



**US Army Corps  
of Engineers**

Vicksburg District  
4155 Clay Street  
Vicksburg, MS 39183-3435

# General Permit

FILE NO.: General Permit 46  
DATE: November 8, 2004  
EXPIRES: November 8, 2009

FOR: CONSTRUCTION AND STABILIZATION OF ROADWAY EMBANKMENTS  
AND BRIDGE ABUTMENTS IN WATERS OF THE UNITED STATES AND  
FOR THE ASSOCIATED DISCHARGE OF DREDGED AND FILL  
MATERIAL

WHERE: THE STATE OF MISSISSIPPI

BY WHOM: DISTRICT ENGINEER, ON BEHALF OF THE MISSISSIPPI  
DEPARTMENT OF TRANSPORTATION

The Vicksburg District is hereby reissuing a Department of the Army General Permit for the construction of roadway embankments and bridge abutments in waters of the United States.

This General Permit includes activities such as the repair and stabilization of existing roadway embankments and bridge abutments in waters of the United States, the installation of additional traffic lanes to existing roadways, and the upgrading of bridges and other stream-crossing facilities. Construction along new alignment is included where impacts to wetlands and other waters of the United States would be minimal.

This action is being taken pursuant to Federal regulations printed in the Federal Register on November 13, 1986, concerning permits for activities in waters of the United States. These regulations state the U.S. Army Corps of Engineers' responsibility for regulating structures or work in or affecting waters of the United States under Section 10 of the Rivers and Harbors Act of 1899 (30 Stat. 1151; 33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

Since portions of the State are within jurisdictional boundaries of four United States Army Corps of Engineers Districts, subsequent authorizations to proceed with work proposed under this General Permit will be granted by letter from the appropriate District within whose boundaries the work will be located. A map indicating the District boundaries is enclosed (enclosure 1).

This General Permit contains certain limitations intended to protect the environment and natural and cultural resources. Conformance with conditions contained in the General Permit does not necessarily guarantee authorization under this General Permit.

In cases where the District Engineer considers it necessary, application will be required for individual permits. Construction, dredging, or fill operations not specifically covered by this General Permit are prohibited unless authorized by a separate permit.

General Permits may be issued for a category or categories of activities when: (1) those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or (2) the General Permit would result in avoiding unnecessary duplication of the regulatory control exercised by another Federal, state, or local agency, provided it has been determined that the environmental consequences of the actions are individually and cumulatively minimal. The determination that the proposed activities comply with the requirements for issuance of General Permits was made using information that is available for inspection at the offices of the Vicksburg District's Regulatory Branch at 4155 Clay Street, Room 233, Vicksburg, Mississippi.

In compliance with requirements of Section 401 of the Clean Water Act, the Vicksburg District has obtained water quality certification from the Mississippi Department of Environmental Quality (enclosure 2).

The Council on Environmental Quality (CEQ) has defined mitigation to include: avoiding impacts, minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts. Early in the design phase of projects to be authorized under this General Permit, avoidance and minimization of impacts to wetlands and other waters of the U.S. must be considered and the least environmentally damaging practicable alternative must be selected. The remaining impacts must be compensated for to the maximum extent practicable.

In order to compensate for any unavoidable loss of wetland functions and values associated with the work authorized by the proposed General Permit, the Mississippi Department of Transportation has developed a mitigation bank plan. The mitigation bank plan details are fully described in the Memorandum of Agreement (MOA) located at the end of this document (enclosure 3). The MOA has been evaluated by the signatory agencies who have determined that the agreement remains valid. The MOA may be modified at any time in the future without reissuing this General Permit provided the signatory agencies agree with the proposed modifications. Plots recommended for inclusion in the mitigation bank must be acceptable to the signatories of the Memorandum of Agreement. The mitigation bank plan is included as a part of this General Permit and will be used by the Mississippi Department of Transportation in the design of each item of work to be covered under the General Permit.

Authorization to conduct work under this General Permit will not negate the responsibility of the applicant to obtain other State or local authorizations or permits required by law for the proposed activity.

REQUEST FOR AUTHORIZATION UNDER THE GENERAL PERMIT: IN ORDER TO BE AUTHORIZED BY THIS GENERAL PERMIT, THE MISSISSIPPI DEPARTMENT OF TRANSPORTATION IS REQUIRED TO SUBMIT TO THE DISTRICT ENGINEER, IN WRITING, THE FOLLOWING INFORMATION AT LEAST 30 DAYS PRIOR TO CONDUCTING THE WORK:

- a. State the number of the General Permit under which the work is to be conducted. (General Permit 46)
- b. Statement that the work will be conducted in compliance with the terms and conditions of the General Permit and will not adversely impact adjoining properties.
- c. Location map showing the proposed worksite(s) (including section, township, range, and county).
- d. A brief description of the proposed worksite in its present condition, and the estimated starting and completion dates of construction.
- e. A brief description and 8 1/2- by 11-inch drawings of the proposed work, including the method of construction or stabilization, the project dimensions, and amounts and types of excavated and fill material in cubic yards.
- f. A Table of Impacts to include the following for each jurisdictional area impacted: Site No.; Station ID; Township/Section/Range; County; Geographical Coordinates (Lat/Long and/or Universal Transverse Mercator (UTM) with specified datum (NAD27, NAD83, or WGS84), Area of Impact (acres/hectares); Type of Jurisdictional Area Impacted (e.g. forested wetland, emergent wetland, scrub/shrub wetland, depressional wetland, perennial stream, intermittent stream, ephemeral stream, etc.); Type of Impact (e.g. permanent fill, temporary fill, mechanized clearing, etc.); Mitigation Source.
- g. Name, mailing address, and telephone number of person acting as the point of contact for the requested authorization.
- h. If wetlands are to be impacted, the following information is required:
  1. A map delineating the wetlands and copies of the associated data form(s) for routine wetland determinations from the 1987 Corps of Engineers Wetland Delineation Manual.

2. The type and date of approval of the environmental documentation by the Federal Highway Administration and a copy of their findings, as required by Executive Order 11990.

i. If the combined acreage of wetlands at a single and complete project site exceeds 1.0 acre, the application shall include a recommendation for compensatory mitigation based on a functional assessment methodology approved by the appropriate District Engineer, which takes into account the habitat quality, and quantity of the impacted area and the proposed mitigation area. Such recommendations shall include copies of all factual information (e.g. worksheets) used in performing the calculations of the functional assessment. (Note: The District Engineer will consider this recommendation in making the final decision on compensatory mitigation measures).

j. If impacts to a perennial stream at a single and complete project site exceed 100 linear feet, MDOT shall provide all information requested by the appropriate District Engineer to determine mitigation requirements for the unavoidable loss of functions and values. (Note: MDOT is actively seeking stream mitigation banking credits in several areas of the State, and through other measures, and will offset perennial stream impacts authorized under this reissued general permit as measures are approved and as deemed necessary by the District Engineer).

k. Comments on the project, as submitted in the application package, from the Mississippi Department of Wildlife, Fisheries and Parks; the Mississippi Department of Archives and History; the Mississippi Department of Environmental Quality; and the United States Fish and Wildlife Service.

l. Comments from the Mississippi Department of Marine Resources and the National Marine Fisheries Service, if the project is located in Hancock, Harrison, or Jackson County, Mississippi. (NOTE: National Marine Fisheries Service = NOAA Fisheries: Habitat Conservation Division. See "Special Condition. h." for addresses).

Upon receipt of this information, the District Engineer will evaluate the proposal and advise either that the work is authorized under the General Permit; will request additional information, if needed; or will advise that the proposed activity will require an individual permit. Included with the letter authorizing work under the General Permit will be the number of wetland acres, if any, which must be deducted from the MDOT mitigation bank or other approved mitigation bank, or other mitigation measures (e.g. mitigation measures to offset loss functions and values of perennial streams) deemed appropriate by the District Engineer.

Special Conditions:

a. No more than 7 acres of wetlands and other waters of the United States shall be directly impacted by the placement of fill at each single and complete crossing of a water of the United States where the proposed work involves either upgrading an existing highway within an established corridor or where the work is to be constructed along a new alignment. Any wetlands or other waters of the United States cut off from their natural hydrologic regime as a result of project work shall be considered as directly impacted. Compensatory mitigation requirements for unavoidable wetland impacts that exceed 1.0 acre at a single and complete project site shall be determined by a functional assessment method that takes into account the quality and the quantity of the impacted wetland site.

b. For stream or river crossings, discharges of permanent fill material and temporary fill material shall be the minimum necessary to complete the crossing. The term fill refers to earthen material, riprap, concrete, and any other materials associated with the work.

c. The stabilization or construction work shall not interfere with navigation (including recreational boating) or adversely impact the flow-carrying capacity of the affected stream.

d. Material to be used for fill must be nonpolluting and may be obtained either offsite or from site preparation. Offsite material shall not be obtained from wetlands outside the 7-acre limit or from other areas that may adversely affect adjacent wetlands. Any excess material shall be placed in an upland area and properly contained or stabilized to prevent entry into adjacent water bodies or wetlands.

e. Disturbed areas on the site that have the potential to impact waters of the United States shall be stabilized to minimize erosion and reduce siltation. Stabilization of soil and removal of sediment that may enter storm water shall be accomplished by the use of appropriate vegetative and structural sediment and erosion control practices. The controls must be in accordance with MS Department of Transportation's Storm Water Pollution Prevention Plan (SWPPP), as approved by MS Department of Environmental Quality. If construction scheduling at a disturbed area results in a cessation of additional construction activities for thirty or more days, appropriate temporary or permanent sediment and erosion control measures shall be implemented within seven calendar days of the cessation of construction activities. Implementation of sediment and erosion control measures shall include sufficient monitoring to evaluate success of the measures.

If initial control measures are not successful, further control measures shall be implemented until sediment and erosion control is achieved at the site (or until construction activities are continued).

f. No activity that may adversely impact a site listed in or eligible for listing in the National Register of Historic Places shall be allowed by this General Permit. Additional material shall not be taken from a known historical or archaeological site such as an Indian Mound. If the permittee, during prosecution of work authorized herein, encounters a previously unidentified archaeological or other cultural resource within the area subject to Department of the Army jurisdiction, he shall immediately notify the District Engineer. The District Engineer, in consultation with the appropriate State Historic Preservation Officer and the Tribal Archaeologists, will comply with 33 CFR 325, Appendix C, paragraph 11 (Historic Properties Discovered During Construction).

g. The work shall not occur in a National Wildlife Refuge, State Game Management Area, or other such Federal or State lands, or lands leased to those entities without the appropriate Federal or State authorization in writing.

h. For work in the Mississippi Coastal Zone Management Area, a set of complete plans shall be sent to the two agencies listed below for review and/or approval as appropriate. Comments resulting from this coordination shall be submitted with the request for authorization under this General Permit.

1. The Mississippi Department of Marine Resources  
1141 Bayview Avenue  
Suite 101  
Biloxi, Mississippi 39530

2. NOAA Fisheries  
Habitat Conservation Division  
Attention: Mr. Mark Thompson  
3500 Delwood Beach Road  
Panama City, Florida 32408

i. All temporary fills must consist of non-erodible material or be protected to prevent erosion.

j. Any materials used for temporary structures such as cofferdams, equipment pads, or temporary crossings, shall be removed as soon as practicable, and the waterway shall be restored to preconstruction contours.

k. Disturbance to riparian vegetation shall be kept to a minimum during construction. Erosion and sediment controls should limit the exposure of disturbed areas to the shortest amount of time as possible and minimize the amount of surface area disturbed. Vegetative practices shall be designed to preserve existing vegetation where possible and revegetate disturbed areas as soon as practicable after grading or construction.

l. The discharge shall not destroy or adversely affect threatened or endangered species or their critical habitat as identified in the Endangered Species Act.

m. Discharges shall not restrict or impede the movement of aquatic species indigenous to the waters.

n. All work shall be performed in a manner that will minimize increased turbidity of the water in the project area and otherwise avoid adverse effects on water quality and aquatic life, especially during fish spawning season. This may require avoiding construction activities during the peak spawning months of April, May, and June.

o. The discharge shall not adversely affect a public water supply intake or a National or State Fish Hatchery intake.

p. The discharge shall not contain unacceptable levels of pathogenic organisms (as prescribed in standards set by the Mississippi Department of Environmental Quality) in areas used for water-contact sports.

q. The construction activity shall not result in the permanent diversion or relocation of a stream or a river channel except where needed to align a waterway crossing to avoid potential damage to the roadway. In no case, shall any realignment extend beyond 150 feet upstream and 150 feet downstream from the centerline of a crossing structure. The construction activity shall result in neither streamflow impediment nor drain adjacent wetlands.

r. Authorizations under this General Permit shall be valid for 5 years from the date of the authorizing letter.

s. Current standards and practices shall be used to determine what type drainage structure is required at a particular stream crossing (box culvert, bridge, etc.).

t. To minimize potential adverse impacts on wetlands or other waters of the United States within the right-of-way or associated with the project, the Mississippi Department of Transportation shall incorporate into each project's design all practicable measures to:

1. Minimize impact on hydrology in wetland areas or other waters of the United States.

2. Minimize potential for toxic spills and leaching into wetland areas or other waters of the United States.

3. Minimize discharge of materials, such as silt, into wetlands or other waters of the United States.

4. Maintain adequate flow through wetlands or other waters of the United States by providing culverts, ditches, and other hydrologic structures.

5. Provide berms, traps, or ditches to direct potential toxic spills away from wetlands or other waters of the United States.

6. Provide for animal migration to and from wetland areas and along stream corridors that would otherwise be impacted by the project.

7. Provide erosion and sediment control features throughout the construction phase of a project that would minimize both short- and long-term impacts to water quality.

8. Provide treatment facilities that may be required to treat highway runoff, which would otherwise adversely affect wetlands or other waters of the United States.

9. Provide contractual provisions for stopwork orders, project staging, and other specifications pertaining to minimizing impacts on wetlands or other waters of the United States, and to onsite monitoring.

General Conditions:

a. The Mississippi Department of Transportation must allow representatives from the appropriate Corps' office to inspect the authorized activity to ensure that it is being or has been accomplished in accordance with the terms and conditions of the permit.

b. This permit does not obviate the need to obtain other Federal, State or local authorizations required by law.

c. This permit does not grant any property rights or exclusive privileges.

d. This permit does not authorize any injury to the property or rights of others.

e. This permit does not authorize interference with any existing or proposed Federal project.

f. In issuing this permit, the Federal Government does not assume any liability for the following:

(1) Damages to the permitted project, or uses thereof, as a result of other permitted or unpermitted activities or from natural causes.

(2) Damages to the permitted project, or uses thereof, as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

(3) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

(4) Design or construction deficiencies associated with the permitted work.

(5) Damage claims associated with any future modification, suspension, or revocation of this permit.

g. In issuing individual authorization under this General Permit, the Government will rely on the information and data, which the permittee provides in connection with his permit application. If, subsequent to the authorization, such information and data prove to be false, incomplete, or inaccurate, this authorization may be modified, suspended, or revoked, in whole or in part, and/or the Government may, in addition, institute appropriate legal proceedings.

h. The United States Army Corps of Engineers may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

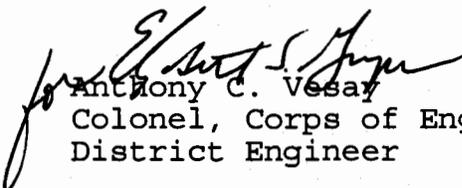
1. Failure to comply with the terms and conditions of this permit.

2. The information provided in support of a request for authorization proves to have been false, incomplete, or inaccurate (see g. above).

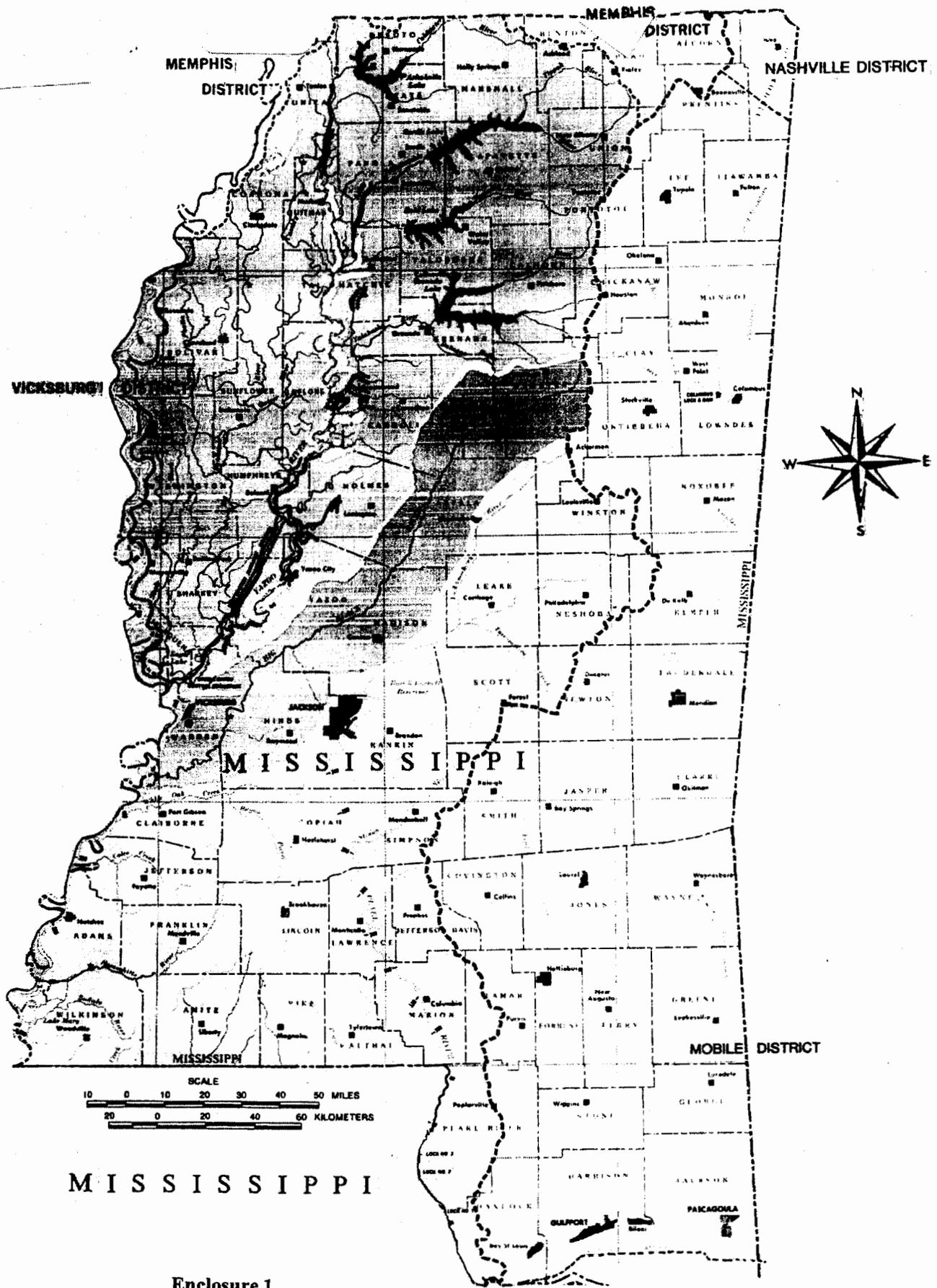
3. Significant new information surfaces which was not considered in reaching the original public interest decision.

i. This General Permit is valid for 5 years. At the end of that time, the cumulative environmental effects of completed work will be reviewed and reissuance of the permit may be considered. However, if unforeseen adverse environmental effects result from the issuance of this General Permit, it may be modified or terminated at any time.

Additional copies of this notice are available upon request from this office. Requests may be addressed to the USAED, ATTN: CEMVK-OD-FP, 4155 Clay Street, Vicksburg, Mississippi 39183-3435.

  
Anthony C. Vesay  
Colonel, Corps of Engineers  
District Engineer

Enclosures



MISSISSIPPI

Enclosure 1



**STATE OF MISSISSIPPI**

HALEY BARBOUF

GOVERNOR

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

CHARLES H. CHISOLM, EXECUTIVE DIRECTOR

October 21, 2004

Colonel Anthony C. Vesay  
U.S. Army Corps of Engineers, Vicksburg District  
4155 Clay Street  
Vicksburg, Mississippi 39183-3435

Dear Colonel Vesay:

Pursuant to Section 401 of the Federal Water Pollution Control Act (33 U.S.C. 1251, 1341), the Office of Pollution control issues this Certification, after public notice and opportunity for public hearing, to U.S. Army Corps of Engineers, Vicksburg District, an applicant for a Federal license or permit to conduct the following activity:

U.S. Army Corps of Engineers, Vicksburg District: Reissuance of a statewide General Permit (GP-46) for construction of roadway embankments and bridge abutments in waters of the United States. This General Permit includes activities such as the repair and stabilization of existing roadway embankments and bridge abutments, the installation of additional traffic lanes to exiting roadways, the upgrading of bridges and other stream-crossing facilities. Construction along new alignment would be included where impacts to wetlands would be minimal. This General Permit would be authorized for use by the Mississippi Department of Transportation. This General Permit would be for use within the boundaries of the State of Mississippi [General Permit-46, OPC2004-051].

The Office of Pollution Control certifies that the applicant's above described activity will be in compliance with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act and Section 49-17-29 of the Mississippi Code of 1972, if the applicant complies with the following conditions:

1. Prior to the start of construction activities, coverage under a Stormwater Construction General NPDES Permit shall be obtained. No construction activities shall begin until such approvals are obtained.
2. Extreme care shall be taken to prevent the permanent restriction or impedance of water flow. Pre-construction hydrology shall be maintained.

OFFICE OF POLLUTION CONTROL

POST OFFICE BOX 10385 • JACKSON, MISSISSIPPI 39289-0385 • TEL: (601) 961-5171 • FAX: (601) 354-6612 • [www.deq.state.ms.us](http://www.deq.state.ms.us)

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Enclosure 2

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3. Storm water discharges shall be free from suspended solids, turbidity, and color at levels inconsistent with the receiving waters.
4. No sewage, oil, refuse or other pollutants shall be discharged into the watercourse.
5. The turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.

The Office of Pollution Control also certifies that there are no limitations under Section 302 nor standards under Sections 306 and 307 of the Federal Water Pollution Control Act which are applicable to the applicant's above-described activity.

This certification is valid for the project as proposed. Any deviations without proper modifications and/or approvals may result in a violation of the 401 Water Quality Certification. If we can be of further assistance, please contact us.

Sincerely,



Jerry W. Cain, P.E., DEE  
Chief, Environmental Permits Division

JWC:FW

cc: U.S. Army Corps of Engineers, Vicksburg District  
Mr. Mike Stewart, Regulatory Branch  
Mr. Jerry Brashier, DMR  
Mr. David Felder, USFWS  
Mr. Bill Ainslie, EPA  
Ms. Mildred Tharpe, Office of the Governor

**MISSISSIPPI DEPARTMENT OF TRANSPORTATION  
MITIGATION BANKING PROGRAM AGREEMENT**

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**I. MITIGATION ALTERNATIVES AND THE MITIGATION BANKING CONCEPT**

This agreement sets forth the procedures and conditions for the establishment of mitigation banks by the Mississippi Department of Transportation (MDOT). Such mitigation banks may, subject to the provisions of General Permit No. CELMK-OD-FE 14-GPD(Vicksburg District)-46 and this agreement, be utilized for the purpose of providing compensation for impacts associated with the discharge of dredged or fill material into forested wetlands pursuant to Section 404 of the Clean Water Act (CWA).

The Council on Environmental Quality (CEQ) has defined mitigation to include: avoiding impacts, minimizing impacts, rectifying impacts, reducing impacts over time, and compensating for impacts. The CWA Section 404(b)(1) Guidelines (40 CFR 230) establish the environmental criteria which must be met for activities to be permitted under Section 404. The types of mitigation enumerated by CEQ are consistent with the requirements of the Guidelines, and, as a practical matter, can be combined to form three general types: avoidance, minimization, and compensatory mitigation.

After it has been determined that all impact avoidance and minimization have been considered and the least environmentally damaging practicable alternative has been selected, remaining impacts must be compensated for to the extent appropriate and practicable. Such compensatory mitigation may be in the form of wetlands restoration, creation, or enhancement. Wetland mitigation banking is a type of compensatory mitigation that often provides environmental benefits not available through traditional project-specific approaches. For example, mitigation banking allows the consolidation of mitigation for impacts to many smaller, isolated or fragmented habitats into a single large parcel or contiguous parcels. Further, mitigation banking can bring together the financial resources, planning and scientific expertise not practicable to many project-specific mitigation proposals.

General Permit No. CELMK-OD-FE 14-GPD(Vicksburg District)-46, this agreement, and a conservation easement, where appropriate, serve as the legal instruments for establishment and operation of the MDOT mitigation bank program. MDOT is the wetland mitigation bank sponsor. This agreement establishes procedures by which the MDOT may purchase lands in fee simple for transfer to a governmental resource management agency or purchase conservation easements from private land owners for transfer to non profit conservation organizations for purposes of mitigation.

**II. AUTHORITY**

The MDOT mitigation banking program as herein defined will operate within the constraints of the National Environmental Policy Act (42 USC 4321 et seq.), the Clean Water Act (33 USC 1251 et seq.), including the Section 404(b)(1) Guidelines (40 CFR 230), Corps of Engineers regulations (33 CFR 320-330), and all other applicable Federal and state

legislation, and rules and regulations. The program complies with the intent of the February 7, 1990, Army/Environmental Protection Agency (EPA) Memorandum of Agreement concerning mitigation and the August 23, 1993, Army/EPA Memorandum to the Field on mitigation banking.

### **III. PURPOSE AND OBJECTIVES OF THE MITIGATION BANKING PROGRAM**

The purpose of individual mitigation banks is to provide credit for the compensation of functions and values of forested wetlands that are unavoidably lost as a result of work requiring Department of the Army permit authorizations. Credits will be available subject to the terms and conditions of General Permit No. CELMK-OD-FE 14-GPD(Vicksburg District)-46 and this agreement. The following is a list of functions and values typically associated with forested wetlands which may need to be compensated: flood conveyance; barrier to erosion; flood storage; sediment retention; habitat for fish and wildlife; water quality improvement; recreation; education and research value; and aesthetic value.

The suitability of using a particular mitigation bank to compensate for impacts to forested wetlands will be determined on a case-by-case basis by the appropriate Corps of Engineers District. In making such determinations, the appropriate Corps of Engineers District, in consultation with the resource agencies, will evaluate the specific characteristics (e.g. functions) of the forested wetland to be affected by a proposed project requiring a Department of the Army (DA) permit. In order to use a particular bank the appropriate Corps of Engineers District must conclude that the bank will appropriately compensate for functions that would be lost if a Department of the Army permit is issued.

The U.S. Army Corps of Engineers District has regulatory jurisdiction over discharges of dredged or fill material in wetlands and other waters of the United States within its geographic boundaries. These geographic boundaries are based on watersheds. The objective of the MDOT mitigation banking program is to compensate for unavoidable wetland impacts within the same watershed where appropriate and practicable. If replacement of functions and values is not practicable within the same watershed, the appropriate Corps of Engineers District may allow mitigation outside of the watershed within its jurisdictional boundaries, preferably within an adjacent watershed similar to the area where the losses occurred.

The MDOT mitigation banking program is primarily for the restoration of prior-converted croplands and enhancement of farmed wetlands to establish forested wetland communities. It is anticipated that the banks will be used to compensate for unavoidable losses of the functions and values of forested wetlands. Mature wetlands may comprise a portion of a tract to be restored, enhanced, and/or created, and serve as a passive source for hydrophytic plants and a wildlife corridor. A tract composed entirely of purchased/preserved mature wetlands may be considered if the wetlands are unique (i.e. habitat for an endangered species, provides recharge for a sole source aquifer, etc.) or is in imminent danger of destructive alteration.

#### **IV. IDENTIFICATION OF BANK SPONSORS AND PARTICIPANTS**

MDOT is the sponsor for the wetland mitigation banking program. Federal and State agencies participating in the review of this banking program include the following: the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the Mississippi Department of Environmental Quality, the Mississippi Department of Wildlife, Fisheries and Parks, and nonprofit conservation organizations.

#### **V. DEVELOPMENT OF RESTORATION PLANS**

When the MDOT proposes to add wetlands to an existing mitigation bank or establish a new bank site, they will first identify a specific tract of land for possible inclusion and then arrange a field inspection to determine the eligibility of the site for mitigation. The Army Corps of Engineers, the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (FWS), the Mississippi Department of Environmental Quality, the Mississippi Department of Wildlife, Fisheries and Parks, and nonprofit conservation organization (where appropriate) will be invited to participate in that evaluation.

The proposed restoration plan for each individual mitigation bank will be furnished by MDOT to the appropriate Corps of Engineers District for review and approval. The appropriate Corps of Engineers District will fully coordinate the review of the proposed restoration plan(s) with all signatory agencies prior to approving the plans. The coordination and comment period with the agencies will encompass 20 working days. This period may be extended by the appropriate Corps of Engineers District if written comments indicate a more detailed review is necessary. Should the amount of time elapsed between the approval of a particular restoration plan and the implementation of that plan exceed 3 years, then the restoration plan will be revisited. This will allow for the review of changes in surrounding land use which may necessitate revisions to the plan.

Restoration plans shall include the following information: scaled maps and plan drawings; description of hydrological restoration activities; planting plans identifying species to be planted and planting locations; success criteria for hydrology and vegetation parameters, etc. The restoration plan for additional acreage must be reviewed and approved by the appropriate Corps of Engineers District in consultation with the signatory agencies and MDOT.

The appropriate Corps of Engineers District will coordinate with the Mississippi State Historic Preservation Officer concerning potential impacts of restoration activities on archeological and historical resources. The appropriate Corps of Engineers District will also coordinate with the U.S. Fish and Wildlife Service (FWS) regarding potential impacts of restoration activities on threatened or endangered species and their critical habitat.

A restoration plan will typically require a minimum of 125 trees per acre (including trees of the target species resulting from natural regeneration) surviving at the end of year 3 and year 5 following the initial date of tree planting. To insure a 70-percent survival rate and a minimum 125 trees per acre, the minimum allowable number of trees for planting is 180 trees per acre. Selected native tree species to be planted shall be seedlings measuring a minimum of 18 inches in height. The native tree species planted will be site-specific based on water tolerance and predicted annual flood elevations.

In addition, a restoration plan will specify hydrological modification if necessary to effect restoration (e.g., removal of levees or dikes, plugging of drainageways, breaking tile drains). Such activities will be designed and conducted under the supervision of MDOT in consultation with a hydrologist and a registered forester.

## **VI. EVALUATION METHODOLOGY AND SUCCESS CRITERIA**

### **A. DETERMINATION OF CREDITS**

The mitigation banks will only be used for in-kind replacement of forested wetlands and their functions and values. The approved mitigation banks will not be used to compensate for functions that they will never perform.

Forested wetlands provide numerous functions. Given the lack of wetland functional assessment methods that quantify the array of functions a forested wetland may perform, the basis for determining the value, and hence credit, of the mitigation banks in the MDOT program will be measured in acres.

### **B. WITHDRAWAL OF CREDITS**

Credits cannot be withdrawn from a bank prior to approval of that tract by the appropriate Corps of Engineers District. This approval is based upon identification of restoration features (i.e., planting, hydrologic modification, etc.); and consultation with the resource agencies.

The proposed withdrawal of credit from a MDOT bank for compensation of impacts associated with a Department of the Army permit must be approved by the appropriate Corps of Engineers District in writing. The appropriate Corps of Engineers District will evaluate, on a case-by-case basis, the suitability of all compensatory mitigation options, including the use of a mitigation bank. MDOT may withdraw credit from a mitigation bank to compensate for unavoidable wetland impacts when the appropriate Corps of Engineers District determines that offsite mitigation is appropriate or practicable after all avoidance and minimization of impacts have occurred. The appropriate Corps of Engineers District will also specify the compensatory mitigation requirements of the proposed project in the Department of the Army permit. The appropriate Corps of Engineers District may choose not to approve use of a mitigation bank where other forms of compensatory mitigation are

more appropriate and practicable, such as permit cases involving impacts to threatened or endangered species, or important archeological or historical resources.

Where practicable, compensatory mitigation should be located in the same watershed as where the impact occurs. A compensation ratio of no less than 1 acre to 1 acre (1:1) will be imposed to insure no net loss of wetland functions and values.

### **C. SUCCESS CRITERIA**

Performance standards specific to a mitigation bank will be described in the restoration plan for that bank. In order to be considered successful, the wetlands restored at the bank must meet the definition of wetlands as defined in EPA and Corps regulations and clarified in the Corps 1987 Wetlands Delineation Manual (or subsequent Federal wetland delineation manuals). As waters of the United States, these areas would be subject to all applicable requirements established under the CWA. The restoration plan will typically require a minimum of 125 trees per acre (including trees of the target species resulting from natural regeneration) surviving at the end of year 3 and year 5 following the initial date of tree planting. To insure a 70-percent survival rate and a minimum 125 trees per acre, the minimum allowable number of trees for planting is 180 trees per acre. Selected native tree species to be planted shall be seedlings measuring a minimum of 18 inches in height. The native tree species planted will be site-specific based on water tolerance and predicted annual flood elevations. Replanting is required where needed to achieve these performance standards.

### **D. ACCOUNTING PROCEDURES**

MDOT will be responsible for establishing and maintaining a ledger of all mitigation bank sites within the banking program. The ledger will document the activity of all bank site transactions, ending balances, location of banks, bank size in acres. A statement for each bank site shall be submitted to the appropriate Corps of Engineers District following (1) each credit withdrawal and (2) the addition of credit resulting from increasing the acreage of a bank, and (3) establishment of a new bank.

## **VII. DECISION MAKING AUTHORITY**

The appropriate Corps of Engineers District is responsible for making final permit decisions pursuant to compliance with the Section 404(b)(1) Guidelines, and Section 7(a)(2) of the Endangered Species Act. As such, the appropriate Corps of Engineers District will serve as the Project Manager and is responsible for conducting all meetings with the resource agencies and/or applicants, unless otherwise agreed to. The appropriate Corps of Engineers District will consider fully the Federal and State resource agencies comments and recommendations when determining the appropriate use of available credits at MDOT mitigation banks and whether to issue a DA permit proposing to debit a particular mitigation bank. The appropriate Corps of Engineers District will determine the amount of credit needed

**VIII. MONITORING PLAN AND CORRECTIVE ACTIONS**

The U.S. Fish and Wildlife Service (FWS), the Mississippi Department of Wildlife, Fisheries and Parks, or nonprofit conservation organizations, in the case of a donated easement, shall be responsible for maintaining the mitigation banks in perpetuity.

In the event of failure to meet performance standards, noncompliance with permit conditions, or unauthorized construction activities on the mitigation lands corrective actions, such as replanting and repair or replacement of water control structures, shall be taken by the agency or organization managing that tract. The appropriate Corps of Engineers District may temporarily suspend the availability of credits or suspend General Permit No. CELMK-OD-FE 14-GPD(Vicksburg District)-46 pending the return of the bank to conditions as specified in the easement and restoration and management plans.

**IX. VALIDITY OF THIS AGREEMENT**

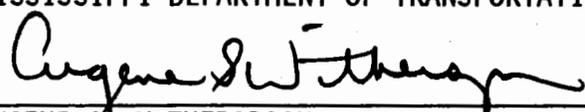
This agreement is subject to modification as mutually agreed to by the appropriate Corps of Engineers District and MDOT in consultation with the signatory agencies, for such reasons as significant policy or regulation changes. Furthermore, no previously approved credits would be affected. Nothing in this agreement should be construed as altering responsibilities or empowering new authorities of the signatory agencies.

General Permit No. CELMK-OD-FE 14-GPD(Vicksburg District)-46 shall be valid for a 5-year period. Prior to the expiration of General Permit No. CELMK-OD-FE 14-GPD(Vicksburg District)-46, an evaluation of the banking program shall be made. At such time, the appropriate Corps of Engineers District shall coordinate with the signatory agencies to review the overall effectiveness of each bank, including an audit of all MDOT bank sites. The effectiveness of this agreement shall also be evaluated at this time.

Signed:

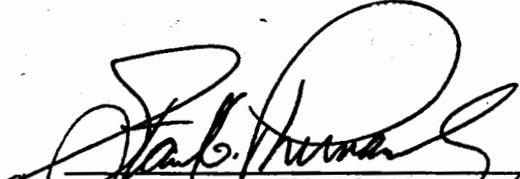
  
\_\_\_\_\_  
JAMES D. QUIN  
CHIEF ENGINEER  
MISSISSIPPI DEPARTMENT OF TRANSPORTATION

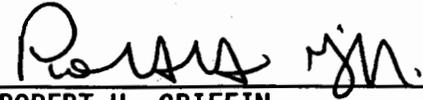
11-21-94

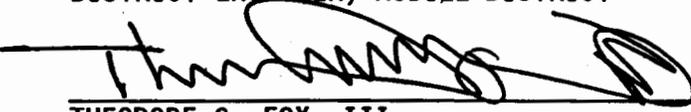
  
\_\_\_\_\_  
EUGENE S. WITHERSPOON  
BRIGADIER GENERAL, U.S. ARMY CORPS OF ENGINEERS  
DIVISION COMMANDER, LOWER MISSISSIPPI VALLEY DIVISION

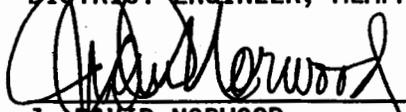
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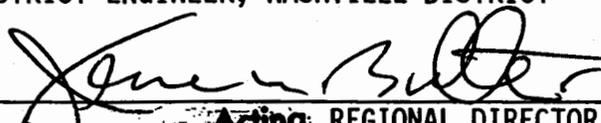
12 MAY 95

  
STANLEY G. PHERNAMBUCQ  
COLONEL, CORPS OF ENGINEERS  
DISTRICT ENGINEER, VICKSBURG DISTRICT  
27 Oct 94  
DATE

  
ROBERT H. GRIFFIN  
COLONEL, CORPS OF ENGINEERS  
DISTRICT ENGINEER, MOBILE DISTRICT  
20 DEC 94  
DATE

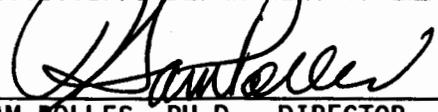
  
THEODORE C. FOX, III  
COLONEL, CORPS OF ENGINEERS  
DISTRICT ENGINEER, MEMPHIS DISTRICT  
3 JAN 1995  
DATE

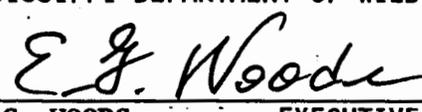
  
J. DAVID NORWOOD  
LIEUTENANT COLONEL, CORPS OF ENGINEERS  
DISTRICT ENGINEER, NASHVILLE DISTRICT  
25 JAN 1995  
DATE

  
Acting REGIONAL DIRECTOR  
U.S. FISH AND WILDLIFE SERVICE  
MAR 7 1995  
DATE

  
JOHN HANKINSON, JR., REGIONAL ADMINISTRATOR  
ENVIRONMENTAL PROTECTION AGENCY REGION IV  
8/13/95  
DATE

  
JAMES I. PALMER, JR., EXECUTIVE DIRECTOR  
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY  
3/20/95  
DATE

  
SAM POLLES, PH.D., DIRECTOR  
MISSISSIPPI DEPARTMENT OF WILDLIFE, FISHERIES AND PARKS  
2/30/95  
DATE

  
E. G. WOODS, EXECUTIVE DIRECTOR  
MISSISSIPPI DEPARTMENT OF MARINE RESOURCES  
4/27/95  
DATE