of the Army, acting through the COE, must authorize certain activities through the issuance of a permit. The COE seeks to protect the "full public interest" by weighing "favorable impacts against detrimental impacts" in making its decision to issue or deny a permit. 33 C.F.R. § 320.1(a). The ultimate purpose of the COE review is to "protect and utilize important resources." Id.

Section 10 Permits

Under § 10 of the River and Harbor Act of 1899, 33 U.S.C. § 403, construction, excavation, or depositing of materials into any "navigable water" of the U.S. is unlawful unless authorized by the COE. "Navigable waters" are defined as "waters of the United States that are subject to the ebb and flow of the tide, and/or are presently used, or have been used in the past, or may be susceptible to use for the transport of interstate or foreign commerce." 33 C.F.R. § 329.4. Courts have construed § 10 to have a broad scope, and activities covered by the Act are not limited to construction in the water. The Daniel Ball, 77 U.S.(10 Wall.) 557 (1870); U.S. v. Rio Grande Dam and Irrigation Co., 174 U.S. 690 (1898). The recipient of a permit under § 10 must abide by the conditions of the permit. Failure to comply with its terms may result in a fine of not less than \$500 or more than \$2,500 or one year imprisonment or both.

Section 404 Permits

Section § 404 of the Clean Water Act, 33 U.S.C. § 1344, makes it illegal to discharge dredge or fill material into the "waters of the U.S." without authorization from the COE. "Waters of the U.S." are defined more broadly than are the navigable waters covered by the River and Harbor Act, including not only navigable waters, but tributaries of such waters and nonnavigable intrastate waters whose use could affect interstate commerce. They are defined as "coastal (including territorial seas) and inland waters, lakes, rivers, and streams that are navigable waters of the U.S., including adjacent wetlands, plus tributaries to navigable waters of the U.S., including adjacent wetlands (but not including man-made non-tidal drainage and irrigation ditches excavated on dry land), plus interstate waters and their tributaries, including adjacent wetlands, plus all other waters of the U.S., such as isolated wetlands and lakes, intermittent streams... and other waters that are not part of a tributary system to interstate waters or to navigable waters of the U.S., the degradation or destruction of which could affect interstate commerce."

Discharges of "dredged or fill material" are defined quite broadly, subjecting most construction activities in or near wetlands or other bodies of water to the terms of § 404. "Fill material" is "any material used for the primary purpose of replacing an aquatic area with dry land or changing the bottom elevation of a waterbody." 33 C.F.R. § 323.2(e). "Dredged material" is "material that is excavated or dredged from waters of the U.S." 33 C.F.R. § 323.2(c).

"Wetlands" are defined at 33 C.F.R. § 328.3(b) as "those areas inundated or saturated by surface or groundwater at a frequency and duration to support... a prevalence of vegetation typically adapted for life in saturated soil conditions." In laymen's terms, wetlands are swamps, bogs, marshes, and similar areas.

As is the case with § 10 permits, the recipient of a § 404 permit must adhere to the terms and conditions of the permit. However, the Clean Water Act provides for more severe penalties than does the River and Harbor Act. Violators may be subject to criminal penalties of not less than \$2,500 per day or more than \$25,000 per day or one year imprisonment or both. If a permittee has been convicted of a previous violation, the penalties increase to fines of not more than \$50,000 per day or two years imprisonment or both. See 33 U.S.C. § 1319(c)(1). Civil penalties may be as much as \$10,000 per day. Additionally, a court may offer injunctive relief for a violation of § 404, ordering removal, restoration, or compliance with certain conditions.

Section 401 of the Clear Water Act

Any discharge of material into waters of the U.S. must also comply with § 401 of the Clean Water Act. Section 401 requires that applicants for a § 404 or § 10 permit must obtain certification from the state in which the work will be done that the discharge will comply with applicable water quality standards. In Virginia, the Virginia Water Control Board (VWCB) is responsible for such certification.

Issuing of Permits

The Corps of Engineer's Evaluation Process

The Secretary of the Army has delegated his authority to issue or deny permits under the River and Harbor Act and Clean Water Act to the COE. The COE thus has authority to review permit applications and issue permits, but it must act in accord with guidelines promulgated by the Environmental Protection Agency (EPA) under § 404(b)(1) of the Clean Water Act. See 40 C.F.R. § 230. The EPA may veto a COE decision to issue a permit pursuant to its authority under § 404(c) of the Clean Water Act if the EPA determines that a discharge will have "unac-

ceptable, adverse effects on municipal water supplies, shellfish beds, and fishery, wildlife, or recreational areas." 33 U.S.C. § 1344(c); 40 C.F.R. § 231.3(a). This veto authority is rarely exercised, though EPA has recently reviewed COE decisions more carefully. See e.g., Newport Galleria v. Deland, 23 E.R.C. 1387 (D.D.C. 1985).

The primary feature of the COE's evaluation of a permit application is what is referred to as "public interest review." To ensure that the public interest is protected, the COE balances the "benefit which reasonably may be expected to accrue from the proposal" against its "reasonably foreseeable detriments." 33 C.F.R. § 320.4. For example, "unnecessary alteration or destruction of wetlands" is deemed contrary to the public interest. 33 C.F.R. § 320.4(6). Thus, under an evaluation process guided by public interest review, a permit will be issued only where "the benefits of the proposed alteration outweigh the damage to the wetlands resource." Id. If an applicant can show, through scientific analysis, that the impacted wetlands are not functional, or will function better than they did before construction because of mitigation measures, issuance of a permit may be considered to be "in the public interest." National Law Journal, December 8, 1986 at p. 25.

One of the most important elements of the evaluation process is "mitigation." Section § 404(b)(1) of the Clean Water Act sets out mitigation requirements for permits issued under § 404. In a nutshell, "mitigation" is an effort to offset any detrimental impacts to the aquatic environment caused by the permitted activity by "replacing or providing substitute resources or environments." 40 C.F.R. § 1508.20(e). Examples of mitigation measures are: (1) constructing or enhancing a wetland, (2) reducing the size or scope of a project, or (3) changing construction methods, such as requiring erosion control measures on a fill project to reduce sedimentation. In some cases, mitigation measures may be agreed upon after informal discussions between the permit applicant and the COE's District Engineer. In other instances, especially those requiring major modification to the proposed activity, mitigation measures will be the result of the more formal public hearing and agency review processes.

Types of Permits

The COE may issue either of two types of permits for activity conducted pursuant to § 404 of the Clean Water Act or § 10 of the River Harbor Act. The first, and most common, type of permit is a standard permit (also referred to as an individual permit). Standard permits authorize only the specific activity for which the permit was obtained. The COE may also issue a general permit. General permits authorize an entire class of activities, eliminating the need for individual authorization of each proposed project. General permits are issued on either a nationwide or regional basis.

Standard Permits

Generally, an individual who seeks to conduct activity that falls within the scope of § 10 of the River Harbor Act or § 404 of the Clean Water Act must seek an individual or standard permit. This requires the applicant to complete and submit an application to the COE. The application must include drawings of the proposed activity and detailed information on the nature of the project. The COE provides public notice of the proposed activity, allowing interested agencies and other parties to comment on the proposal. In some instances, public hearings are held to allow the applicant and any objectors to the project to present their case to the COE's District Engineer. The District Engineer then makes a decision to issue or deny a permit on the basis of public interest review.

Under the standard permit application process, every proposed activity is subject to the public-notice-and-comment process. As a result, it takes from two to nine months for the VDOT to obtain a standard permit. The COE has developed a Joint Permit Application for standard permits in Virginia. Thus, an applicant can apply for permits from the COE, the VWCB, and the VMRC by submitting a single joint application to the VMRC. The VMRC serves as a clearinghouse, assigning a processing number to the application and forwarding copies to the other agencies. The VMRC's review process is described on pages 9-10 in the section, Individual Permit Applications.

The COE must provide public notice of a proposed project within fifteen days of the receipt of an application. Notices are placed in local newspapers and are also sent to Congressmen, federal agencies, environmental interest groups, and other parties who have requested that they be notified. Once notices have been issued, there is a fifteen-business-day comment period (thirty days for more controversial projects) during which interested parties may notify the COE of any objections to the proposal.

The COE holds monthly coordination meetings at which involved state and federal agencies assemble to discuss project impacts and possible alternatives. If no public comments have been received and the applicant agrees to any modifications proposed at the coordination meeting, the permit will be granted. Thus, a permit may be issued in as little as sixty days under the standard application process.

However, when public comments are received, the process becomes more complicated. The COE transmits any comments received to the applicant. The applicant may then contact the objector and try to resolve any differences. The applicant must respond to all objectors. According to the COE, it can take up to nine months to approve a standard permit application when public comments have been received.

General Permits

The COE developed general permits to minimize regulatory control where individual review is unwarranted. A general permit, either regional or nationwide in nature, will be issued for a category or categories of activities when (1) "those activities are substantially similar in nature and cause only minimal individual or cumulative environmental impacts," or (2) issuance of a general permit "avoids unnecessary duplication of regulatory control, provided that there has been a determination that the environmental consequences of the action are individually and cumulatively minimal." 33 C.F.R. § 323.2(h).

Regional Permits. Regional permits authorize a category of activities within a specific geographic region, such as a state. The activities authorized by the regional permit require no further authorization from the COE. However, the COE's District Engineer maintains discretion to require additional processing and review of an activity otherwise authorized by a general permit. Such discretion is usually exercised for especially controversial projects. The term "general permit" used in this report refers to regional permits unless otherwise noted. Nationwide permits are referred to by that name.

The COE has issued the VDOT a general permit for highway projects involving work activities, construction of structures, and material filling (both temporary and permanent) in the waters of the United States and the Commonwealth of Virginia. The project contractor must abide by the conditions of this general permit. The general permit requires that proposed projects be discussed at regularly scheduled "permit coordination meetings" attended by representatives of the United States Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), the EPA, the COE, the VDOT, and other state and federal agencies. At these meetings, the agencies make recommendations to the VDOT regarding ways to minimize adverse environmental impacts of the proposed activity. When agency objections can be resolved, the VDOT may proceed with the project. If agreement cannot be reached, the VDOT must seek authorization through the standard permit process or through recoordination. This general permit and the procedures by which it is implemented are discussed in detail beginning on page 10.

Nationwide Permits. A nationwide permit authorizes certain types of activities throughout the nation. The authority to issue nationwide permits derives from both § 404 of the Clean Water Act and § 10 of the River and Harbor Act. The VDOT determines when a proposed highway project fits within the class of activities authorized by a nationwide permit. The project contractor must then abide by the conditions that accompany issuance of a nationwide permit. The COE's District Engineer has discretionary authority to require an individual or regional permit instead of a nationwide permit.

The nationwide permit program authorizes several relatively minor activities of importance to the VDOT. These include:

1. Bank stabilization activities. (33 C.F.R. § 330.5(13)).
2. Minor road crossing fills, which are defined as those crossings that involve the discharge of less than 200 cubic yards of fill material below the plane of ordinary high water and are culverted or bridged to prevent the restriction of the waterway. (33 C.F.R. § 330.5(14)).
3. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the U.S., provided that the activity has been authorized by a bridge permit from the Coast Guard. (33 C.F.R. § 330.5(15)).
4. Discharges of less than 10 cubic yards of dredged or fill material into all waters of the U.S. (other than wetlands). (33 C.F.R. § 330.5(18)).
5. Dredging of no more than 10 cubic yards from navigable waters of the U.S. (33 C.F.R. § 330.5(19)).

State Statutes

Section 62.1-3 of the Code of Virginia authorizes the VMRC to issue permits for encroachments in and crossings over state-owned streambeds and tidal wetlands. In general, the VMRC is concerned with any activities that may have a negative impact on the marine environment, such as excess sedimentation and erosion or unnecessary disturbance of streambeds. It is also concerned with any adverse effects on fishing, fowling, or taking of oysters and other shellfish in state-owned waters and subaqueous lands.

Individual Permit Applications

The VMRC uses a Joint Permit Application in conjunction with the COE and the VWCB. When a proposed project will encroach in, on, or over state-owned subaqueous lands, the proponent of the project must submit a Joint Permit Application to the VMRC. The application must contain drawings of the proposed activity and detailed information on the nature of the project.

After receipt of an application, the VMRC issues public notice of the proposal. A joint notice with the COE is used, so that those wishing to comment may notify either the COE or the VMRC of their objections. A VMRC environmental engineer generally makes a field inspection during the public notice and comment period. At the

conclusion of the comment period, the VMRC will act on the permit application at its regular monthly meeting. These meetings are generally held within sixty days of the receipt of the initial Joint Permit Application. If the applicant and the VMRC agree on modifications, a permit will be issued within thirty days. Thus, it can take as little as sixty days from the date an application is received for a permit to be issued, but as previously mentioned, the public notice and comment process may cause delays of up to nine months between application and issuance.

General Permit Applications

The VMRC has issued a general permit to the VDOT for all proposals that qualify for a COE § 404 or § 10 permit and would otherwise require a subaqueous bed permit.

THE GENERAL PERMIT PROGRAM

The VDOT's "General Permit Program" refers to the general permits issued by the COE and the VMRC. The COE permit (82-GP-14) was issued in 1982 under the authority of § 10 of the River and Harbor Act and § 404 of the Clean Water Act. It authorizes the VDOT to proceed with highway projects involving work activities, construction of structures, or material filling (both temporary and permanent) in the waters of the U.S. and the Commonwealth (see Appendix B). However, projects must be reviewed and approved at monthly interagency coordination meetings before work can begin. The VMRC permit (VGP-1) was issued in 1985 pursuant to §§ 28.1-23 and 62.1-3 of the Code of Virginia. The permit authorizes "all proposals by the [VDOT] to encroach in, on, or over state-owned subaqueous land which qualify for a Nationwide Permit... or ... General Permit." (See Appendix C). Thus, if a VDOT project meets the standards of a COE nationwide or General Permit-14, a VGP-1 will also be issued. Like the COE permit, VGP-1 is conditioned on monthly interagency coordination procedures.

The General Permit Program was created to handle relatively small, uncontroversial highway projects that impact wetlands or waterways. Examples of such projects are alterations to roadbeds, stream crossings requiring the use of box culverts or bridges, and minor bridge repairs. Because the VDOT undertakes a very large number of projects requiring § 404 and subaqueous bed permits, it became quite cumbersome and time consuming to apply for individual permits for each project. The two to nine month period required to process applications led to delays in road construction and repair.

The General Permit Program is designed to expedite the permit application process in two ways: (1) it eliminates the public notice

and comment periods; and (2) it brings the key participants together on a monthly basis so that views may be exchanged and compromises reached. The VDOT can formulate plans for a project, present them to the involved agencies at an "early coordination meeting," receive agency comments at the meeting, and then if necessary, present a modified version of the proposal at a later meeting. Representatives of the COE report that projects are often presented for permit approval at the next coordination group meeting (thirty days later). However, several District Environmental Managers report that projects are not usually presented for permit approval until sixty days after the early coordination meeting. Thus, permits are often granted within sixty to ninety days from the date the proposal is initially submitted to the agencies. This compares favorably to the two to nine months typically required for individual permits.

If a VDOT project is especially large or controversial, a permit application will not be processed through the General Permit Program. Attempting to process these projects through the General Permit Program is bound to result in additional delays since the Program was not designed for this purpose. In such instances, individual authorization must be obtained through the standard permit application process.

Mechanics of the Program

The General Permit Program covers three permit requirements: §§ 404 and 10 permits required by the Clean Water Act and River and Harbor Act, § 401 water quality certification required by the Clean Water Act, and subaqueous bed permits required by the VMRC. One combined general permit application is used to apply for all three permits. A copy of the application is included in Appendix D.

The General Permit application process begins with a VDOT District Environmentalist submitting an application on the combined application form. The application is then sent to each of the state and federal agencies that comprise the interagency coordination group. The agencies receive the application at least fifteen days prior to a permit coordination meeting.

The permit coordination meeting may be the most important aspect of the General Permit Program. These meetings bring together the key actors in the permit application process: representatives of the VDOT, (including District Environmentalists), the USFWS, the VMRC, and the VWCB. In so doing, much of the delay caused by interagency communication is eliminated.

At a permit coordination meeting, highway projects that require a § 404/10 or subaqueous bed permit are presented for either "early coordination" or "permit coordination." Early coordination is a regular

part of the permit process when the project is federally funded. Some state projects are early coordinated; however, most are permit coordinated directly without early coordination. If the project were presented for early coordination, the District Environmentalist would not be seeking approval of the project at this particular meeting. Rather, agency comments are noted, and the District Environmentalists respond to those comments. The VDOT will then seek to incorporate those comments into the proposal and present the project again at a later date, usually within thirty to sixty days. When agency comments are received by the District Office after the input deadline for the next coordination meeting, the project must wait until the following month to be permit coordinated, thus taking sixty days from early coordination. Though not required, some projects are early coordinated three to eight months prior to permit coordination. Projects presented for permit coordination are often those that have already been early-coordinated. Those agency comments that require substantial modifications of the project have already been addressed, and only minor modifications, if any, should be necessary for approval. Typical agency comments for such projects are requirements of strict erosion and sedimentation controls. If these comments are agreed to by the Department, approval is granted and a permit will be issued within fifteen days. Figure 1 shows the time involved in the application process in time-line format.

Some projects are also approved through what is called the "fast-track" system. The projects have been reviewed in advance of the meetings and are not discussed further. The VMRC signs the permits for these projects at the meeting (i.e., there is no fifteen-day waiting period).

Procedural Aspects

The representatives of the participating agencies receive the general permit application for each proposed project at least fifteen days prior to the meeting. The application describes the location of the project, its purpose, environmental impacts (on streams, floodplains, and wetlands), and construction methods.

At the meeting, the District Environmentalist for the construction district in which the project is located makes a brief presentation summarizing the materials included in the permit application. Generally, slides of the affected areas are shown. Agency representatives may then ask the District Environmentalist to elaborate on material in the application or presentation. The VDOT official who runs the General Permit Program will then read the comments received from parties not present at the meeting. Finally, the agency representatives make their comments. The extent of comments tends to be a function of whether the project is presented for early coordination or permit coordination.

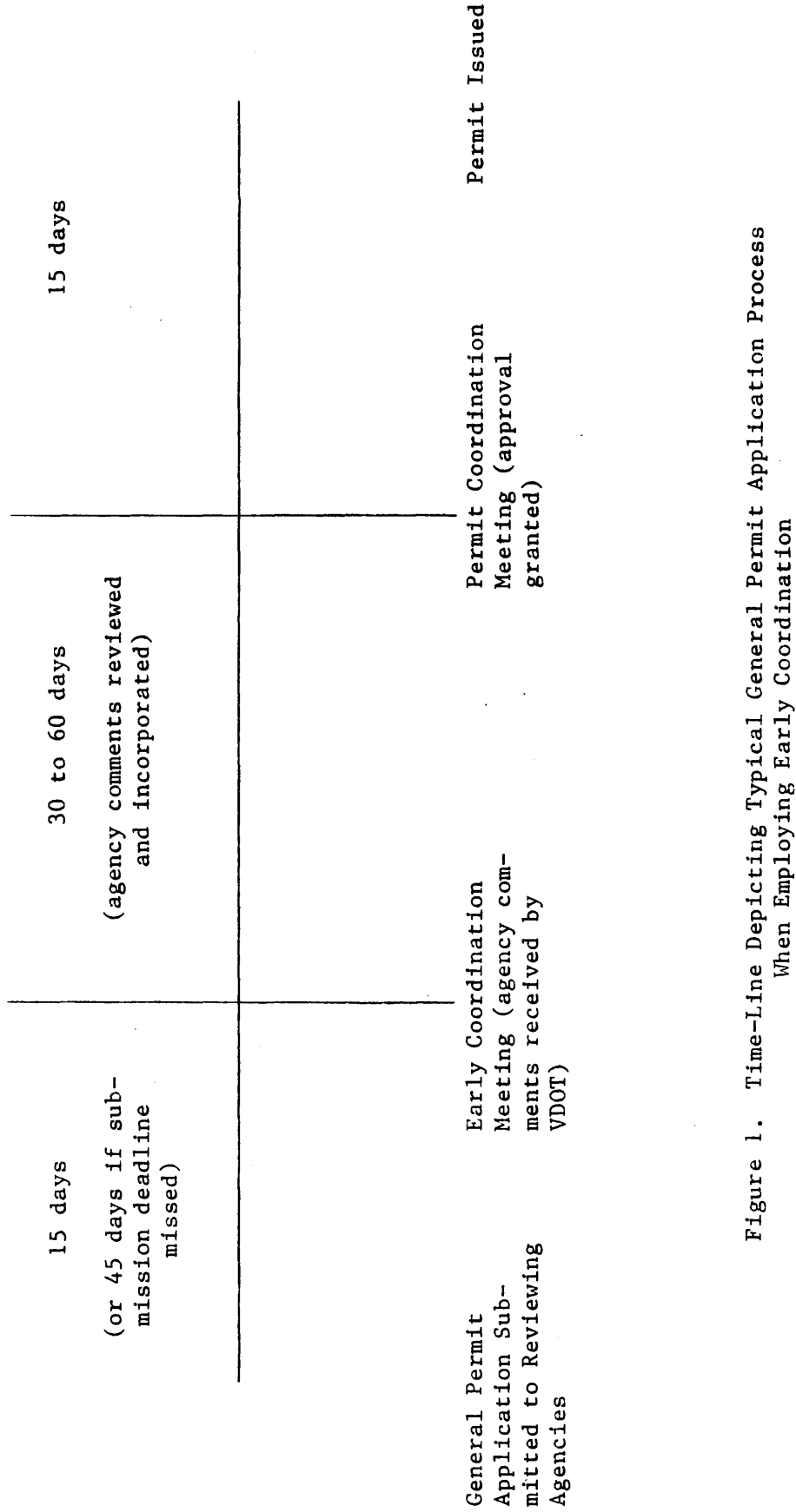


Figure 1. Time-Line Depicting Typical General Permit Application Process When Employing Early Coordination

If the VDOT and the involved agencies cannot reach agreement on modifications at a permit coordination meeting, the project may be tabled until a future meeting, thus adding at least thirty days before issuance of a permit. If the project is especially large or controversial, it may be removed from the General Permit Program. An individual application will then be required, necessitating separate agency review and water quality certification.

An Illustration: The February 26, 1987 Meeting

A review of a few of the projects presented at the February 26, 1987, Permit Coordination meeting provides an example of how the General Permit Program works.

1. Early Coordination Project

(a) The District Environmentalist from the Fredericksburg District presented a proposal to widen an existing box culvert, which would result in the displacement of wetlands. Consequently, the VDOT acquired property rights to nearby land in order to develop a mitigation site. The USFWS was concerned that use of a box culvert would have undesirable effects upon the stream bottom, and called for an investigation of a bottomless structure as an alternative. Additionally, USFWS asked for a more detailed mitigation plan before the project was presented for permit coordination. The NMFS and the VWCB suggested that the box culvert be sunk deep enough to provide for a natural stream bottom. The COE and VMRC concurred with the comments made by NMFS. Because the project was only presented for early coordination, it will be presented again at a later date when a permit is necessary.

2. Permit Coordination Projects

(a) The District Environmentalist from the Richmond District, presented a proposal to raise a roadbed in order to eliminate flooding caused by a creek adjacent to Rte. 639. The work would impact wetlands adjacent to the road, and the VDOT had therefore prepared a proposed mitigation plan. To offset the displacement of existing wetlands, new wetlands would be added across the road from the impacted area. Additionally, silt fences would be used on the side of the road to prevent the flow of runoff into wetlands and the creek. The NMFS recommended a time-of-year restriction on in-stream construction from May 15 to May 30, and the USFWS asked for two minor revisions in the wetlands mitigation plan. The construction delay was deemed acceptable, revisions were made, and the project was approved.

(b) The District Environmentalist from the Lynchburg District, presented a contractor's proposal to add a causeway to a bridge project on Rte. 710 in Pittsylvania County. The environmental setting, adjacent land use, a hydrologist's report on the impact, and other matters contained in the general permit application were presented. Slides of the affected area were shown. It was noted that no wetlands were impacted by this project. While NMFS, VWC, and VMRC had no comments to make on the proposal, the COE called for strict erosion and sedimentation control (a standard comment at the permit coordination stage). The project was then approved.

PERMIT APPLICATION PROCESSES IN OTHER STATES

In an effort to gauge the problems encountered by the VDOT's General Permit Program, surveys were sent to twelve state agencies responsible for obtaining § 404 permits for highway construction projects. Those agencies were: the Alabama Highway Department, the Connecticut Department of Transportation, the Delaware Department of Transportation, the Florida Department of Transportation, the Maine Department of Transportation, the Maryland State Highway Administration, the Massachusetts Department of Public Works, the New Hampshire Department of Transportation, the New Jersey Department of Transportation, the New York Department of Transportation, the North Carolina Department of Transportation, and the Pennsylvania Department of Transportation.

Because the General Permit Program was initiated to increase the efficiency of Virginia's permit application process, the survey questions were primarily directed at the amount of time required for the state agencies to receive a § 404 permit. Thus, the agencies were questioned about the length of the application process, the factors that might delay receipt of a permit, measures the agencies had taken to expedite the application process, and mitigation requirements. The results of the survey are discussed below. Tables 1, 2, and 3 summarize the survey results. Information obtained from the VDOT regarding Virginia's problem areas is included in the discussion of sources of delay.

Length of Application Process

The amount of time from date of submission to date of approval of a § 404 permit application varies from state to state. Delaware has the fastest turn-around time, with a typical application taking between two and four months for approval. On the other hand, several states report that some applications take twelve months or more. With the exception of Delaware, no state reports a turn-around time of less than three months. A rough average of the length of time required for approval in

the twelve states surveyed is six months. The responses of each state are summarized in Table 1.

Mitigation Requirements

The survey contained questions concerning the types of mitigation measures used by the responding agencies and the extent of mitigation required. All twelve states responded that wetlands replacement and enhancement are required mitigation measures. Avoidance of wetland impacts (usually by altering the road alignment) and design modifications (such as erosion and sedimentation control or bank stabilization devices) are also commonly required. Two states (Delaware and North Carolina) have established wetlands banks as part of their mitigation efforts. Two states also report that time of year restrictions are imposed as mitigation requirements. For example, the Maine Department of Transportation reported that road construction must be timed to avoid conflicts with fisheries resources. The mitigation measures most commonly required are summarized in Table 2.

The extent of mitigation required varies from state to state. Most states have a requirement of 1:1, but are subject to reviewing agency pressure to increase that ratio. Several states report that USFWS is the chief proponent of increased mitigation. The Florida Department of Transportation reports that mitigation in the ratio of 2:1 or greater is usually required. Other states report that a ratio of more than 1:1 is required only in special circumstances. For example, the Connecticut Department of Transportation is subject to a greater than 1:1 requirement when there are "impacts to viable upland habitats."

Sources of Delay

The results of the survey showed that three factors tend to be the most common causes of delay in the permit application process: agency review, mitigation requirements, and the public comment period. Most respondents elaborated on the specific nature of the delay. These responses are summarized below. Additionally, Table 3 summarizes those factors identified by each respondent as a source of delay.

Agency Review

Virginia and eleven other states identified agency review as a source of delay. Some of the aspects of the agency review process that were cited by the eleven other states as problems included:

- Reluctance of federal agencies to provide assistance in the planning stages while requiring substantial modifications once a proposal is submitted.

State	Length of Application Process	Early Coordination
Alabama	minor impact: 3-6 months major impact: 6 or more months	yes
Connecticut	6-12 months or more	yes
Delaware	2-4 months	yes
Florida	3½-8 months	yes
Maine	3 months if no negative responses received	yes
Maryland	3-5 months	yes
Massachusetts	6 months (minimum)	yes
New Hampshire	8½ months	no
New York	6-12 months or more	no
New Jersey	minor impact: 4 months major impact: up to 3 years	no
North Carolina	3 months	no
Pennsylvania	3-4 months (minimum)	no

Table 1. Time Required for Permit Approval in Other States

- Agency manpower shortages, especially at the COE.
- Agency bureaucracy.
- Agency parochialism. In the words of one respondent, "they protect their small area of concern not realizing that other areas of concern must be balanced against theirs."
- Inability of highway department applicants to reach agreement with the commenting agencies.
- Inability of reviewing agencies to agree amongst themselves on mitigation measures. For example, one state reported that the FHWA, the funding agency, often cannot agree with NMFS and USFWS on mitigation requirements.

Similar problems have been cited in Virginia by several District Environmental Managers. Occasionally, an agency will not have a representative at the early coordination or permit coordination meeting. Therefore, no comments are furnished. This lack of input for permit coordination can result in future revisions to the project. The problem seems to be increasing and can be particularly severe when an agency, such as USFWS, is not represented at a coordination meeting at which a wetlands mitigation plan that is already a source of delay is being discussed. Also, when an agency is represented, there is less chance that there will be gaps in their information as well as the Department's.

Mitigation Requirements

Mitigation requirements were also cited by eleven states in addition to Virginia as a source of delay in the permit application process. Several respondents identified difficulty in finding wetlands replacement sites as a major obstacle to permit approval. Most states that identified agency review as a source of delay specifically mentioned agency pressure for mitigation as a problem. One state reported that the length of time required for approval of an application is directly related to the severity of the wetlands impact and the amount of mitigation required. Virginia projects involving wetland impacts are also typically the most difficult to permit coordinate. They are the most likely to require more than one coordination, and delay associated with revision of a mitigation plan is not uncommon.

Public Comment Period

Eight states reported that permit applications are held up by the public comment period. One aspect of the delay is failure of some of those who make comments to respond in timely fashion. The other aspect stems from the requirement that comments be transmitted through the COE to the applicant. Respondents reported that the COE is sometimes slow in relaying those comments to the applying agency.

State	Wetlands Replacement and Enhancement	Avoidance	Wetlands Bank	Design Modifications	Time of Year Restrictions
Alabama	X				
Connecticut	X	X		X	
Delaware	X	X	X		
Florida	X			X	
Maine	X				X
Maryland	X	X		X	
Massachusetts	X	X			
New Hampshire	X				
New York	X	X			X
New Jersey	X			X	
North Carolina	X	X	X		
Pennsylvania	X				

Table 2. Mitigation Requirements in Other States

STATE	AGENCY REVIEW	MITIGATION REQUIREMENTS	DISAGREEMENT WITH AGENCIES	DISAGREEMENT AMONG AGENCIES	PUBLIC COMMENT PERIOD	PUBLIC NOTICE REQUIREMENTS	PUBLIC HEARINGS	EIS PREPARATION	DESIGN MODIFICATIONS	IMPROPER/ERRONEOUS APPLICATION	WATER QUALITY CERTIFICATION	REVIEWING AGENCY BUREAUCRACY	REVIEWING AGENCY PAROCHIALISM	REVIEWING AGENCY STAFF SHORTAGES
Alabama	X	X	X											
Connecticut	X	X					X	X					X	
Delaware									X					
Florida	X	X	X	X	X	X				X	X			
Maine	X	X			X	X	X	X	X					
Maryland	X	X			X	X		X				X	X	
Massachusetts	X	X			X									X
New Hampshire	X	X			X	X						X		X
New York	X	X			X	X	X	X					X	X
New Jersey	X	X		X										X
North Carolina	X	X			X									
Pennsylvania	X	X			X		X						X	

Table 3. Sources of Delay in the Permit Application Process

Other Sources of Delay

The survey respondents also identified the following factors as sources of delay in the permit application process: public notice requirements, public hearings, improper or erroneous applications by the state agency, preparation of Environmental Impact Statements, design modifications to accommodate objectors, and state water quality certification.

In Virginia several District Environmental Managers have cited the necessity of submitting the permit data (application) to the Central Office two to three weeks prior to the coordination meeting not as a source of delay in itself, but rather as a deadline, which if not met, automatically adds another month to the time required for the permit to be issued.

Another problem encountered in Virginia occurs when a participating agency requests information that the Environmental Division is not prepared to answer. This information usually includes engineering and design questions that require input from another division of the Department. If the questions are not answered to the agency's satisfaction, then the project may require recoordination during the next monthly meeting.

Expediting Measures

The most commonly used method of expediting the permit application process is the use of early coordination meetings. Like Virginia, seven states meet with reviewing agency representatives before a project design is finalized in order to get agency input at the planning stage. Similarly, several states stress the importance of good personal relationships with agency representatives to facilitate communication and cooperation before and after the planning stage.

Other measures taken to expedite the application process include increasing the use of nationwide permits, speeding up turn-around time on design modifications, and funding mitigation with state money (to avoid delay caused by disagreement between federal funding and reviewing agencies). Additionally, several states report that they are persistent in their follow-up contacts with the COE after an application has been submitted.

Summary

The survey of twelve east coast state transportation agencies (not including Virginia) showed the \$ 404 permit applications take from two to more than twelve months to be approved, with a rough average of about

six months. Survey respondents identified the agency review process and mitigation requirements as the primary obstacles to prompt approval of an application. Some of the state agencies surveyed seemed to feel that the reviewing agencies did not adequately consider the interests of both the applicant and other agencies. Others felt that agency bureaucracy and manpower shortages made it difficult for the agencies to process applications quickly. Most respondents indicated that reviewing agency demands for mitigation were a major cause of delay. Specifically, applicants may have their proposals rejected because of unacceptable environmental impacts. They are then required to modify plans or increase their mitigation efforts. However, disagreements on mitigation measures, inability to find adequate mitigation sites, or delay in revising plans often impede final approval of an application. Finally, most respondents reported that failure to receive agency comments in timely fashion made it difficult to secure prompt approval of a permit application.

To alleviate these problems, seven states have implemented early coordination efforts. Since much delay seems to be caused by agency pressure for modifications after planning has been completed, the survey respondents have attempted to incorporate agency input into the design phase of a project. Several respondents also stressed the importance of good communication with the reviewing agencies both before and after an application has been submitted. By soliciting agency input into environmental documentation and mitigation plans before planning is completed, applicants are able to minimize agency objections in the later stages.

AGENCY EVALUATIONS OF THE GENERAL PERMIT PROGRAM

The VDOT established the General Permit Program primarily because filing an individual permit application for every proposed highway construction project became quite cumbersome and resulted in considerable duplication of effort. By changing to monthly interagency coordination meetings at which agency comments are transmitted in person rather than by written comment in response to public notice, VDOT and agency officials believed that the application process could be streamlined considerably. At the same time, agency and departmental representatives hoped to ensure that the public-interest concept that guides the application process would still be protected. To see if these goals have been met, reviewing agency officials were asked to give their opinions of the General Permit Program. Their comments are discussed in this section.

Bruce Williams and Julie Samuel (COE)

The Norfolk District COE believes that the General Permit Program has saved both the COE and the VDOT a tremendous amount of paperwork. They feel that it processes the relatively minor projects very efficiently, which is precisely what the program was intended to do. One of its chief advantages is that it eliminates the need for preparation of public notices and processing of comments. Preparation of notices was particularly time-consuming because of inadequate typing services at the COE. Because the VDOT undertakes a very large number of minor projects that can be processed through the General Permit Program, the COE conserves considerable resources that would otherwise have been spent on these applications. These resources can then be focused on the larger, more controversial projects.

Mr. Williams and Ms. Samuel believe that the General Permit Program adequately protects the environment because the larger, environmentally sensitive projects are removed from the program and subject to the individual application process. If the VDOT and the reviewing agencies cannot reach agreement on mitigation measures, the project will not be approved through the General Permit Program. Thus, the reviewing agencies still have the power to require the VDOT to address their concerns. Additionally, if the COE believes that a project is sufficiently controversial to merit review by parties outside the General Permit Program, it has discretion to require that an individual permit application be filed.

The COE representatives do believe that although there are problems in some VDOT construction districts with noncompliance with permit conditions, they are not caused by the General Permit Program. Rather, they have arisen on several projects for which individual permits were obtained (such as the Powhite Parkway extension controversy).

Diane Eckles (USFWS)

Ms. Eckles feels that the General Permit Program has reduced the administrative burden associated with the § 404 permit application process. USFWS no longer has to make written responses to projects processed through the General Permit Program, since objections are transmitted verbally at the coordination group meetings. Additionally, Ms. Eckles feels that the use of monthly coordination meetings improves interagency communication and reduces duplication of effort.

Ms. Eckles is less enthusiastic about the program from an environmental perspective. The principal problem is that the agency seems to receive less information about General Permit proposals than it receives for individual permit applications. Specifically, the problems she has with the General Permit Program include the following:

- The USFWS does not receive a written copy of the permit conditions imposed on a project by the reviewing agencies.
- Necessary information is sometimes omitted from the material sent to the agency prior to the coordination group meetings. Under an individual application, such information must be included as part of public notice requirements.
- Much of the information exchanged in the application process is transmitted verbally, and sometimes important material is missed. Efforts to obtain the information after the coordination group meeting may be unsuccessful.

Because necessary information is not always supplied under the General Permit Program, Ms. Eckles feels she may not be aware of potentially adverse environmental impacts of some projects.

The USFWS does not treat projects approved through the General Permit Program any differently than it treats individually permitted projects. There is no greater scrutiny of General Permit projects either before or after approval. Although USFWS is pressing for greater than 1:1 mitigation, it is making this demand of both individual and general permit projects.

Dr. Edward Cristoffers (NMFS)

Dr. Cristoffers feels that the General Permit Program is definitely an improvement over individual permits from an administrative perspective. Whereas NMFS once had to transmit comments through letters when every highway project was individually permitted, it is now able to verbally relay comments on general permit projects. This saves paperwork and accelerates the process. Additionally, Dr. Cristoffers finds that face-to-face meetings with the VDOT and the other agencies improves communication and facilitates cooperation.

Dr. Cristoffers believes that the General Permit Program does a "reasonable job" of protecting the environment. In his opinion, the projects processed through the program are smaller and uncontroversial in nature. Consequently, they tend not to be environmentally sensitive. Those projects that may have a substantial adverse environmental impact are usually processed through the individual permit process. Agency comments have as much weight in the General Permit Program as they do in the individual process because projects can be transferred out of the program when agreement can't be reached with the VDOT.

Michael Gregory (VWCB)

Mr. Gregory feels that the General Permit Program is "great" from an administrative perspective. Its principal advantage is that it avoids duplication of effort by the agencies. Mr. Gregory believes the program is especially valuable because there are many highway projects currently in the planning stages as a part of Virginia's recent commitment to improved highways.

From an environmental protection standpoint, Mr. Gregory believes that reviewing agencies have as much control over projects in the General Permit Program as they do over individually permitted projects.

Summary

The agencies responsible for reviewing § 404 permit applications made by the VDOT are generally favorable in their evaluations of the General Permit Program. All the agencies agree that the program conserves resources by reducing the amount of paperwork required for most applications. According to the COE, resources that would otherwise have been spent on individual permit applications for the numerous small projects undertaken by the VDOT are now directed at the larger, more controversial projects. All the agencies also agreed that communication is better under the General Permit Program. Face-to-face exchanges of information with the applicant and other agencies are perceived to be much more efficient than the written exchange of views through the comment process. With the exception of USFWS, all the agencies are satisfied that the General Permit Program has not had a detrimental effect on efforts to protect the environment. This seems to stem from the fact that most projects in the program are smaller and less environmentally sensitive. Additionally, the program is designed so that any project that becomes controversial during the review process can be transferred out, thereby necessitating an individual permit application. The agencies also believe that their comments carry equal weight in both the individual and general permit application processes. The VDOT must respond adequately to agency concerns, since objecting agencies have the power to require an individual permit if their comments are not addressed.

Thus, from the viewpoint of the participating agencies, the General Permit seems to have accomplished the goal of increasing administrative efficiency without compromising the agencies ability to ensure environmental protection. The only negative feedback came from USFWS, which believes that environmental protection may sometimes be compromised because sufficient information is not provided in the general permit application. None of the agencies believed that the General Permit

Program should be terminated and replaced with a return to individual permit applications for all projects.

It should be pointed out that the administrative burden of which these agencies have been relieved has shifted largely to the District offices of the VDOT who prepare the application, prepare the information packet for the participating agencies, and prepare the presentation for the coordination meetings.

SUMMARY OF THE WORKINGS OF THE GENERAL PERMIT PROGRAM

The VDOT instituted the General Permit Program in 1982 in response to a perceived need for greater efficiency in the process by which it obtained § 404 permits for highway construction projects. The program was intended to cover the relatively small, uncontroversial projects that comprise the bulk of VDOT construction activity. Controversial projects such as new road construction through environmentally sensitive areas may still require an individual permit application with the accompanying public notice and public comment period requirements. However, despite their controversial nature, these are most often processed through the General Permit Program. Thus, the goal of the General Permit Program was to expedite the § 404 permit application process for most VDOT activity. This goal was to be accomplished principally through the use of monthly interagency coordination meetings bringing together both the VDOT applicant and the state and federal agencies that must review and approve permit applications. The meetings facilitate the direct exchange of VDOT and agency views, considerably streamlining the process by which comments are exchanged in the individual permit application for which written comments are sent to the COE in response to publication of a public notice and then relayed to the VDOT, which must then respond to objections to the proposal.

The results of this preliminary inquiry show that the General Permit Program seems to be accomplishing its objectives. According to the Norfolk District COE, permits obtained through an individual application take up to nine months for approval. The primary reason for delay is the public comment period. Under the individual permit process the VDOT spent a great deal of time trying to resolve objections raised by reviewing agencies and others who had comments. This process often entailed time-consuming field inspections and appeals to the COE or the VMRC.

Projects processed through the General Permit Program are usually approved within three months and often within two. Many projects are early coordinated, meaning that tentative plans are presented at a coordination group meeting at which the agencies can provide their comments before plans are finalized. When a project that has been early coordinated is presented for permit coordination and approval, most

agency concerns have already been addressed. This greatly increases the likelihood that a project will be approved at a permit coordination meeting. Therefore, consideration should be given to increasing the number of state projects that are early coordinated.

Both the VDOT and the state and federal reviewing agencies feel that the General Permit Program has succeeded at efficiently processing the smaller projects that constitute the bulk of VDOT highway construction activity. Additionally, it has improved communication by bringing the key actors together on a monthly basis. Agency representatives are given the opportunity to be made fully aware of the concerns of other participants since they can exchange views directly. Agency concerns must still be addressed by the VDOT, because failure to obtain consent of one reviewing agency means that the project might be kicked out of the General Permit Program. Moreover, the COE maintains discretion to require an individual permit for any project that it views as too environmentally sensitive for a general permit.

This survey of procedures has also shown that the problems in the VDOT's General Permit Program are not unique to the general permit process in Virginia. To the contrary, these problems -- agency parochialism and pressure for increased mitigation -- are found in other states as well. More importantly, many problems that other states report in their permit application processes -- slow turn-around time on applications, bureaucracy, lack of cooperation, and ineffective communication -- are not as severe in Virginia's General Permit Program. For example, applications take an average of six months for approval in other states, while Virginia obtains permits for most projects within three months. Similarly, while most other states report that they are spending a great deal of time responding to agency objections after "final" plans have been submitted, Virginia is able to respond to agency objections during planning stages by presenting projects for early coordination. Communication and cooperation are not usually a problem in the General Permit Program, since agency representatives report having a good working relationship with the VDOT official in charge of the program. One problem in this area that needs to be addressed is lack of agency comment due to the absence of an agency representative at a coordination meeting. VDOT and the Commission of Game and Inland Fisheries have an agreement whereby the Commission will supply VDOT with written comments for a coordination meeting if their representative will be absent. It would be advantageous to have such an agreement between VDOT and the other agencies. At the same time, some thought should be given to having a VDOT design engineer at the coordination meetings to handle questions which might arise that the Environmental Division representative cannot answer. This would allow more projects presented for the first time to be processed at any given meeting rather than having to wait for recoordination the following month.

One of the most revealing aspects of this survey is the fact that other states have sought to improve their permit application processes by taking steps similar to those the VDOT has taken. Seven states try to expedite the process by instituting early coordination measures with the reviewing agencies. For example, the Delaware Department of Transportation includes preliminary agency comments in their environmental documentation and makes presentations to joint agency meetings to discuss wetlands impacts and mitigation. Consequently, permits are usually approved within two to four months. Similarly, the Florida Department of Transportation responded that "there is no substitute for personal contact with your regulatory counterpart on a continuing basis." There is a consensus among the surveyed states that the best way to expedite the § 404 permit application process is through coordination meetings designed to facilitate communication and agency input during the planning stages.

In sum, the VDOT's General Permit Program compares favorably to the permit application processes of other states. Additionally, the state and federal agencies that review permit applications in Virginia believe that the General Permit Program has succeeded in streamlining the permit application process without substantially compromising the agencies' ability to ensure environmental protection. Consequently, it appears that there is not a need for substantial modifications in the General Permit Program. However, there are problem areas in the Program, and the following recommendations address these.

In order to minimize the number of projects that do not receive approval when initially presented for permit coordination and to avoid future revisions:

- o Early coordination should be standard procedure whenever practical so that comments are received and addressed prior to the permit coordination meeting.
- o A design engineer familiar with the project being presented for permit approval should be present at the permit coordination meeting to answer agency questions concerning aspects of the project that the Environmental Division representative cannot answer.
- o If there is further need for improvement, it may be in response to both VDOT and USFWS concerns that information and comments are sometimes unavailable in the General Permit process. The USFWS's concerns can be addressed through direct communication between the Agency and the VDOT if information is omitted. The VDOT's problem of not receiving comments from agencies can be addressed by reaching an agreement with the agencies to supply comments when their representative will not be present at a coordination meeting.

Additional inquiry into the possibility of streamlining the General Permit Program even further has been proposed and should be scheduled. This proposed study should include:

- o a closer examination of coordination meetings
- o a procedure to be followed when permit revisions are required after the permit has been approved and perhaps already issued
- o a procedure for easing the VDOT District Office's administrative burden
- o wetland mitigation options.

APPENDIX A

AGENCIES PARTICIPATING IN PERMIT COORDINATION FOR VIRGINIA'S
GENERAL PERMIT PROGRAMFederal

- United States Army Corps of Engineers
- Federal Highway Administration
- National Oceanic and Atmospheric Administration, National Marine Fisheries Service
- United States Fish and Wildlife Service
- Environmental Protection Agency
- United States Coast Guard
- Tennessee Valley Authority, Division of Land and Economic Resources, Land Management Branch

State

- Virginia Marine Resources Commission
- Virginia Water Control Board
- Virginia Commission of Game and Inland Fisheries
- Virginia Department of Health, Division of Water Programs
- Virginia Institute of Marine Science
- Governor's Council of the Environment
- Virginia Department of Conservation and Historic Resources, Division of Parks and Recreation, and Division of Soil and Water Conservation

NAOQP-P
82-GP-14

DEPARTMENT OF THE ARMY
NORFOLK DISTRICT, CORPS OF ENGINEERS
FORT NORFOLK, 803 FRONT STREET
NORFOLK, VIRGINIA 23510

21 October 1982

PUBLIC NOTICE

ANNOUNCING THE ISSUANCE OF A DEPARTMENT OF THE ARMY GENERAL PERMIT

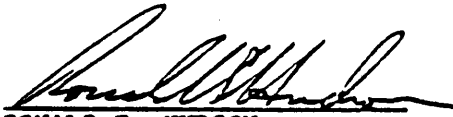
Attached to this notice is a copy of a General Permit for Virginia Department of Highways and Transportation projects in the waters of the United States of the Commonwealth of Virginia. The permit has been thoroughly reviewed by all appropriate Federal, State and local regulatory agencies and was presented in draft form to the public on 9 July 1982.

The decision to issue this general permit is based on an evaluation of the probable impact of the permit on the public interest. The decision reflects the national concern for both protection and utilization of important resources. All factors which were relevant to the proposal have been considered; among those were conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use classification, navigation shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs and in general, the needs and welfare of the people. The evaluation of the impact of the activity on the public interest also included the application of the guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Clean Water Act as amended. A thorough review of the proposed action has revealed that the activities authorized will have only minimal cumulative impact on the environment. Therefore, a determination has been made that an environmental impact statement will not be prepared.

This permit is issued pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (Public Law 95-217).

Additional copies of this permit may be obtained by request to the District Engineer at the address shown above.

21 Oct 1982
Date


RONALD E. HUDSON
Colonel, Corps of Engineers
District Engineer

DEPARTMENT OF THE ARMY GENERAL PERMIT FOR
VIRGINIA DEPARTMENT OF HIGHWAYS AND TRANSPORTATION
PROJECTS IN THE WATERS OF THE UNITED STATES
OF THE COMMONWEALTH OF VIRGINIA

The Virginia Department of Highways and Transportation (VDH&T) is hereby authorized by the Secretary of the Army and the Chief of Engineers (under provisions of Section 10 of the River and Harbor Act of March 3, 1899 and Section 404 of the Clean Water Act to proceed with highway projects involving work, structures and filling (both temporary and permanent) in the waters of the United States of the Commonwealth of Virginia.

Activities authorized by this general permit do not require further authorization under provisions contained in 33 CFR 320 (Department of Defense Regulation Entitled: Corps of Engineers, Department of the Army, General Regulatory Policies, Permits for Activities in Navigable, Ocean Waters and Waters of the United States published in final form in the Federal Register on 22 July 1982) unless the District Engineer determines, on a case-by-case basis, that additional processing is in the public interest. This general permit shall not be interpreted as authorizing any work other than that which is outlined in conditions 1 through 50.

All work authorized herein shall be subject to the following conditions, standards, and limitations. All other work must receive Department of the Army approval through the normal joint application method.

1. This permit will authorize work undertaken within the following geographical limits of the State of Virginia (See figure 1). All waters in the State of Virginia which fall under the regulatory jurisdiction of the Norfolk and Baltimore Districts.
2. Projects proposed by the Virginia Department of Highways and Transportation will be discussed at a regularly scheduled permit coordination meeting attended by representatives of the Department of Interior, the National Marine Fisheries Service, the Environmental Protection Agency, and the Corps of Engineers. In those cases where the aforementioned agencies do not object to a project or when the VDH&T agrees to incorporate agency recommendations into the final project plan, the VDH&T will send a list of those projects and comments to each of the aforementioned agencies. If the agencies do not respond within 15 days of receipt, then the comments are considered final and the VDH&T may proceed with the work.
3. That those cases where objections cannot be resolved, the project must then be approved and authorized by an individual permit (as opposed to a General Permit).
4. A project will be authorized by this general permit only after final design plans have been presented which are acceptable to the aforementioned agencies.
5. All State and local requirements and regulations pertaining to the project will remain applicable.

6. That all activities identified and authorized herein shall be consistent with the terms and conditions of this permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension or revocation of this permit, in whole or in part, as set forth more specifically in Conditions 16 or 17 hereto, and in the institution of such legal proceedings as the Corps of Engineers may consider appropriate whether or not this permit had been previously modified, suspended or revoked in whole or in part.
7. That all activities authorized herein shall, if they involve, during their construction or operations, any discharge of pollutants into waters of the United States or ocean waters, be at all times consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pretreatment standards and management practices established pursuant to the Federal Water Pollution Control Act of 1972 (Pub. L. 92-500; 86 Stat. 816), the Marine Protection Research and Sanctuaries Act of 1972 (Pub. L. 92-532, 86 Stat. 1052), or pursuant to applicable State and local law.
8. That an individual Department of the Army permit will be required for those projects considered extremely controversial by the District Engineer or when he determines that an Environmental Impact Statement is required.
9. That when the activity authorized herein involves a discharge during its construction or operation, of any pollutant (including dredged or fill material), into waters of the United States, the authorized activity shall, if applicable water quality standards are revised or modified during the term of this permit, be modified, if necessary, to conform with such revised or modified water quality standards within 6 months of the effective date of any revision or modification of water quality standards, or as directed by an implementation plan contained in such revised or modified standards, or within such longer period of time as the District Engineer, in consultation with the Regional Administrator of the Environmental Protection Agency, may determine to be reasonable under the circumstances.
10. That the Virginia Department of Highways and Transportation agrees to follow to the maximum extent possible in the construction or operation of the work authorized herein the Best Management practices contained in Volume 47, Number 141 of the Federal Register, Thursday, 22 July 1982.
11. That the Virginia Department of Highways and Transportation agrees that it will prosecute the construction or work authorized herein in a matter so as to minimize any degradation of water quality.
12. That the Virginia Department of Highways and Transportation shall permit the District Engineer or his authorized representative(s) or designee(s) and the aforementioned agencies 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.

13. That the Virginia Department of Highways and Transportation shall maintain the structure or work authorized herein in good condition and in accordance with the plans and drawings reviewed at highway coordination meetings.

14. That this general permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and that it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein.

15. That this general permit may be summarily suspended, in whole or in part, upon a finding by the District Engineer that immediate suspension would be in the general public interest. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventive measures to be taken by the permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. The permittee shall take immediate action to comply with the provisions of this notice. Within ten days following receipt of this notice of suspension, the permittee may request a hearing in order to present information relevant to a decision as to whether his permit should be reinstated, modified or revoked. If a hearing is requested, it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the hearing, or within a reasonable time after issuance of the suspension notice to the permittee, if no hearing is requested, the permit will either be reinstated, modified or revoked.

16. That this general permit may be either modified, suspended or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that there has been a violation of any of the terms or conditions of this permit or that such action would otherwise be in the public interest. Any such modification, suspension, or revocation shall become effective 30 days after receipt by the permittee of written notice of such action which shall specify the facts or conduct warranting same unless (1) within the 30-day period the permittee is able to satisfactorily demonstrate that (a) the alleged violation of the terms and the conditions of this permit did not, in fact, occur or (b) the alleged violation was accidental, and the permittee has been operating in compliance with the terms and conditions of the permit and is able to provide satisfactory assurances that future operations shall be in full compliance with the terms and conditions of this permit; or (2) within the aforesaid 30-day period, the permittee requests that a public hearing be held to present oral and written evidence concerning the proposed modification, suspension or revocation. The conduct of this hearing and the procedures for making a final decision either to modify, suspend or revoke this permit in whole or in part shall be pursuant to procedures prescribed by the Chief of Engineers.

17. That in issuing this general permit, the Corps has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

18. That any modification, suspension, or revocation of this permit shall not be the basis for any claim for damages against the United States.
19. That the permittee shall notify the District Engineer at what time the activity authorized herein will be commenced, as far in advance of the time of commencement as the District Engineer may specify, and of any suspensions of work, if for a period of more than one week, resumption of work and its completion.
20. That this general permit does not authorize or approve the construction of particular structures, the authorization or approval of which may require authorization by the Congress or other agencies of the Federal Government.
21. That if the recording of this permit is possible under applicable State or local law, the permittee shall take such action as may be necessary to record this permit with the Register of Deeds or other appropriate official charged with the responsibility for maintaining records of title to and interests in real property.
22. That there shall be no unreasonable interference with navigation by the existence or use of the activity authorized herein.
23. That the permittee, prior to the commencement of any work authorized herein, shall advise the District Engineer in writing the name, address, and telephone number of the Resident Engineer undertaking the work. The Resident Engineer shall furnish all contractors, before the commencement of the work, a complete copy of the drawings and conditions for each project.
24. That the permittee shall advise the District Engineer verbally or in writing when unusual or complicated foundation conditions are incurred requiring debris removal (e.g. stumps, broken concrete, ec.) and shall not take measures to remove the obstruction or change the location of the structure until written or verbal approval by the District Engineer or his authorized representative is received.
25. That all dredging and/or filling will be done so as to minimize disturbance of the bottom or turbidity increases in the water which tend to degrade water quality and damage aquatic life.
26. That the deposition of dredged or excavated materials on shore, and all earthwork operations on shore will be carried out in such a way as to minimize erosion of the material and preclude its entry into the adjacent waterway.
27. That on completion of earthwork operations, all fills on shore, and other areas on shore disturbed during construction will be seeded, riprapped or given some other type of protection from subsequent soil erosion.
28. That the permittee will employ measures to prevent or control spills of fuels or lubricants from entering the adjacent waterway.

29. That this general permit does not authorize the interference with any existing or proposed Federal project and that the permittee shall not be entitled to compensation for damage or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest. That no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized by this permit.

30. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

31. That the permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the authorized structure or work, shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former conditions. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

32. That the permittee hereby recognizes the possibility that the structure permitted herein may be subject to damage by wave from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

33. That all discharges will be carried out in conformity with the goals and objectives of the EPA Guidelines established pursuant to Section 404(b) of the Clean Water Act and published in 40 CFR 230.

34. That all discharges will consist of suitable material free from toxic pollutants in other than trace quantities.

35. That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution.

36. That only dredged material originating from those waterways specified in H. D. 563, 79th Congress 2nd Session is eligible to be placed in Craney Island.

37. That quantities of material dredged and placed in the Craney Island Rehandling Basin and/or the Craney Island Disposal Area will be furnished by the VDH&T. Before and After Dredging Hydrographic Surveys and Yardage Calculations shall be performed and certified by a Professional Engineer or Land Surveyor. For local surveys and tidal datum information, the applicant is referred to Mr. Stephen DeLoach at the District Office (441-3664). All surveys, maps, and calculations will conform to recognized professional standards and be sent to the District Engineer.

38. That the permittee shall pay to the District Engineer in charge of the locality certain tolls which have been established to comply with the Federal legislation authorizing construction of the Craney Island Disposal Area Project. The rates are established at amounts which will cover amortization of the facilities used plus operation, maintenance, and rehandling costs. Since costs of operation, maintenance, and rehandling vary from year to year, the tolls will vary. The applicant rate in effect on the date of issuance of this permit is listed below. A review of the rates will be made annually on or about 1 July to determine whether any revisions should be made. If changes in these rates become necessary during the life of this permit, the permittee will be notified of the change and the effective date thereof. Late charges will be applied to all overdue payments at a percentage rate based on the current value of funds available to the U. S. Treasury. The charges will be applied for each 30-day period the account is overdue.


Deposit in Rehandling Basin (Scow)	\$1.25 per cu. yard (Place and/or Scow measurement less 10%)
Direct deposit in Disposal Area	7¢ per cu. yd. (Place measurement)
Deposit in Disposal Area by Barge Rehandler	9¢ per cu. yd. (Place measurement)
Deposit in Disposal Area by Hopper Dredge	4¢ per cu. yd. (Place measurement)

The above toll is for use of disposal facilities only, and is in addition to any charges for inspection, supervision, and surveys.

39. That if the Craney Island Disposal Area becomes an area no longer available for use as a disposal area during the terms of this permit, the VHD&T will be responsible for finding an upland disposal area and have it approved by this office prior to any further dredging.
40. That a contract number be obtained at the coordination meeting from the Corps Representative, for those projects which involve the disposal of dredged material in Craney Island.
41. That construction methods will be designed to minimize marsh disturbance.
42. That all projects occurring in a National Scenic River will be precoordinated by the Virginia Department of Highways and Transportation with the U. S. Department of Interior. All necessary approval must be obtained before the project will qualify for this general permit.
43. All projects which have the potential to effect threatened and/or endangered species or occur in the vicinity of such species be precoordinated with the Fish and Wildlife Service. Provided that the Fish and Wildlife Service and the Virginia Department of Highways and Transportation can reach an agreement on project specifications which will eliminate impacts to endangered or threatened species the project will qualify for a general permit. When this cannot be accomplished, the project will require a formal Section 7 consultation and an individual permit.

44. That failure to comply with the terms and conditions of this general permit can result in enforcement actions against the Virginia Department of Highways and Transportation and/or contractor.
45. That if the waterway affected is a "Navigable Waterway of the United States", over which the U.S. Coast Guard asserts jurisdiction, the location and clearances of the bridge or structure must also be approved by the U.S. Coast Guard.
46. If the District Engineer determines that the proposed work does not meet the provisions of this general permit, or that extraordinary conditions exist, he will notify the VDH&T that an individual permit will be required.
47. That VDH&T contact the Virginia Research Center for Archaeology on a project by project basis for possible archaeological surveys and/or mitigation recommendations prior to the permit coordination meeting. Where the latter's concerns cannot be resolved, VDH&T must submit an application for an individual Department of the Army permit. Those applications will be processed in accordance with 33 CFR 325.
48. That if items of apparent historical or archaeological interest are discovered during construction, the Virginia Historic Landmarks Commission shall be notified immediately.
49. That this General Permit, unless modified, suspended or revoked, will be in effect for a period of five (5) years from the date of issuance. Upon expiration, it may, if the public interest so dictates, be considered for revalidation.
50. That any modification, to the project plans made after final permit coordination, will be re-coordinated at a permit coordination meeting. The modification must be acceptable by the aforementioned agencies in order for it to qualify for a general permit.

21 Oct 1982
Date


RONALD E. HUDSON
Colonel, Corps of Engineers
District Engineer

APPENDIX C

COMMONWEALTH OF VIRGINIA

VIRGINIA MARINE RESOURCES COMMISSION (VMRC)

GENERAL PERMIT VGP # 1

VMRC GENERAL PERMIT FOR PROJECTS WHICH CONFORM TO CERTAIN CRITERIA AND ARE UNDERTAKEN BY THE VIRGINIA DEPARTMENT OF HIGHWAYS AND TRANSPORTATION (VDH&T) IN, ON OR OVER STATE-OWNED SUBAQUEOUS LANDS ANYWHERE IN THE COMMONWEALTH.

1. AUTHORITY - EFFECTIVE DATE:

(a) This General Permit is promulgated pursuant to the the authority contained in Sections 28.1-23 and 62.1-3 of the Code of Virginia, as amended.

(b) The effective date of this General Permit is August 24, 1982 and reauthorized and amended on May 28, 1985.

2. DISCUSSION:

(a) The U. S. Army Corps of Engineers has granted a Nationwide General Permit for certain minor projects in waters of the United States.

(b) The Norfolk District U. S. Army Corps of Engineers has granted a General Permit effective October 21, 1982 for VDH&T projects in the waters of the Commonwealth which meet certin rigid criteria (82-GP-14).

(c) Projects which do not qualify under (a) and (b) above will be processed in accordance with established joint State/Federal regular permit procedures.

(d) Formal monthly State/Federal inter-agency coordination procedures have been established and practiced over the past several years at which each VDH&T project is subjected to rigorous review and routinely modified to satisfy agency concerns.

(e) All VDH&T projects are routinely given wide public notice in conformance with established State/Federal highway project requirements and public hearings are held by VDH&T on all significant proposals.

(f) VDH&T is exempt by statute from all fees and royalties.

3. AUTHORIZATION/CONDITIONS:

All proposals by VDH&T to encroach in, on or over State-owned subaqueous land which qualify for a Nationwide Permit, Paragraph 2(a), or a Norfolk District General Permit, Paragraph 2(b), above, are hereby permitted subject to the following standard conditions:

a) Any proposed deviation from the pre-conditioned plan must be formally re-coordinated and approved prior to undertaking the work.

b) Permittee shall notify the Commission when the project has been completed.

- c) This permit grants no authority to the Permittee to encroach upon the property rights, including riparian rights, of others.
- d) The duly authorized agents of the Commission shall have the right to enter upon the premises at reasonable times, for the purpose of inspecting the work being done pursuant to this permit.
- e) The Permittee shall comply with the water quality standards as established by the State Water Control Board and all other applicable laws, ordinances, rules and regulations affecting the conduct of the project. The granting of this permit shall not relieve the Permittee of the responsibility of obtaining any and all other permits or required authorization for the project.
- f) This permit shall not affect or interfere with the right vouchsafed to the people of Virginia concerning fishing, fowling and the catching of and taking of oysters and other shellfish in and from the bottom of areas and waters not included within the terms of this permit.
- g) The Permittee shall, to the greatest extent practicable, minimize the adverse effects of the project upon adjacent properties and wetlands and upon the natural resources of the Commonwealth.
- h) This permit may be revoked at any time by the Commission upon the failure of the Permittee to comply with any of the terms and conditions hereof or at the will of the General Assembly of Virginia.
- i) This permit is subject to any lease of oyster planting ground in effect on the date of this permit. Nothing in this permit shall be construed as allowing the Permittee to encroach on any lease without the consent of the leaseholder. The Permittee shall be liable for any damages to such lease.
- j) The issuance of this permit does not confer upon the Permittee any interest or title to the beds of the waters.
- k) Specifically prohibited is the sale by subcontractors, without Commission approval, of material removed from State-owned bottoms.
- l) All structures authorized by this permit which are not maintained in good repair shall be completely removed from State-owned bottom within three (3) months after notification by the Commission.
- m) This permit authorizes no claim to archaeological artifacts which may be encountered during the course of construction. If, however, archaeological remains are encountered, the Permittee agrees to notify the Commission, who will, in turn, notify the Virginia Historic Landmarks Commission. The Permittee further agrees to cooperate with agencies of the Commonwealth in the recovery of archaeological remains if deemed necessary.

4. PROCEDURES:

The Chief, Habitat Management Division will administer this General Permit and establish procedures to assure:

- (a) That all projects authorized by this permit satisfy either the Nationwide

Permit criteria established by Department of the Army Regulations or General Permit Criteria established by the Norfolk District U. S. Army Corps of Engineers in 82-GP-14.

- (b) Minimum cumulative impact on the marine environment.
- (c) Adequate opportunity for public review.
- (d) That a record is maintained on all projects authorized by this permit.

Such records will include:

- 1) The name, address, and telephone number of the Highway Office who wishes to perform the work.
 - 2) The location of the project, including waterway, county/city and route number of roadway.
 - 3) Detailed drawings of the project including a plan view and section view with the mean high and mean low water lines or the ordinary high water mark, whichever is appropriate.
 - 4) The amount of dredging and fill. If dredging is involved, the type of dredge—hydraulic or dragline, the location of disposal sites and the type of erosion and sediment controls if necessary.
 - 5) When projects involve the destruction of wetlands, the type of species involved, the amount to be disturbed, and any plan for compensation, or mitigation.
 - 6) A copy of the environmental assessment or Environmental Impact Statement prepared by the Virginia Department of Highways and Transportation.
- (e) If any objections are raised by either individuals or agencies which cannot be resolved at the monthly project coordination meeting, that project must then be processed for an individual permit to encroach in, on or over State-owned bottomlands.
- (f) Those projects located within a non-tidal drainage basin of less than 5 square miles can be undertaken without the review process outlined in paragraph 2(d) above unless the project involves one or more of the following resources:
- 1. A designated or proposed scenic river as determined by the Virginia Division of Parks and Recreation.
 - 2. A natural trout stream as designated by the Virginia Commission of Game and Inland Fisheries.
 - 3. A public water supply as determined by the State Health Department and/or the State Water Control Board.
 - 4. A habitat or critical area designated for endangered and/or threatened species as listed on the Commonwealth of Virginia's "Official List".
 - 5. Any spawning area designated by the Virginia Institute of Marine Science and/or the Virginia Commission of Game and Inland Fisheries.

- 6. A historical or archaeological site as determined by the Virginia Historic Landmarks Commission.
- 7. A total area of open water, greater than one (1) acre.
- (g) The Commission may conduct periodic inspections to evaluate compliance with applicable environmental management laws and regulations and sediment and erosion control practices specified by the Virginia Division of Soil and Water Conservation.
- (h) The results of any inspections conducted may be utilized by the Commission to assess the advisability of continuation of the provisions of this VGP #1. Such continuation may be on a highway district basis. The Commission will advise the VDH&T in writing if a highway district is not in compliance and may suspend this VGP #1 for that district until evidence of compliance satisfactory to the Commission is achieved.
- (i) Where emergency conditions exist in time of flood or other catastrophic event or a declared disaster by the Governor's Office, the VDH&T, after consultation with the Commission, will take whatever actions it deems appropriate to protect life and property of both private citizens and the transportation system of the Commonwealth. The emergency actions taken will be reported in writing by the VDH&T to the Commission within three months of the completion of such action.

This is to certify that this permit was approved by the Commission at its regularly scheduled meeting on August 24, 1982 and reauthorized with minor administrative corrections at its regularly scheduled meeting on May 28, 1985 and is recorded in the official minutes of those meetings.

COMMONWEALTH OF VIRGINIA
MARINE RESOURCES COMMISSION

By: William A. Pruitt
William A. Pruitt
Commissioner

Subscribed and sworn to before me this 4th day of June, 19 85.

My Commission expires September 25, 19 87.

Patricia Ann Leonard
NOTARY PUBLIC
Patricia Ann Leonard

SCOPING - COORDINATION
FEDERAL AND STATE AGENCIES
GENERAL PERMIT

COE

SWCB

VMRC

DEPARTMENT OF HIGHWAYS AND TRANSPORTATION
INTERAGENCY COORDINATION

I. PROJECT LOCATION:

Route:

Project Numbers:

County/City:

Streams/Drainage
Areas:

II. PROJECT DESCRIPTION/PURPOSE:

III. TYPE SCOPING/COORDINATION:

Early Coordination: Yes No
Permit Coordination: Yes No
Bridge Plans Avail: Yes No
Road Plans Avail: Yes No

VDH&T Contact _____
Ad Date: _____
Location Map: Yes No
Permit Sketches: Yes No

IV. PURPOSE OF COORDINATION:

ENVIRONMENTAL ASSESSMENT:

Stream Impacts: _____

Floodplain Impacts: _____

Wetlands Impacts: _____

Endangered Species: _____

Scenic Rivers: _____

Public Hearing Date/s: _____

Public Hearing Summary: _____

*If project has been previously coordinated you must attach summary of previous comments and point summary of VDH&T's response.

DEPARTMENT OF HIGHWAYS AND TRANSPORTATION
 PERMIT COORDINATION

VI. PERMIT REQUIREMENTS:

STATE PERMITS

SBP General: Yes No
 SBP Standard: Yes No
 401 General: Yes No
 401 Standard: Yes No
 Permit Extension SBP: Yes No
 Permit Modification SBP: Yes No

FEDERAL PERMITS

404 General (VDH&T): Yes No
 404 General (NW): (HW) (MRF)
 404 Standard: Yes No
 Section 10 General: Yes No
 Section 10 Standard: Yes No
 Permit Extension 404/10: Yes No
 Permit Modification 404/10: Yes No

VII. PERMIT DATA

Permittee

Agent

Name: Dept. of Highways and Trans.

M. H. Thomas, Coordinator
 Aquatic Ecology Section
 1221 East Broad Street
 Richmond, Virginia 23219

Address: 1221 East Broad Street
 Richmond, Virginia 23219

Telephone Number:

(804) 786-7428
 (Direct all correspondence to the
 attention of Mr. M. H. Thomas)

Attachments:

Location Map: _____

Sketches - Plan View: _____ Section View: _____

MLW/OHW: _____ MHW: _____

Public Hearing Dates: _____

Summary of Public Hearing: _____

Copy of EIS or AES/WQR: _____

Brief summary of EIS Water Quality/Ecology Impacts: _____

Brief description of water column impacts (construction impacts): _____

Historical/Archaeological Impacts: _____

Dredging/Excavation:

Method:	Quantity:
___ Hydraulic	Above (MLW/OHW): _____ cu. yds.
___ Dragline	Below (MLW/OHW): _____ cu. yds.
___ Other Specify _____	Total: _____ cu. yds.
	Area: Below (MLW/OHW): _____ sq. ft.

Filling:

Method: _____ Quantity: _____ cu. yds.
Area: _____ sq. ft.

Disposal Sites:

Location: _____
Highlands: _____ Wetlands: _____
Approved Site: Yes No Area: _____ sq. ft.

Borrow Site:

Location: _____
Highlands: _____ Wetlands: _____
Approved Site: Yes No Area: _____ sq. ft.

Erosion and Sediment Controls:

Special - Specify:

General SWCC: Yes No If no; Why? _____
 BMP'S: Yes No If no; Why? _____

Wetlands:

Impacts: _____

Species Involved: _____

Amount Disturbed (area):

Primary: _____
 Secondary: _____
 Total: _____

Mitigation:

Description: _____

Amount and type: _____

Species Involved: _____

Method of revegetation:

Seeding _____ Sprigging _____ Natural _____

Time period: _____

*If project has been previously coordinated you must attach summary of previous comments and point summary of VDH&T's response.

VIII. AGENCY COMMENTS:

A) FEDERAL

F&WS:

EPA:

NMF:

COE: NORFOLK DISTRICT

USCG:

OTHER:

B) STATE

SWCB:

MRC:

COR:

VIMS:

SHD:

CGIF:

OTHER:

IX. VDH&T RESPONSE
