



DEPARTMENT OF THE ARMY
Little Rock District, Corps of Engineers
Post Office Box 867
Little Rock, Arkansas 72203-0867

CESWL-PR-R

April 18, 2001

09417
JOINT PUBLIC NOTICE
CORPS OF ENGINEERS - STATE OF ARKANSAS

**INITIATION OF LETTER OF PERMISSION (LOP) PROCEDURE FOR OBTAINING
AUTHORIZATION FOR THE CONSTRUCTION OF PUBLIC ROADWAY
EMBANKMENTS AND BRIDGES AND THE ASSOCIATED DISCHARGES OF
DREDGED AND FILL MATERIAL IN WATERS OF THE UNITED STATES IN THE
STATE OF ARKANSAS**

TO WHOM IT MAY CONCERN:

1. The attached LOP procedure is effective immediately.
2. On August 14, 2000, the Little Rock, Memphis, and Vicksburg Districts of the Corps of Engineers issued a joint public notice with the State of Arkansas announcing consideration of modifying General Permit (GP) GB and extending its time limit an additional five years to meet the transportation needs in the State of Arkansas and the initiative directed by Section 1309 of the Transportation Equity Act for the 21st Century (TEA-21) to streamline the review process for transportation projects.
3. An agreement was subsequently made between the Corps of Engineers and the Environmental Protection Agency to convert the GP to a LOP procedure under essentially the same limits and requirements of the GP, as advertised in the initial joint public notice. The streamlining of the review process would not be significantly changed under this LOP procedure.
4. The policies of this LOP procedure will be subject to reconsideration at any time. Also, if additional information indicates factors contrary to the public interest, this LOP procedure may be suspended, modified, or revoked.
5. Interested parties are requested to provide comments on this LOP procedure at any time. Comments should be addressed to Chief, Regulatory Branch, U.S. Army Corps of Engineers, P.O. Box 867, Little Rock, Arkansas 72203-0867.

Enclosures



**DEPARTMENT OF THE ARMY
Little Rock District, Corps of Engineers
Post Office Box 867
Little Rock, Arkansas 72203-0867**

CESWL-PR-R

March 06, 2001

LETTER OF PERMISSION PROCEDURE ID NO. 09417

**FOR THE CONSTRUCTION OF PUBLIC ROADWAY EMBANKMENTS AND
BRIDGES AND THE ASSOCIATED DISCHARGES OF DREDGED AND FILL
MATERIAL IN WATERS OF THE UNITED STATES IN THE STATE OF ARKANSAS**

In accordance with Title 33 Code of Federal Regulation 325.2(e)(1), published in the Federal Register on November 13, 1986, the U.S. Army Corps of Engineers (USACE), Little Rock, Memphis, and Vicksburg Districts, have adopted a Letter of Permission (LOP) procedure for authorizing the work described herein in the State of Arkansas. The purpose of this procedure is to expedite Sections 10 and 404 authorizations for the activities described below when they would not pose substantial adverse individual or cumulative impacts on the aquatic environment. Each LOP issued would include the general and special conditions identified herein by reference and case-specific provisions intended to protect the environment, including natural and cultural resources. Work that does not comply with these provisions may require authorization by individual permit. However, compliance with the LOP procedure, including the general and special conditions, does not guarantee authorization of the work by LOP i.e., controversial highway projects will require an individual permit review. Work or structures that would have an unacceptable impact on the public interest are not authorized. Activities requiring Department of the Army authorization that are not specifically covered by this LOP procedure are prohibited unless authorized by a separate permit.

1. SCOPE OF WORK.

Work that may be authorized by LOP using this procedure is limited to temporary and permanent fills associated with the construction of public roadway embankments and bridge abutments in waters of the United States, the installation of additional traffic lanes to existing roadways, and upgrading and/or maintenance of bridges and other stream-crossing facilities by the Arkansas State Highway and Transportation Department (AHTD). Construction along new alignment is included, where the impacts to wetlands would be minimal, all commenting agencies agree that it is the least environmentally damaging practicable alternative, and a public hearing has proven it to be non-controversial.

2. LOCATION OF WORK.

All waters of the United States within the State of Arkansas.

3. CONDITIONS OF THE LETTER OF PERMISSION.

In addition to the limitations discussed in the Scope of Work, AHTD projects authorized by LOP are subject to the General and Special conditions contained in Appendix A.

4. WATER QUALITY CERTIFICATION.

The Arkansas Department of Environmental Quality has issued water quality certification provided the Special Conditions included in Appendix A are followed.

5. CORPS DISTRICTS

The area of the proposed work is divided among three Corps of Engineers Districts in Arkansas. The Little Rock District, as lead District for Arkansas, developed this LOP procedure in consultation with the Memphis and Vicksburg Districts. Each district would be responsible for administering the LOP procedure in its respective geographical area of jurisdiction. The jurisdictional areas of the three Corps Districts in Arkansas are shown on Appendix B. Individual submittals for work under this LOP would be reviewed by the Corps District in which the work is to be performed. The addressees are as follows:

U.S. Army Corps of Engineers
Little Rock District
ATTN: CESWL-PR-R
P.O. Box 867
Little Rock, Arkansas 722033-0867

Telephone No. (501) 324-5296

U.S. Army Corps of Engineers
Memphis District
ATTN: CELMM-CO-R
167 North Main Street
Memphis, Tennessee 38103-1894

Telephone No. (901) 544-3471

U.S. Army Corps of Engineers
Vicksburg District
ATTN: CELMK-OD-F
P.O. Box 60
Vicksburg, Mississippi 69180-0060

Telephone No. (601) 631-5293

6. APPLICATION PROCEDURES.

The following information shall be submitted to the appropriate District Engineer (addresses listed in paragraph labeled No. 5 above) in all applications at least 30 days prior to proposed commencement of work. Also, a copy of the information shall be provided to the Arkansas Department of Environmental Quality, Arkansas Game and Fish Commission, Arkansas Natural Heritage Commission, Arkansas Soil and Water Conservation Commission, the United States Environmental Protection Agency, and the United States Fish and Wildlife Service for the solicitation of comments on the intent to perform the work under this LOP procedure.

a. Name, mailing address, and telephone number of person acting as point of contact for the requested authorization.

b. Location map(s) showing the proposed worksite (including section, township, range, and county).

c. A brief description of the environmental setting at the proposed worksite and a summary of the total aquatic impacts.

d. A brief description and drawings no larger than 11- by 17-inch of the proposed work, including the method of construction or types of excavated and fill material in cubic yards.

The following additional information shall either be submitted separately with the application, or included in the required NEPA documentation prepared for the project.

e. Documentation indicating that the work complies with the intent of the National Historic Preservation Act.

f. Documentation indicating that above grade fills within a 100-year floodplain complies with Federal Emergency Management Agency (FEMA) or FEMA-approved local floodplain construction requirements (Special Condition No. 19).

g. Written Federal or state authorization for any work proposed in the following areas:

(1) National Wildlife Refuge, State Game Management Area, or other Federal or State lands, or lands leased to those entities (Special Condition No. 12).

(2) A component of the National Wild and Scenic River System or State Wild and Scenic River System (Special Condition No. 14).

h. Individual water quality certification from the Arkansas Department of Environmental Quality (ADEQ) for all work in Extraordinary Resource Waterbodies and Ecologically Sensitive Waterbodies as listed on the current Regulation No. 2, ADEQ (Special Condition No. 13).

i. If wetlands are impacted or stream channelization or realignment is proposed, 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) A copy of the type and date of approval of the environmental documentation and its findings for state and/or Federally funded sites.

(3) An appropriate compensatory mitigation plan to compensate for any unavoidable loss of wetland functions and values associated with the proposed work. The mitigation plan provided may include the preparation of a prospectus for specific site development or the use of a mitigation bank located within the proximity to compensate for the loss of wetlands.

(4) A plan addressing the need for buffer areas for stream channelization or realignment projects.

The following additional information shall be included in the NEPA documentation prepared for the project.

j. Appropriate map(s) showing all of the alternative alignments being considered for the project. Also, wetlands and other waters located along each alignment should be labeled, outlined, and documented in a manner to provide a clear comparison and selection of a preferred alignment for the project.

k. An evaluation showing the selected preferred alignment(s) compliance with the Environmental Protection Agency's Section 404(b)(1) Guidelines.

7. EVALUATION PROCEDURES.

a. Upon receipt of your request, the Corps of Engineers will provide a two week time period (14 days) for the resource agencies with interest to provide any comments they may have about the work. An evaluation of the comments received from the agencies will be used in determining whether the work is covered under this LOP procedure. The length of time required to process each request under this LOP procedure would be directly related to the adequacy and completeness of the information submitted and/or the resolution of any concern (s) raised by the agencies.

AHTD will receive a LOP if the work is covered under this procedure. Also, additional special conditions may be included in the LOP to resolve any concerns raised by the resource agencies. If the Corps of Engineers determines that the work cannot be authorized under this LOP, AHTD will be notified that their application must be processed under normal permitting procedures, which may involve submission of additional information and likely issuance of a public notice. Should any one of the commenting resource agencies provide a valid objection during the 14-day review period, the proposed work would require authorization by individual permit or other means.

b. In areas where the United States has acquired an interest in the real estate under the jurisdiction of the Corps of Engineers, such as easements for occasional flooding and fee land, a real estate instrument will be required. Processing of the real estate instrument will begin when plans are received from AHTD. If the request for use of the real estate is disapproved, the authority granted under this LOP would be null and void.

Date_____

Thomas A. Holden Jr.
Colonel, Corps of Engineers
District Engineer

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DEPARTMENT OF THE ARMY
Little Rock District, Corps of Engineers
Post Office Box 867
Little Rock, Arkansas 72203-0867

APPENDIX A

CONDITIONS FOR LETTERS OF PERMISSION ISSUED UNDER LETTER OF PERMISSION (LOP) PROCEDURE ID NO. 09417 FOR THE CONSTRUCTION OF PUBLIC ROADWAY EMBANKMENTS AND BRIDGES AND THE ASSOCIATED DISCHARGES OF DREDGED AND FILL MATERIAL IN WATERS OF THE UNITED STATES IN THE STATE OF ARKANSAS

Location of work: **All waters of the United States within the State of Arkansas.**

LOP Conditions:

General Conditions:

1. The time limit for completing the issuance of the work authorized under this LOP ends 3 years from the date of issuance of the LOP. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must have the new owner write the District Engineer for transfer of this authorization.
5. You must allow representatives from this office 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.

Special Conditions:

- 1. No more than 7.0 acres of wetlands and/or other waters shall be directly and indirectly impacted by the placement of fill at each single and complete crossing. Any wetlands cut off from their natural hydrologic regime as a result of the project work shall be considered as directly impacted.**
- 2. Avoidance and minimization of impacts to wetlands and other waters of the U.S. shall be considered and the least environmentally damaging practicable alternative shall be selected for each crossing. Appropriate compensatory mitigation shall then be provided to offset the selected crossing's wetland impacts.**
- 3. Discharges of permanent and temporary dredged or fill material shall be the minimum necessary to construct crossings of wetlands and/or other waters. Also, measures shall be taken during construction to minimize any adverse impacts on wetlands or other waters**

(located within the right-of-way or directly adjacent). The design of each project shall incorporate all practicable measures to:

- a. Minimize impacts on hydrology in wetland areas.
 - b. Minimize the potential for toxic spills and leaching into wetlands and other waters.
 - c. Maintain preconstruction downstream flow conditions.
 - d. Provide and maintain erosion and sediment control features throughout the construction phase of a project until the area is permanently stabilized.
4. 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 more than 350 feet of channel be realigned. The construction activity shall result in neither streamflow impediment nor drainage of adjacent wetlands.

Impacts to streams should be minimized by maintaining adequate stream geomorphology (dimensions, patterns, and profile) so that above and below flows are not altered.

5. The dredged or fill material used for construction shall be nonpollutional material in accordance with the EPA Guidelines for the Discharge of Dredged or Fill Material, found in 40 CFR 230. The material may be obtained either offsite or from site preparation. Offsite material shall not be obtained from wetlands or from other areas which 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 wetlands or other waters. It is the permittee's responsibility to notify the authorizing Corps District's Regulatory Branch if any off-right-of-way fills are proposed in waters of the United States in connection with the authorized highway project.
6. The discharge of dredged or fill material associated with stabilizing a shoreline or constructing bridge abutments shall not interfere with navigation (including recreational boating) or adversely impact the flow-carrying capacity of the affected stream. 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 authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
7. The U.S. Coast Guard asserts jurisdiction over bridged crossings of navigable waterways. Therefore, the location of a proposed bridge crossing, and its clearances and support features shall all be approved by the U.S. Coast Guard prior to any bridge work.
8. All temporary fills shall consist of nonerodible material. Also, the materials used for temporary structures such as cofferdams, equipment pads, or temporary access crossings, shall be removed as soon as practicable, and the waterway restored to preconstruction contours.
9. Erosion, both during and after construction, shall be controlled as outlined in the latest edition of the "Standard Specification for Highway Construction of the Arkansas State Highway Commission" and the "Arkansas Highway and Transportation Department Erosion and Sediment Control Design and Construction Manual," dated June 1, 1994, or the latest edition of such manual. All erodible areas, during and after construction, shall be stabilized as soon as practicable, as outlined in the Manual.
10. Borrow material shall not be taken from a known historical or archeological site

unless prior approval has been obtained from the Arkansas State Historic Preservation officer (SHPO).

11. All construction activity shall be performed in a manner that will minimize increased turbidity of the water in the work area and otherwise avoid adverse effects on water quality and aquatic life, especially during fish breeding and spawning seasons. Avoidance of construction activities during specific months associated with these seasons may be required to protect this interest.

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

13. An individual water quality certification shall be obtained from the Arkansas Department of Environmental Quality (ADEQ) for all work in Extraordinary Resource Waterbodies and Ecologically Sensitive Waterbodies as listed on the current Regulation No. 2, ADEQ.

14. The work shall not occur in a component of the National Wild and Scenic River System or State Wild and Scenic River System without the appropriate Federal or state authorization in writing.

15. The discharge shall not be located in the proximity of a public water supply intake.

16. The discharge shall not occur in areas of concentrated shellfish beds.

17. The discharge shall not contain unacceptable levels of pathogenic organisms in areas used for sports involving physical contact with the water.

18. The discharge shall not adversely affect any threatened or endangered species or their critical habitat, as identified under the Endangered Species Act.

19. In the event that the work would be located in a designated 100-year floodplain of any stream, documentation shall be acquired prior to any work, indicating that its associated above- grade fills comply with Federal Emergency Management Agency (FEMA) or FEMA-approved local floodplain construction requirements.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S. Code 403).

Section 404 of the Clean Water Act (33 U.S. Code 1344).

Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S. Code 1413).

2. Limits of this authorization:

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

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

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

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

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office 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:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 Code of Federal Regulations (CFR) 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

