Norfolk District Regulatory Office

Laura Herrmann

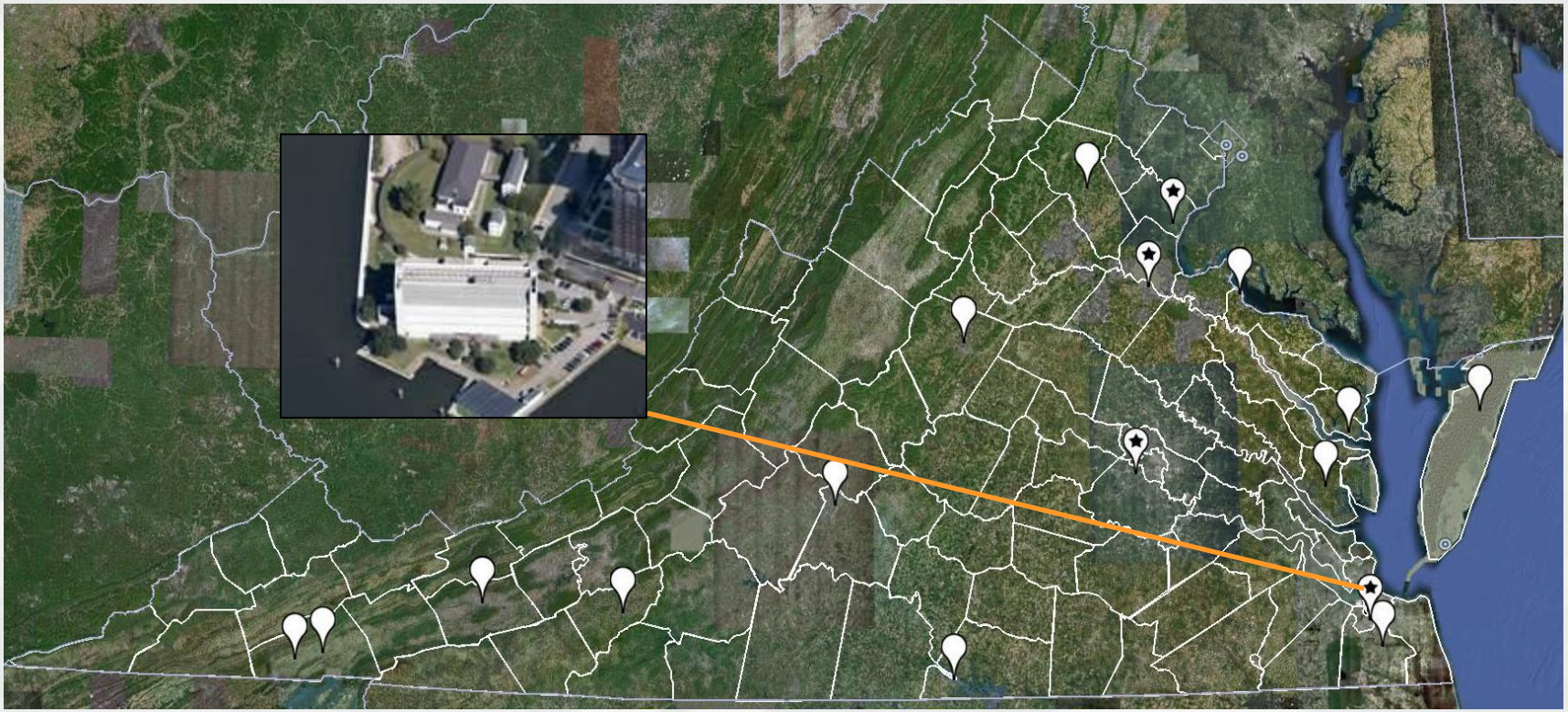
Robert Howell

Rowen Schmidt



Norfolk District Regulatory Division

Location



Legal Basis:

1776 US Constitution

Commerce Clause

The U.S. Congress shall have power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

Rivers and Harbors Act of 1899

(Sec. 9, 10, 13 & 14)

Oldest federal environmental law in the U.S.

Regulates use of Nations navigable waters

Clean Water Act of 1972

(Sec. 404)

Regulates discharge of dredged or fill material into waters of the U.S.

Marine Protection, Research and Sanctuaries Act

(Sec. 103)

Regulates the dumping of all types of material into ocean waters

Section 10 – Rivers and Harbors Act of 1899

Objective: Ensure full and free public use of the nations navigable waters supporting interstate and international commerce



Geographic Jurisdiction

33 CFR 329.4

- Navigable waters (tidal waters)
- Interstate commerce
- Mean high water (tidal waters) or OHWM (non-tidal waters)
- Seaward to 3 nautical miles (the "territorial seas")

Requires that you obtain a permit from the Regulatory Branch for any work or construction **in, over, or under** navigable waters of the U.S. (WOTUS)

Clean Water Act:
(Section 404)

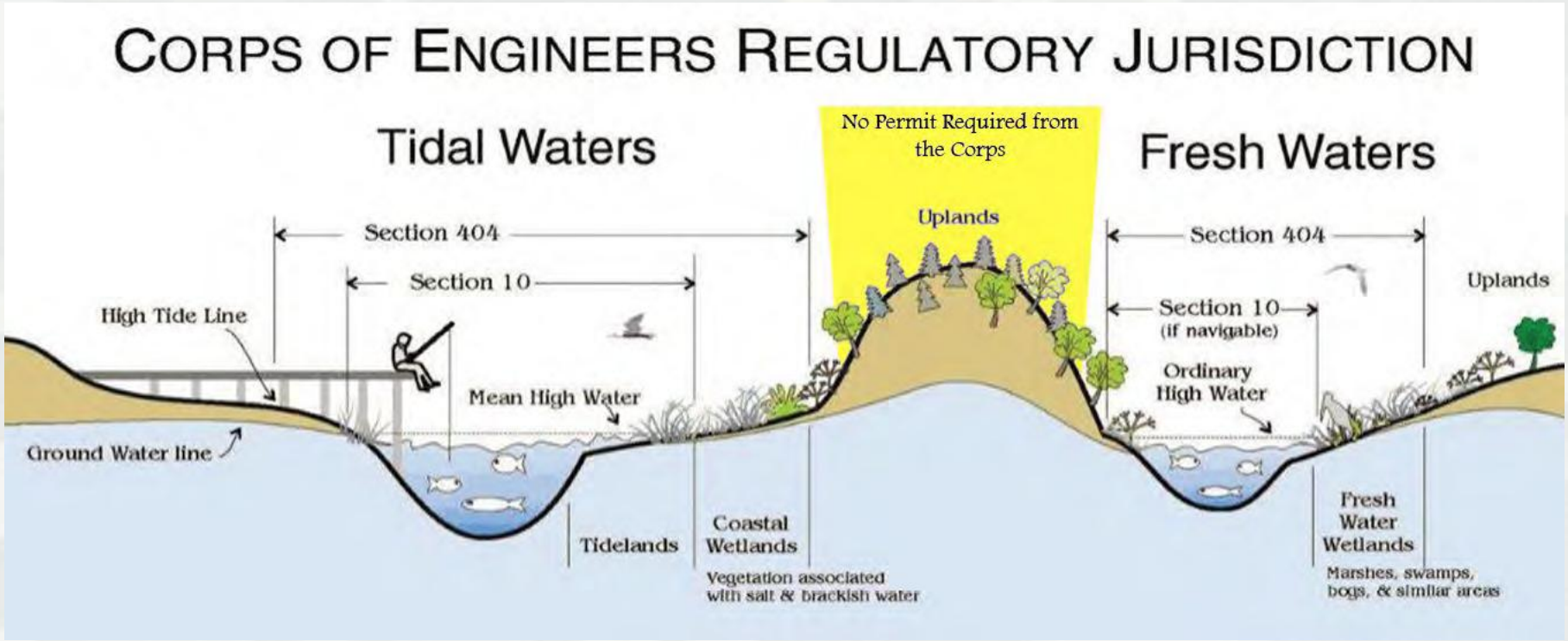
To restore and maintain the chemical, physical and biological integrity of the Nation's waters including streams and wetlands.

- **Water storage and flood abatement**
- **Water quality**
- **Habitat**
- **Nutrient cycling**
- **Pollution Removal**
- **Erosion control**



Section 404 permits issued by the Secretary (of the Army) Requires that you obtain a permit from the Regulatory Branch for the <u>discharge of dredged or fill material</u> into any WOTUS

Jurisdiction Overview



Wetland Functions and Values

Why are wetlands important?

- Wildlife habitat
- Floodwater storage
- Erosion control (coastal wetlands dissipate storm energy)
- Water purification (naturally filtering polluted runoff)
- Economic benefits (fish, shellfish, cranberries, timber, wild rice, etc.)
- Recreation (hunting, canoeing, bird watching, hiking, etc.)
- Education (outdoor laboratories)
- Intangibles (vibrant colors, rich diversity, and beauty inspired paintings, poetry, and music)

Did you know that nearly half of federally threatened and endangered species need wetlands for their survival?



Wetland Definition

Corps/EPA definition for Clean Water Act Section 404 purposes (33 CFR 328.3(b)):

Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Tributaries:

(33 CFR 328.3 (a)(5))

- Relatively Permanent Waters or have a significant biological, chemical or physical nexus to Navigable Water
- Lateral limit defined by OHWM or High Tide Line





When are USACE permits required?

In summary, a permit from the Regulatory Division is required under:

- "Section 10 jurisdiction"
  for any work or construction **in, over, or under** navigable WOTUS

- "Section 404 jurisdiction"
  for the discharge of dredged material or fill material into any WOTUS

Norfolk District Regulatory Division

Examples of activities that may require a USACE permit

DREDGING
(Section 10 waterway)



DISCHARGE OF FILL
(Section 404 water)



Examples of activities that may require a USACE permit

SHORELINE STABILIZATION

BEFORE **AFTER**





ERODING SHORELINE

RIPRAP REVETMENT

WETLAND PLANTINGS

Permitting:

The Regulatory Division works with private individuals, developers, and government agencies through the permitting process.







The Corps, in making permit decisions, must consider a range of factors including environmental impacts, socioeconomic impacts and property ownership rights, and balance public benefits against public detriments.

Permitting:

The Regulatory Division, in making permit decisions, must not only follow the procedures of the Rivers and Harbors Act and the Clean Water Act but must also ensure compliance with many **other laws** including:

- Section 401, Clean Water Act
- Endangered Species Act
- Coastal Zone Management Act
- National Environmental Policy Act (NEPA)
- Fish and Wildlife Coordination Act
- National Historic Preservation Act









2 basic types of permits:

- General Permits
- Individual Permits

Permitting Efficiency:

In order to increase efficiency and remove duplication of effort, the Norfolk District has developed several Nationwide and Regional permits that also carry DEQ's 401 certification. In addition, we have developed the State Programmatic General Permit that DEQ issues on our behalf. All of these permits make the permitting process quicker and easier for applicants.



Pre-construction notification (PCN) requirements

"The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps."

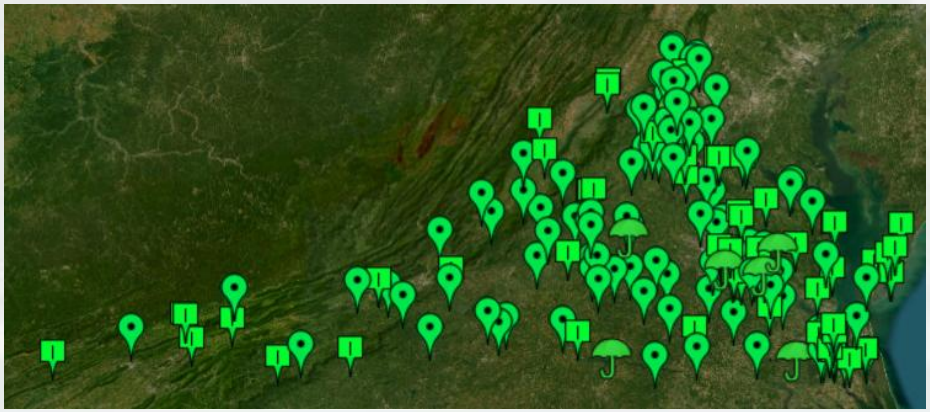
The delineation does not need to be confirmed via preliminary jurisdictional determination nor approved jurisdictional determination prior to submittal for Nationwide Permits or Regional Permits.

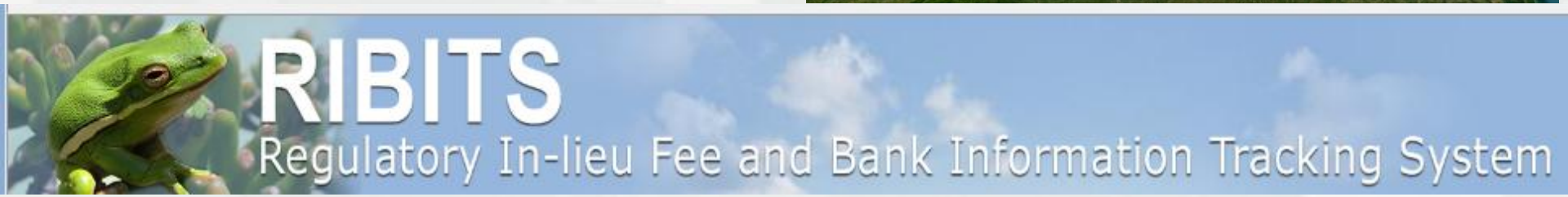
You can view all NWPs at:
http://www.nao.usace.army.mil/Missions/Regulatory/Nationwide-Permit-Conditions/

Mitigation for Impacts

- Projects must be designed to avoid and minimize adverse impacts to the maximum extent practicable
- Compensatory mitigation credit purchases required for all NWP wetland losses that exceed 1/10-acre and require a PCN and for stream bed losses that exceed 3/100-acre and require a PCN.

- Compensatory mitigation types:
  - Mitigation Bank
  - In-Lieu Fee Program
  - Permittee Responsible Mitigation





Apply for a Permit

1.) Regulatory Request System (RRS) – Preferred Application Method

2.) Joint Permit Application submitted through mail or email to the Norfolk District

Visit our webpage for more information: https://www.nao.usace.army.mil/Missions/Regulatory-Branch/Apply-for-a-Permit/

Reading the PASDO for limits

Piers and Other Structures

1. Proposed structures that extend greater than one-fourth of the distance across the waterway measured from either mean high water to mean high water (including channelward wetlands) or ordinary high water to ordinary high water (including all channelward wetlands) may be authorized under this SPGP if:
   a. The prospective permittee provides written justification/need for the encroachment (e.g., to reach the deeper water within the waterway for navigational purposes); and
   b. The Corps determines that the proposed activity does not individually or cumulatively adversely affect general navigation and/or the aquatic environment.

2. Proposed structures crossing wetland vegetation that are more than five (5) feet in width and/or have fewer than four (4) feet between the decking and the vegetated wetlands substrate may be authorized under this SPGP if:
   a. The prospective permittee provides written justification/need for the increased width of the structure and/or decreased height between the decking and the vegetated wetlands substrate; and
   b. The Corps determines that the proposed activity does not individually or cumulatively adversely affect general navigation and/or the aquatic environment.

Reading NWPs for limits

Bank Stabilization. Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects (an exception is for bulkheads – the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);

(c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge of dredged or fill material will result in no more than minimal adverse environmental effects;

Reading for General and Regional Conditions

2. Aquatic Life Movements. No activity may 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. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

RC 1. Waters Containing Submerged Aquatic Vegetation (SAV) Beds:

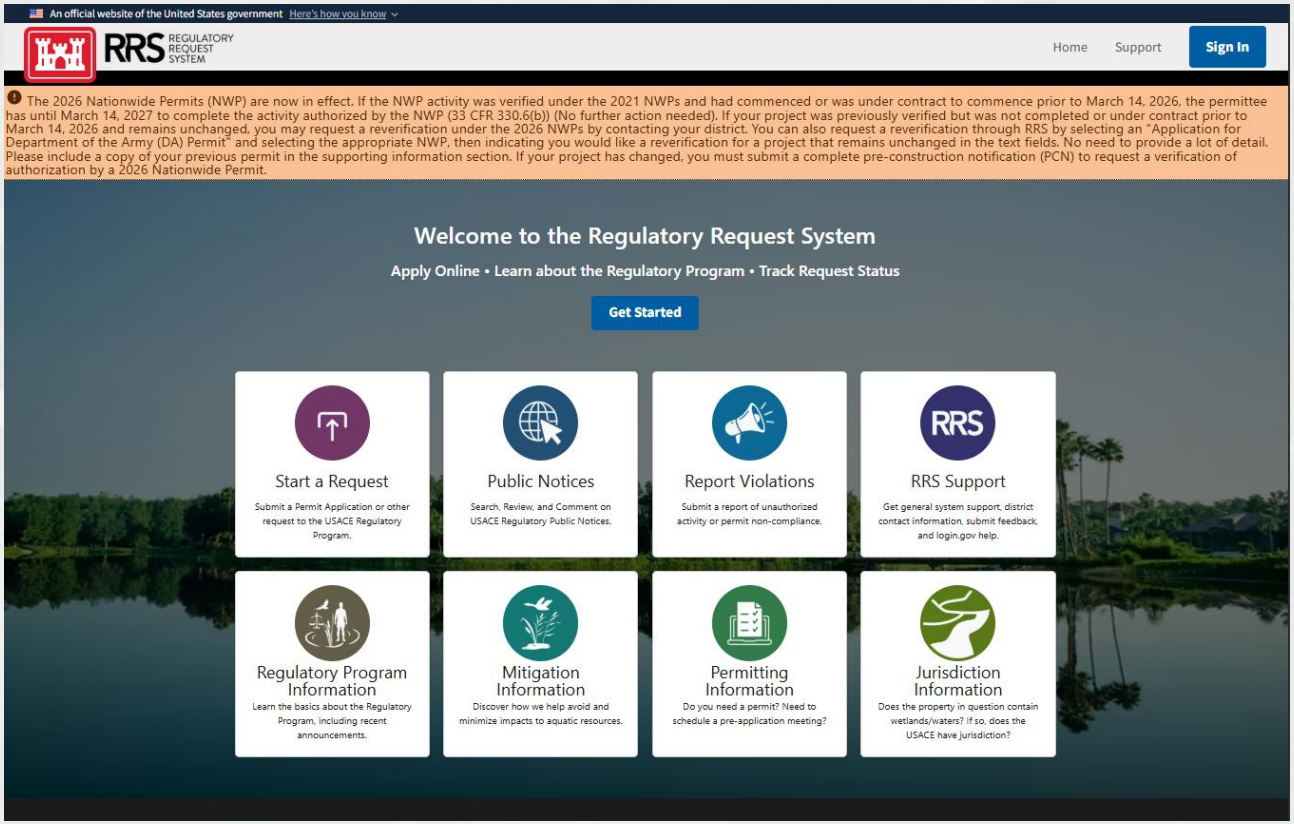
This condition applies to: NWPs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 29, 31, 32, 33, 35, 36, 37, 38, 39, 45, 48, 52, 53, 54, 55, 57, 58 and 60.

A pre-construction notification (PCN) is required if work will occur in areas that contain submerged aquatic vegetation (SAV). Information about SAV habitat can be found at the Virginia Institute of Marine Science's website: http://mobjack.vims.edu/sav/savwabmap/. Additional avoidance and minimization measures, such as relocating, realigning, or extending a structure or time-of-year restrictions (TOYR), may be required to avoid or reduce impacts to SAV habitat.

Apply for a Permit

Regulatory Request System (RRS)

https://rrs.usace.army.mil/rrs



Regulatory Request System

Start a New Request

Select a Request Type

Delineation / Jurisdictional Determination

- [ ] Aquatic Resource Delineation Report and Aquatic Resource Inventory
- [ ] Jurisdictional Determination

Permits & Pre-construction Notifications (Use for ALL Permit Types (SP, LOP, NWP, RGP, PGP))

- [ ] Application for Department of the Army (DA) Permit

Pre-Application / Project Scoping

- [ ] Pre-application / Project Scoping

Self Screening Tools *(Optional)*

- [ ] No Permit Required (Activity Based)
- [ ] No Pre-construction Notification Required (Nationwide Permits)

Regulatory Request System

No Permit Required (Activity Based)

Are you planning to conduct work or install structures in, over, or under navigable water of the United States under Section 10 of the Rivers and Harbors Act of 1899? *

No

Are you planning to transport dredged material for the purpose of dumping it in ocean waters? *

○ Yes ◉ No

Are you planning to discharge (dump, place, deposit, redistribute) dredged or fill material into a waterbody or wetland? *

No

Are you constructing a floating dock that has no associated discharge of dredged or fill material? *

○ Yes ◉ No

Are you excavating material from a non-navigable water with no associated discharge of dredged or fill material? *

○ Yes ○ No

Regulatory Request System

No Pre-construction Notification Required (Nationwide Permits) Information

NWP Type Selection

Which Nationwide Permit (NWP) is appropriate to use for your proposed project? *

NWP 1 Aids to Navigation

NWP - General Questions

Is your project for the resolution of an enforcement action? *

( ) Yes (•) No

Does your State have a Joint Permit with the US Army Corps of Engineers which requires submittal of a PCN for NWPs? *

( ) Yes (•) No

Regulatory Request System

General Project Information

Project Name *

Example

Has the USACE previously issued a file number for any part of the project area? *

No

Project Description *

PUT IMPORTANT INFORMATION HERE
project description including measurements go here.

3917 characters left

Project Purpose *

project purpose goes here.

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Nature of Activity *

Additional information about how you would do the work goes here.

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Permit Information

Select the type of permit you're requesting *

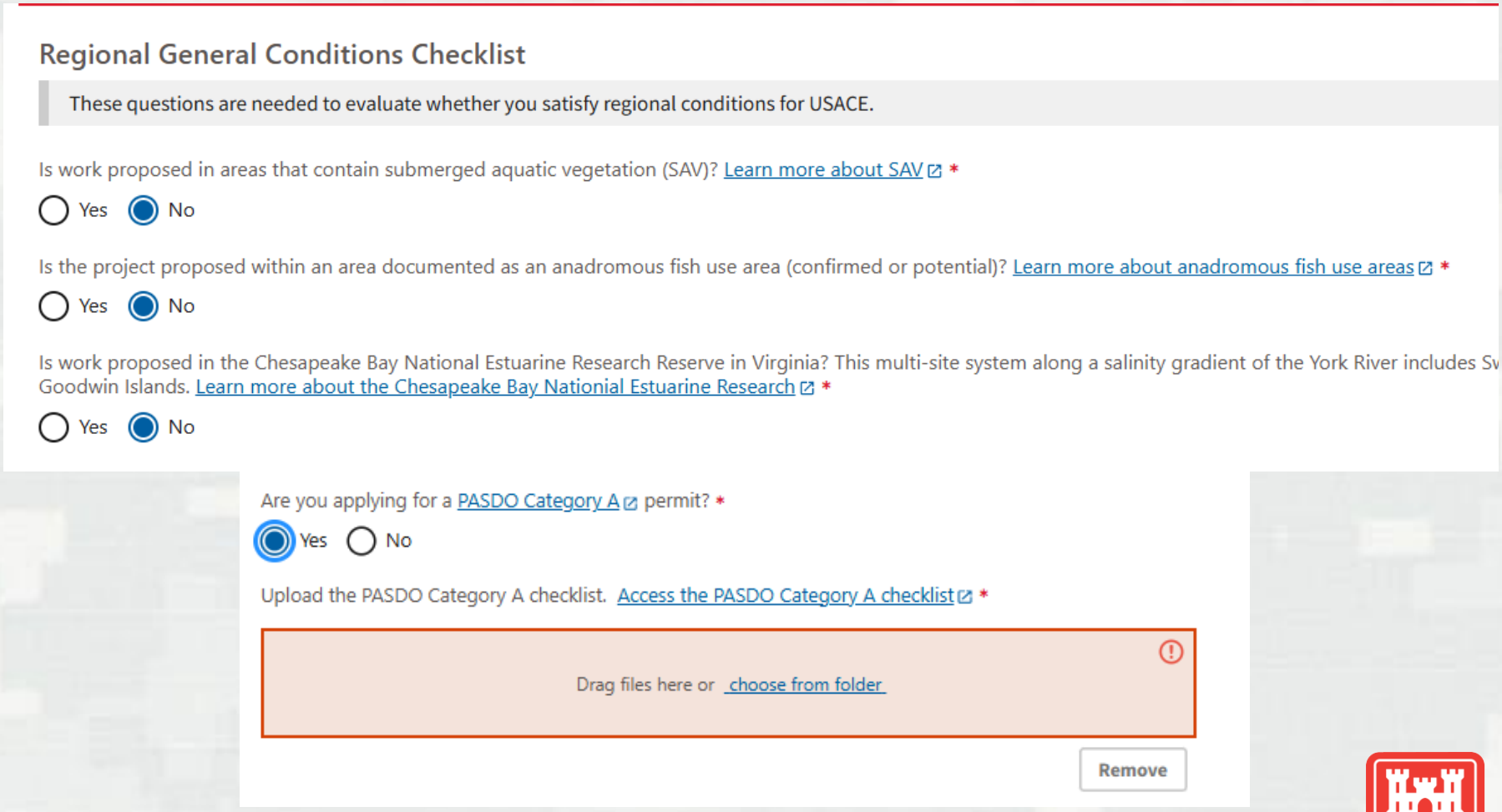
General Permit

Identify the specific Nationwide Permit(s) or Regional or Programmatic General Permit you pro

Select...

- I'm not sure
- NWP 1 Aids to Navigation
- NWP 2 Structures in Artificial Canals
- NWP 3 Maintenance
- NWP 4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 Scientific Measurement Devices
- NWP 6 Survey Activities
- NWP 7 Outfall Structures and Associated Intake Structures
- NWP 59 Water Reclamation and Reuse Facilities
- NWP 60 Activities to Improve Passage of Fish and Other Aquatic Organisms
- 22-SPGP-LT
- 22-SPGP-RCIR
- 23-PASDO Cat A
- 23-PASDO Cat B
- 23-PASDO Cat C
- 23-RP-20 VMRC Reef

Regulatory Request System



Regional General Conditions Checklist

These questions are needed to evaluate whether you satisfy regional conditions for USACE.

Is work proposed in areas that contain submerged aquatic vegetation (SAV)? Learn more about SAV *

○ Yes ◉ No

Is the project proposed within an area documented as an anadromous fish use area (confirmed or potential)? Learn more about anadromous fish use areas *

○ Yes ◉ No

Is work proposed in the Chesapeake Bay National Estuarine Research Reserve in Virginia? This multi-site system along a salinity gradient of the York River includes Sv
Goodwin Islands. Learn more about the Chesapeake Bay National Estuarine Research *

○ Yes ◉ No

Are you applying for a PASDO Category A permit? *

◉ Yes ○ No

Upload the PASDO Category A checklist. Access the PASDO Category A checklist *

Drag files here or choose from folder

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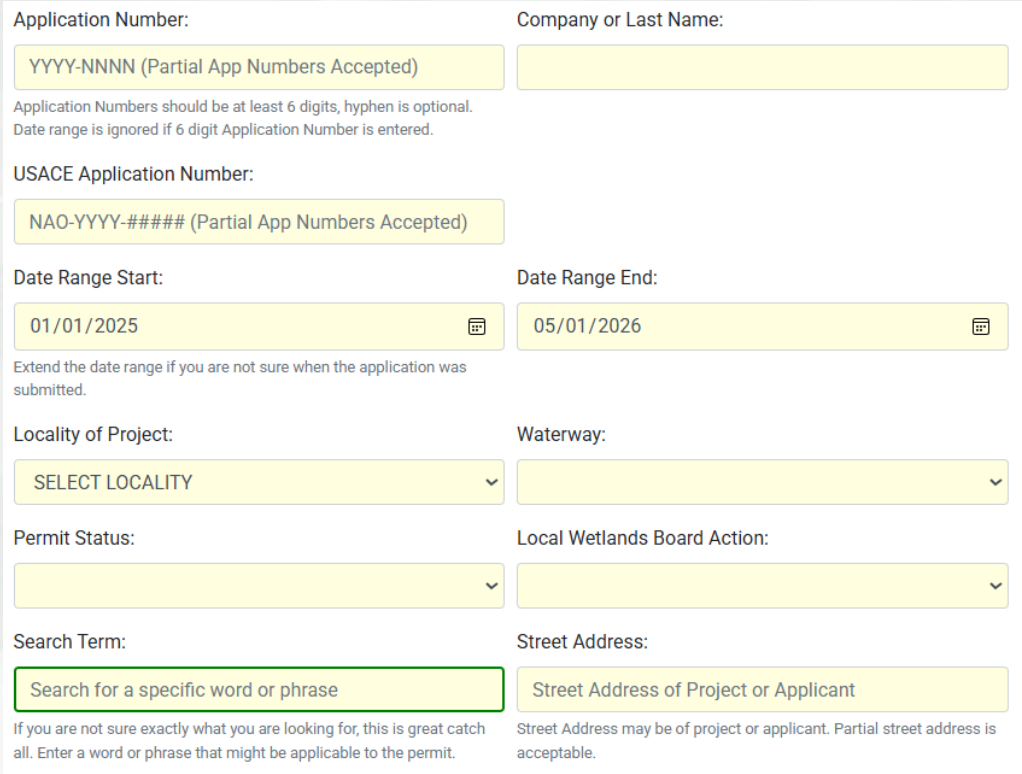
Regulatory Request System

What needs to be in an application?

1. Description of work
2. Drawings of work on a map
3. Jurisdiction lines – MHW/MLW, HTL
4. Accurate lat/long in decimal degrees
5. Acknowledgement of permit limits/conditions

Where to find permit applications

The public can search for copies of submitted permit applications on the **VMRC Habitat Management Permits and Applications** website: https://webapps.mrc.virginia.gov/public/habitat/



Questions?

More information about applying for permits, RRS, permits, and much more can be found on our website.

https://www.nao.usace.army.mil/Missions/Regulatory-Branch/

