



**US Army Corps
of Engineers**

Vicksburg District

4155 Clay Street

Vicksburg, MS 39183-3435

www.mvk.usace.army.mil

Public Notice

FILE NO.:	<u>MVK-2018-808 (General Permit 46)</u>
EVALUATOR:	<u>Mr. Anthony R. Lobred</u>
PHONE NO.:	<u>(601) 631-5470</u>
E-MAIL:	<u>GeneralPermitReissuance@usace.army.mil</u>
DATE:	<u>March 22, 2024</u>
EXPIRATION DATE:	<u>April 22, 2024</u>

**FOR: REGULATED ACTIVITIES IN WATERS OF THE UNITED STATES
ASSOCIATED WITH THE CONSTRUCTION AND STABILIZATION OF
ROADWAY EMBANKMENTS AND BRIDGE ABUTMENTS**

WHERE: STATE OF MISSISSIPPI

**BY WHOM: DISTRICT ENGINEER, VICKSBURG DISTRICT, ON BEHALF OF THE
MISSISSIPPI DEPARTMENT OF TRANSPORTATION (MDOT)**

Interested parties are hereby notified that the U.S. Army Corps of Engineers (USACE), Vicksburg District and the Mississippi Department of Environmental Quality are proposing the reissuance of a Department of the Army General Permit (General Permit 46) and State Water Quality Certification, for regulated activities including discharges of dredged and/or fill material in waters of the United States, associated with the construction and stabilization of roadway embankments and bridge abutments. Authorized activities would include, but not limited to, the repair and stabilization of existing roadway embankments and bridge abutments; the installation of additional traffic lanes to existing roadways; the upgrading of bridges and other stream-crossing structures; and the construction along new alignments.

Comments regarding this proposal should be forwarded via email to:

GeneralPermitReissuance@usace.army.mil; or by hard copy to: USACE, Vicksburg District, ATTN: Regulatory Division, 4155 Clay Street, Vicksburg, Mississippi 39183-3435 and the Mississippi Department of Environmental Quality, Office of Pollution Control at Post Office Box 2261, Jackson, Mississippi 39225-2261. Comments must reach these offices by the expiration date cited above.

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 navigable 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, discharges of dredged and/or fill material into waters of the United States under Section 404 of the Clean Water Act (33 U.S.C. 1344).

An agreement was finalized between MDOT, Federal Highways Administration (FHWA), and USACE with concurrence from the appropriate Districts within Mississippi on September 19, 2016, which specifies that all MDOT projects within the State will be evaluated by the Vicksburg District.

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 action are individually and cumulatively minimal. The final decision regarding a 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 Division at 4155 Clay Street, Vicksburg, Mississippi 39183-3435.

This General Permit contains certain limitations intended to protect the environment and natural and cultural resources. Construction, dredging, or fill operations which include regulated work and/or discharges of dredged or fill material into Section 10/404 or Section 404 regulated waters of the United States (collectively hereafter referred to as: WOTUS) which are not specifically authorized by this General Permit are prohibited unless specifically approved by the District Engineer via separate authorization. Conformance with conditions contained in the General Permit would not necessarily guarantee authorization under this General Permit. In cases where the District Engineer considers it necessary, an application for an individual permit will be required.

In compliance with requirements of Section 401 of the Clean Water Act, the Vicksburg District requests water quality certification (WQC) for General Permit 46 from the Mississippi Department of Environmental Quality.

A. Proposed General Permit 46:

REQUEST FOR AUTHORIZATION UNDER GENERAL PERMIT 46 – APPLICATION REQUIREMENTS: IN ORDER TO BE AUTHORIZED BY THIS GENERAL PERMIT, THE MISSISSIPPI DEPARTMENT OF TRANSPORTATION WOULD BE REQUIRED TO SUBMIT TO THE DISTRICT ENGINEER, IN WRITING, THE FOLLOWING INFORMATION IN 8 ½ x 11 INCH FORMAT AT LEAST 60 DAYS PRIOR TO THE PLANNED START DATE FOR THE WORK:

1. State the number of the General Permit under which the work would be conducted. (General Permit 46) (GP 46)
2. Statement that the work would be conducted in compliance with the terms and conditions of GP 46 and would not adversely impact adjoining properties.
3. A location description including: latitude and longitude; Section, Township, Range; County; a plan-view (including a digital aerial overlay), and location map showing the proposed worksite.
4. Estimated starting and completion dates of the project.
5. Name, mailing address, telephone number, and email address of the party (person and agency) applying for authorization.
6. A description of the proposed activity and its purpose, including:
 - a. drawings (plan and profile) of the proposed structure with elevations,
 - b. indication of the ordinary high water mark (when available),
 - c. dimensions (in feet), total area impacted (in acres for wetlands; in both acres and linear feet for streams), and,
 - d. amounts of excavated and fill material (in cubic yards).

For the selected site, a full set of construction plans (including quantities and types of any fill and quantities of any excavation), maps, and engineering drawings for the proposed activity at that site. These shall include a map of sufficient scale that illustrates an "overlay" of the proposed construction/development activity (e.g., construction roads, ditches, parking areas, lay-down pads, temporary work areas, remaining natural areas, etc.) on jurisdictional waters of the U.S.

7. A delineation of as all waters of the United States (WOTUS) within the project area, including special aquatic sites (e.g. wetlands) and other waters of the U.S. such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations would be prepared in accordance with the current method required by the Corps. The applicant may ask the Corps to delineate the special aquatic sites, including wetlands, and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the application evaluation period would not start until the delineation has been submitted by the applicant or completed by the Corps, as applicable.
8. An informational narrative and/or list detailing:
 - a. individual aquatic resource impacts (in acres for wetlands; in acres and linear feet for streams),

- b. total quantity of impacts for each resource type (e.g. emergent wetland, forested wetland, intermittent stream, etc.),
- c. all impact activities (discharge of dredged and/or fill material, conversion, etc.), impact duration (temporary or permanent),
- d. the latitude/longitude (approximate centerpoint) for each impact, and,
- e. current site photos representative of the WOTUS to be impacted.

[NOTE: An Aquatic Resources Identification and Impacts Spreadsheet is available for use on the Vicksburg District's Regulatory Web Page]:

<https://www.mvk.usace.army.mil/Missions/Regulatory/Permits/>

9. A narrative describing how impacts to WOTUS were minimized to the maximum extent practicable. For projects that include adverse impacts to WOTUS, the complete application would include information on mitigation in all forms (i.e. avoidance, minimization, and compensation).

For projects with unavoidable adverse functional impacts greater than 0.10 acre to wetlands or greater than 0.03 acre of streams, the complete application would include a statement describing: how, if required, the compensatory mitigation requirement would be satisfied (either through purchase of mitigation credits from an approved mitigation bank or "in lieu fee" provider, or through permittee responsible mitigation); or explaining why the project-specific adverse effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan. If the applicant proposes permittee responsible mitigation, the application would not be considered complete until the Corps receives an acceptable permittee responsible mitigation plan.

[NOTE: Information on the Vicksburg District's current mitigation requirements is available on the MVK Regulatory Web Page]:

<https://www.mvk.usace.army.mil/Missions/Regulatory/Mitigation/>

10. The type and date of approval of the NEPA documentation by the FHWA and a copy of their findings as required by Executive Order 11990.
11. A description of the Best Management Practices that would be used to minimize movement of disturbed soil(s) from the construction into adjacent WOTUS.
12. Comments from the Mississippi Department of Wildlife, Fisheries and Parks, Mississippi Department of Archives and History (including the results of any National Historic Preservation Act, Section 106, consultation actions), United States Fish and Wildlife Service (including the results of any Endangered Species Act, Section 7, consultation actions), and the Mississippi Department of Environmental Quality on the project.

13. Concurrence in writing from the Mississippi Department of Marine Resources (related to the Coastal Zone Management Act) and the National Marine Fisheries Service (including the results of any Magnuson-Steven Fisheries Conservation and Management Act, essential fish habitat consultation actions), if the project is located in Hancock, Harrison, or Jackson County, Mississippi.
14. For work proposed: on or adjacent to any stream in a component of a National Wild and Scenic Rivers System or in a component of a State Natural and Scenic Rivers System; on a property/area owned or managed by a State or Federal natural resource agency (e.g. wildlife management areas, national wildlife refuges, national forests, etc.), the MDOT must submit with their request for authorization under this General Permit, the agency point of contact (including phone number, mailing address, and email address) and proof of initiation of the applicant's request for approval from the managing agency.
15. For activities affecting structures or works built by the United States: If a GP 46 activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it would alter or temporarily or permanently occupy or use a USACE Federally authorized Civil Works project, the application must include a statement (and any associate documents) confirming that MDOT has submitted a written request for Section 408 permission to the Vicksburg District office having jurisdiction over that USACE project.

Upon receipt of this information, the District Engineer would evaluate the proposal and advise the inquiring party, in writing, that the work could be authorized under General Permit 46; or would require an individual permit (if it exceeds the authoritative capacity of the General Permit) and/or additional separate authorizations.

B. Special Conditions:

1. No more than 7 acres of wetlands and other waters would 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 cut off from their natural hydrologic regime as a result of project work would be considered as directly impacted.
2. For stream or river crossings, discharges of permanent fill material and temporary fill material would 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.
3. The stabilization or construction work would not interfere with navigation (including recreational boating) or adversely impact the flow-carrying capacity of the affected waterbody.

4. Best management practices would be used to prevent off-site movement of disturbed soils. The fill material would be compacted upon completion of construction. The site would be revegetated by sod, seed, or another acceptable method, as necessary, to restore cover and prevent erosion. In areas subject to currents, riprap could be used for slope protection.
5. Material to be used for fill must be nonpolluting and may be obtained either offsite or from site preparation. Additional material would not be obtained from WOTUS or any area which would affect an adjacent WOTUS. Offsite material would not be obtained from wetlands outside the 7-acre limit or from other areas which may adversely affect adjacent wetlands. Any excess material would be placed in an upland area and properly contained or stabilized to prevent entry into adjacent water-bodies or wetlands.
6. To minimize potential adverse impacts to wetlands within the right-of-way or associated with the project, the Mississippi Department of Transportation would incorporate into each project's design all practicable measures to:
 - a. Minimize impact on hydrology in wetland areas.
 - b. Minimize potential for toxic spills and leaching into wetland areas.
 - c. Minimize discharge of materials, such as silt, into wetlands.
 - d. Maintain adequate flow through wetlands by providing culverts, ditches, and other hydrologic structures.
 - e. Provide berms, traps, or ditches to direct potential toxic spills away from wetlands.
 - f. Provide treatment facilities which may be required to treat highway runoff which would otherwise adversely affect wetlands.
 - g. Provide contractual provisions for stopwork orders, project staging, and other specifications pertaining to minimizing impacts on wetlands and to onsite monitoring.
7. Disturbed areas on the site would be stabilized to minimize erosion. Stabilization of erodible areas would be accomplished by seeding or sodding as soon as practicable to restore vegetative cover. If initial re-vegetation is unsuccessful, the area would be reseeded or re-sodded until re-vegetation is successful. In areas subject to currents, riprap may be required for slope protection.
8. No activity that has the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, or a site that has previously been unevaluated, could be authorized by this General Permit until the requirements of Section 106 of the National Historic Preservation Act have been satisfied. Additional fill material could not be taken from a known historical or archaeological site within or outside of regulated areas. If the permittee, during prosecution of work authorized herein, inadvertently discovers or accidentally destroys a cultural resource such as a cemetery, shipwreck, mound, historic structure, or archaeological site, within the area subject to Department of the

Army jurisdiction, they would cease work in the immediate area and notify the District Engineer within 24 hours. The District Engineer, in consultation with the appropriate State Historic Preservation Officer and the Federally recognized Tribe, would comply with the procedures set forth in 33 CFR 325, Appendix C, paragraph 11 (Historic Properties Discovered During Construction).

9. Authorized structures would not increase the frequency, duration, or elevation of floodwaters on adjoining property. This General Permit would not authorize the creation of new greentree reservoirs.
10. If damage to a revetment were to occur as a result of work in accordance with this General Permit, the permittee would be required to make necessary repairs at their own expense. These repairs would meet specifications designated by the District Engineer.
11. Activities would not be authorized for work proposed on or adjacent to any stream in a component of a National Wild and Scenic Rivers System or in a component of a State Natural and Scenic Rivers System, without the appropriate Federal or State authorization.
12. For work within the Mississippi Coastal Zone Management Area, including all areas below Interstate I-10, a set of complete plans would be sent to the agencies listed below for review and/or approval as appropriate. Comments and concurrence resulting from this coordination would be submitted with the request for authorization under this General Permit.
 - a. Mississippi Department of Marine Resources
1141 Bayview Avenue
Suite 101
Biloxi, Mississippi 39530
 - b. National Marine Fisheries Service
Southeast Regional Office
Protected Resources
Attention: Ms. Karla Reece
263 13th Avenue South
St. Petersburg, Florida 33701
Email: Karla.reece@noaa.gov
 - c. National Marine Fisheries Service
Habitat Conservation Division
Attention: January Murray
5757 Corporate Boulevard, Suite 375
Baton Rouge, Louisiana 70803

13. Dredged, excavated, or fill material used for construction would be nonpolluting material in accordance with the Environmental Protection Agency Guidelines for the Discharge of Dredged or Fill Material found in 40 CFR 230.
14. All construction activities would be performed in a manner that would minimize increased suspended sediment/turbidity of the water in the work area and downstream, and otherwise avoid adverse effects on water quality and aquatic life, especially during fish spawning seasons. This may require avoiding construction activities during the peak spawning months of April, May, and June.
15. All excavated material not used as backfill would be placed in a non-jurisdictional area (i.e., upland) unless specifically approved via separate authorization. If dredged material would be placed in an upland contained disposal area and return water discharged back into waters of the United States, a separate Department of the Army authorization could be required (See Nationwide Permit No. 16).
16. The discharge would not be located so as to adversely affect a public water supply intake or a national fish hatchery intake.
17. The discharge would not contain unacceptable levels of pathogenic organisms (as prescribed in standards set by the Mississippi Department of Environmental Quality) in areas used for activities involving physical contact with the water.
18. The discharge would not occur in areas of concentrated shellfish production.
19. No activity would be authorized under this General Permit which would be likely to directly or indirectly jeopardize the continued existence of a Federally-listed threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), or which would directly or indirectly destroy or adversely modify the critical habitat of such species. No activity would be authorized under this General Permit which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
20. Activities in WOTUS that would impact known wading bird rookeries would be avoided to the maximum extent practicable. The permittee would be responsible for obtaining any "take" permits required under the U.S. Fish and Wildlife Service's regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee would be advised to contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such "take" permits are required for a particular activity.

21. The construction activity would 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, would any realignment extend beyond 150 feet upstream and 150 feet downstream from the centerline of a crossing structure. The construction activity would result in neither stream flow impediment nor drain adjacent wetlands.
22. Current standards and practices would be used to determine what type drainage structure is required at a particular stream crossing (box culvert, bridge, etc.).
23. No activity would substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water.
24. No sewage, oil, refuse, or other pollutants would be discharged into the waterbody.
25. Projects located on property encumbered by a Natural Resources Conservation Service (NRCS) Wetlands Reserve Program (WRP) easement would not be authorized without written release/approval from the NRCS. Under such situations, the application would not be considered complete until the Corps is provided written documentation of release/approval from the agreement by the NRCS.
26. Activities would not be authorized on a property/area managed by a State or Federal natural resource agency (e.g. wildlife management areas, national wildlife refuges, national forests, etc.) without documented approval (e.g. special use permit, waiver, etc.) by the managing agency.
27. Authorizations for this General Permit would not be granted to an applicant who is in noncompliance with a Department of the Army permit until such noncompliance has been resolved.
28. Conditions on the water quality certifications issued from the State in which the work is proposed that satisfies the requirements of 40 CFR Part 121.7(d) would be incorporated by reference. Enforcement actions resulting from noncompliance with these conditions could be initiated by the State or the Environmental Protection Agency.
29. The permittee would return a Certification of Compliance after completing construction of the authorized activity.

C. General Conditions:

1. The activity authorized by the permit would be maintained in good condition and in conformance with the terms and conditions of the permit. The permittee would not be relieved of this requirement if the permitted activity is abandoned. However, a good faith transfer to a third party in compliance with General Condition "2", below, would be acceptable. Should the permittee desire to abandon the authorized activity without a good faith transfer, or should the permittee wish to cease to maintain the authorized activity, the permittee would obtain a modification of the authorization from this office, which could require restoration of the area.
2. If the property associated with the authorization under this General Permit is sold, the permittee would notify this office to ensure that the authorization is transferred to the new owner.
3. Representatives from this office would be allowed to inspect the authorized activity at any time deemed necessary to ensure that it is being, or has been, accomplished in accordance with the terms and conditions of your permit.
4. This permit would not obviate the need to obtain other Federal, State, or local authorizations required by law.
5. This permit would not grant any property rights or exclusive privileges.
6. This permit would not authorize any injury to the property or rights of others.
7. An activity that requires Section 408 permission because it would alter or temporarily or permanently occupy or use a USACE federally authorized Civil Works project (Activities Affecting Structures or Works Built by the United States, 33 U.S.C. 408) would not be authorized by GP 46 until the appropriate Corps office issues the Section 408 permission to alter, occupy, or use the USACE Civil Works project, and the District Engineer issues a written GP 46 authorization.

The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work would cause unreasonable obstruction to the free navigation of the navigable waters, the permittee would be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim could be made against the United States on account of any such removal or alteration.

8. In issuing this permit, the Federal Government would not assume any liability for the following:
 - a. Damages to the permitted project, or uses thereof, as a result of other permitted or unpermitted activities or from natural causes.

- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by, or on behalf of, the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
9. In issuing individual authorization under this General Permit, the Government would rely on the information and data, which the permittee provides in connection with the permit application. If, subsequent to the authorization, such information and data prove to be false, incomplete, or inaccurate, this authorization could be modified, suspended, or revoked, in whole or in part, and/or the Government could, in addition, institute appropriate legal proceedings.
 10. The permittee would immediately notify the Corps of any unforeseen activities, including emergency activities, that are directly or indirectly associated with the authorized activity and that may require separate authorization.
 11. The General Permit would be valid for five years from its effective date. At the end of that time, the cumulative environmental effects of completed work would be reviewed and reissuance of the permit could be considered. However, if unforeseen adverse environmental effects result from the issuance of this General Permit, it could be modified or terminated at any time.
 12. Authorization under this General Permit would be valid until the General Permit expires. Activities which are under construction, or that are under contract to commence in reliance upon this General Permit, would remain authorized provided the activity is completed within 12 months of the date of the expiration.

D. FURTHER INFORMATION:

1. Additional copies of this Public Notice are available upon request from this office. Requests may be addressed to: USACE, Vicksburg District, Attention: Regulatory Division, 4155 Clay Street, Vicksburg, Mississippi 39183-3435; or to: GeneralPermitReissuance@usace.army.mil.
2. The decision whether to issue a permit would be based on an evaluation of the probable impacts including cumulative impacts of the proposed General Permit on the public interest. That decision would reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal would be considered including the cumulative effects thereof; among

those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

3. The USACE Vicksburg District is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed General Permit. Any comments received would be considered by the District Engineer determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.
4. Any person may make a written request for a public hearing to consider this proposed General Permit. This request must be made by the expiration date of this public notice and must clearly state why a hearing is necessary. Any individual or agency may comment on the proposal described in this notice; however, failure to comment would be interpreted to mean that there is no objection to the proposed General Permit. All comments received would be evaluated during the review process of this proposed General Permit.
5. Please bring this announcement to the attention of anyone you know who might be interested in this matter. Comments can be submitted by e-mail to: GeneralPermitReissuance@usace.army.mil; or by standard mail to: Vicksburg District, U.S. Army Corps of Engineers, Attention: Regulatory Division, 4155 Clay Street, Vicksburg, Mississippi 39183-3435.

Kristina W. Hall
Chief, Regulatory Division

