U.S. Army Corps of Engineers
Regulatory Program

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Regulatory Authority

- Section 10 of the Rivers and Harbors Act of 1899 (RHA)
- Section 404 of the Clean Water Act (CWA)
§10 of the Rivers and Harbors Act

Requires a Department of the Army permit for all structures or work in/affecting **Navigable Waters of the United States**

- Structure = pier, boat dock/ramp, wharf, water intake, aerial transmission line, submarine cable, weir, breakwater, jetty, bulkhead, revetment, or any obstruction
- Work = any **dredging**, disposal, **excavation**, or other modification
Navigable Waters of the U.S.

- Lake Champlain
- Lake Memphremagog
- Wallace Pond
- Several Major Rivers (some only sections)
  - Connecticut River, Otter Creek, Missisquoi River including North Branch, Batten Kill, Winooski River, Lamoille River, Passumpsic River, Ompompanoosuc River, Black River, Waits River, Moose River, Paul Stream, East Branch of the Passumpsic River, White River, Wells River, Nulhegan River including East Branch, Black Branch, and Yellow Branch.
§404 of the Clean Water Act

- Requires a Department of the Army Permit for the discharge of dredged or fill material into all waters of the United States.
  - Wetlands (all wetlands)
  - Streams – Ephemeral, Intermittent, Perennial
  - Lakes/ponds
What is a §404 discharge of dredged or fill material?

- Discharge is:
  - Placement of Fill
  - Grading, regrading, moving soil
  - Mechanized land clearing
  - Temporary access roads, mats
  - Temporary diversions (cofferdams)
  - Trenching/backfill

- Discharge is NOT
  - Dredging/excavation
  - Logging, skidding, leaving stumps
  - Tire tracks left by heavy equipment
  - Pile Driving
Wetland Delineations

Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region

Version 2.0

January 2012

U.S. Army Corps of Engineers
Corps of Engineers Regulatory Jurisdiction in **FRESH WATERS**

**SECTION 404**
Discharge of Dredged or Fill Material

**SECTION 10**
All Structures and Work if a Navigable Water of U.S.

- Ordinary High Water
- Swamps
- Marshes
- Bogs

UPLAND

FRESH WATER

WETLANDS

RIVERS

STREAMS

LAKES

PONDS

FRESH WATER

WETLANDS

UPLAND
*NEW* VT General Permits (GPs)

- Effective on December 6, 2017 - December 6, 2022
  - Self Verification (SV) – formerly Category 1
  - Pre Construction Notification (PCN) – formerly Category 2
- 21 General Permits
- Renewed every five years
- No Application/Permit Fee
Self Verification (SV) Process

1.) Identify all wetlands & waterways at site
2.) Determine impacts to wetlands & waters
3.) Review the Vermont General Permits and all General Conditions
4.) Verify activity will meet the SV thresholds
5.) Ensure all General Conditions will be met…

No notification to Corps required
Pre-Construction Notification (PCN) Process

If a project does not qualify for Self Verification then…

1.) Delineate all wetlands & waters at the site
2.) Determine impacts to wetlands & waters
3.) Submit application form ENG 4345 and project plans to the Corps
   *If wetlands will be impacted, submit wetland delineation datasheets
4.) Wait to receive written verification from Corps
**GP-2: REPAIR-OR-MAINTENANCE-OF-EXISTING-CURRENTLY-SERVICEABLE, AUTHORIZED-OR-GRANDFATHERED-STRUCTURES-FILLS & REMOVAL-OF-STRUCTURES-AND-FILLS (Sections 10 & 404) (a) Repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33-CFR-330.3 (activities occurring before certain dates), provided that the structure or fill is not to be put to uses differing from those used or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. Includes removal of structures and fill.**

Not authorized under GP-2: Permanent impacts > 5,000 SF in Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands, and > 1 acre in all other waterways and/or wetlands.

<table>
<thead>
<tr>
<th>Self-Verification (SV) Eligible</th>
<th>Pre-Construction Notification (PCN) Required</th>
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</thead>
<tbody>
<tr>
<td>1. Repair, replacement in-kind, or maintenance of existing, currently serviceable, authorized structures or fills with no substantial expansion or change in use;</td>
<td>1. Work not eligible for SV.</td>
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<td>- Conditions of the original authorization apply.</td>
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<td>- Minor deviations in fill design allowed.</td>
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<td>- The repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events is authorized, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, the Corps may waive the two-year limit in writing provided the permittee can demonstrate funding, contract, or other similar delays.</td>
<td>2. Dam and flood control or levee repair, rehabilitation, or replacement which involves a change in the flood elevation or permanent water surface elevation of the impoundment.</td>
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<td>- Maintenance includes, but it is not limited to, the removal of accumulated sediments and debris in the vicinity of existing structures (such as bridges, culvert-ed road-crossings, water intake structures, dams, etc.), provided: (a) removal is the minimum necessary to restore the waterway in the vicinity of the structure-to the approximate dimensions that existed when the structure was built, and (b) all dredged or excavated materials are deposited and retained in an upland area.</td>
<td>3. Construction-mats of any area necessary to conduct activities that were previously authorized, authorized under SV, or not subject to regulation in Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands and should be removed as soon as work is completed.</td>
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<tr>
<td>2. Bulkhead replacement via installation of new bulkhead within 18” of existing bulkhead &amp; backfill</td>
<td>4. The discharge of more than de minimus (i.e., inconsequential) quantities of accumulated bottom sediment occurring from or through a dam into downstream waters.</td>
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<tr>
<td>3. Construction mats of any area necessary to conduct activities that were previously authorized, authorized under SV, or not subject to regulation in all waterways and wetlands other than Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands and should be removed asSoon as work is completed.</td>
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<td>4. Removal of previously authorized structures or fills.</td>
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**NOTE 1:** Grandfather dates include structures or work completed before December 18, 1968 & fill placed before July 25, 1975 for Corps purposes only.

**NOTE 2:** This GP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the CWA §404(f) exemption for maintenance. See 33 CFR 323.4(a)(2).
**GP 9. SHORELINE & BANK STABILIZATION PROJECTS (Sections 10 & 404)** Bank stabilization activities necessary for erosion protection along the banks of lakes, ponds, streams, and any other open waters. Includes bulkheads, seawalls, riprap, revetments or slope protection & similar structures, as well as vegetative planting, soil bioengineering, or alternative techniques that are a combination of the two (e.g. living shorelines), specifically for the purpose of shoreline protection.

**Not authorized under GP 9:** (a) Bank stabilization $\geq 500$ LF in total length and/or involving more than an average of 1CY of fill per linear foot placed below the plane of the ordinary high water mark in Lake Champlain, Lake Memphremagog and Wallace Pond and adjacent wetlands; (b) Stream channelization or relocation activities; or (c) breakwaters, groins and jetties.

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<th>Self-Verification (SV) Eligible</th>
<th>Pre-Construction Notification (PCN) Required</th>
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<tr>
<td>1. No fill in Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands.</td>
<td>1. Work not eligible for SV.</td>
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<td>2. Bank stabilization $&lt; 200$ linear feet long and does not exceed an average of 1 CY of fill per linear foot placed below the plane of the ordinary high water mark in waterways and wetlands other than Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands.</td>
<td>2. Bank stabilization $&lt; 500$ linear feet and an average of $&lt; 1$ CY of fill per linear foot placed below the plane of the ordinary high water mark in Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands.</td>
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<td>3. $&lt; 5,000$ SF of temporary fill associated with bank stabilization in waterways and/or wetlands, other than Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands.</td>
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**U.S. Army**

**BUILDING STRONG®**
GP 18. LINEAR TRANSPORTATION PROJECTS AND STREAM/WETLAND CROSSINGS (Sections 10 & 404) - Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., driveways, roads, highways, railways, trails, airport runways, and taxiways), and attendant features. Any stream channel modification is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

Not authorized under GP 18: Permanent and temporary impacts >5,000 SF in Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands, and >1 acre in all other waterways and/or wetlands.

Self-Verification (SV) Eligible:

1. <5,000 SF of permanent and temporary impacts in waterways and/or wetlands other than Lake Champlain, Lake Memphremagog and Wallace Pond and adjacent wetlands.
2. Permanent and temporary stream crossings that comply with GC 20; and
3. Existing crossings (e.g., culverts, elliptical or arch pipes, etc.) are not modified by (a) decreasing the diameter of the crossing or (b) changing the friction coefficient, such as through slip-lining (retrofitting an existing culvert by inserting a smaller-diameter pipe), culvert relining, or invert lining.

Pre-Construction Notification (PCN) Required:

1. Work not eligible for SV.
2. Permanent and temporary impacts are:
   a. <5,000 SF in Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands.
   b. >5,000 SF and <1 acre in waterways and/or wetlands other than Lake Champlain, Lake Memphremagog, Wallace Pond and adjacent wetlands.
3. Work involves stream channelization, relocation or loss of streambed including impoundments.

NOTE: Construction mats of any area necessary to conduct activities do not count towards the 5,000 SF threshold and should be removed as soon as work is completed.

Non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars may be authorized by GP 17.
General Condition #10
§106 of the National Historic Preservation Act

- Tribal Historic Preservation Officer
- State Historic Preservation Officer
  - Bennington, Rutland and Addison Counties
General Condition #11
§7 of the Endangered Species Act
General Condition #19
Aquatic Life Movements and Management of Water Flows

- Maintain movement of aquatic life indigenous to the waterbody
- The activity must be constructed to withstand expected high flows
- Activities that temporarily or permanently impact upstream or downstream flood conditions require a PCN.
General Condition #20
Watery/Wetland Work and Crossings

- Natural Bottom
- Least intrusive and environmentally damaging crossing
- Slip lining requires PCN
- Outside time of year restriction (low flow period of July 1 – October 1) requires PCN
Possibly SV if…

- All in-stream work will occur between July 1 and October 1
- No trees ≥3”dbh will need to be cut, no bridge work (compliance with ESA)
- Project involves <200 LF of bank stabilization
- Impacts to waterways/wetlands will be <5000 sq. ft.
- Embedded box culvert with natural bottom material
- ETC…
Individual Permit

- Projects that do not meet the “minimal impact” criteria of the Vermont General Permits
- Alternatives Analysis required
- 30-day public notice sent to the resource agencies and general public
Mitigation Sequencing

- **AVOID IMPACTS** to waters of the U.S. to the maximum extent practicable
- **MINIMIZE IMPACTS** to waters of the U.S. to the maximum extent practicable
- **MITIGATE** for the unavoidable impacts of the project
Exemptions under §404 C.W.A

- **MAINTENANCE**, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as riprap, bridge abutments, dams, causeways, etc. **No change to the Character, scope of size of original fill design.**

- Other exemptions... Normal farming activities, farm roads, forest roads, temporary roads for moving mining equipment, etc.
Our Resource Agency Partners

- U.S. Fish and Wildlife Service
- U.S. Environmental Protection Agency
- Vermont Department of Environmental Conservation
- Vermont Division for Historic Preservation
- National Parks Service – GC# 9 WSR - Missisquoi and Trout Rivers
- Stockbridge-Munsee Community