



Fact Sheet

Regulatory Flood Response in Maine

January 30, 2024

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The following information is intended to aid the public on the U.S. Army Corps of Engineers (USACE) Regulatory Program following the recent storm damage in Maine for activities that may be regulated under Section 404 Clean Water Act and Section 10 Rivers & Harbors Act. We encourage the public to contact us with questions regarding permitting:

- Peter D. Olmstead, Chief, Maine Section at peter.d.olmstead@usace.army.mil or 978-412-7947 (after hours or emergency actions required with less than 24-hour notice)
- **For Aroostook, Hancock, Penobscot, Piscataquis, Washington Counties:** Shawn Mahaney at shawn.b.mahaney@usace.army.mil, (207) 233-3243 (cell), or (978) 318-8492.
- **For York, Cumberland, Sagadahoc, Somerset Counties:** LeeAnn Neal at leeann.b.neal@usace.army.mil (207) 800-5667 (cell), or 978-318-8498
- **For Kennebec, Knox, Lincoln Counties:** Amanda Sayles at amanda.i.sayles@usace.army.mil or (802) 881-9742 (cell) or (978) 318-8486
- **For Androscoggin, Franklin, Oxford, Waldo Counties:** Heather Stukas at heather.s.stukas@usace.army.mil, (207) 272-5219 (cell), or (978) 318-8678
- **General email box:** cenae-r-me@usace.army.mil

What activities require authorization from the Corps?

Section 10 (33 CFR Part 322): Corps authorization (permit) is generally required for *structures* and *work* in or affecting *navigable waters of the U.S.* pursuant to Section 10 of the Rivers and Harbors Act of 1899. Navigable waters are defined as those waters that are subject to the ebb and flow of the tide and/or are presently used or have been used in the past or may be susceptible for use to transport interstate or foreign commerce (33 CFR 329.4). The following waters have been determined to be *navigable waters of the U.S.* in Maine: 1) all waters that are subject to the ebb and flow of the tide, 2) the Kennebec River to Moosehead Lake), 3) the Penobscot River to the confluence of the East and West Branch at Medway and 4) Lake Umbagog, within the State of Maine. Examples of *structures* may include private docks & floats, wharfs, pier supported structures, seawalls, riprap, revetments, boat ramps, and breakwaters.

Section 404 (33 CFR Part 323): Corps authorization is generally required for the discharge of dredged or fill material into *waters of the U.S.* under Section 404 of the Clean Water Act (CWA), unless otherwise exempt. Waters of the U.S. (WOTUS) include the navigable waters described above, their relatively permanent tributaries (streams & rivers), wetlands adjacent to those waters, and lakes & ponds with a continuous surface connection to such waters.

Does my existing permit authorize the maintenance and repair of previously authorized structures & work?

Maintenance of certain Section 10 structures & work in navigable waters of the U.S. that have been previously authorized (permitted) by the Corps may not require additional authorization, provided it remains in compliance with the terms & conditions of the original Corps permit and current Federal Regulation. Permit holders should refer to their original permit for the activity and determine whether maintenance has been previously authorized or required by a general or special condition. For example, the current 2020 Maine General Permits include the following maintenance requirement via general condition 35:

“35. Maintenance. The permittee shall maintain the activity authorized by these GPs in good condition and in conformance with the terms and condition of these permits. This does not include maintenance dredging, related disposal, or beach nourishment projects, which are subject to review thresholds for GP 5 on page 30, unless specified in written authorization from the Corps.”

Individual Permits issued by the Corps should include the following general condition from 33 CFR Part 325, Appendix A:

“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.”

Most Corps authorizations include this condition or language substantially similar. In these cases, permittees may proceed with maintenance or reconstruction activities without obtaining further authorization from the Corps provided they comply with all terms & conditions of the original permit; including the original footprint & location of the structure or work authorized, time of year restrictions, BMPs, and conditions relating to other Federal laws.

Section 404 Maintenance exemption (33 CFR 323.4(a)(2)): Discharges of dredged or fill material into waters of the U.S. that may result from any of the following activities are not prohibited by or otherwise subject to regulation under Section 404 of the CWA:

“Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency

reconstruction must occur within a reasonable period of time after damage has occurred in order to qualify for this exemption.”

Please note: The 404(f) exemptions are self-implementing, meaning the public is not required to get authorization for use of exemptions. However, we encourage applicants to reach out or thoroughly understand the use & limitations prior to implementation under their own liability. Refer to 33 CFR 323.4 for limitations that may apply to all 404(f) exemptions (i.e. the “recapture provision”). ***This exemption does not apply to structures & work activities located in the navigable waters of the U.S. listed above, including tidal coastlines, which may require authorization pursuant to Section 10 of the Rivers and Harbors Act.***

Does the Corps have an emergency permit process?

Currently, we do not have special permit processing procedures in place for the December 2023/January 2024 event pursuant to 33 CFR 325.2(e)(4). However, certain emergency activities may be authorized under the 2020 Maine General Permits (GPs) “self-verification” procedures without written authorization. The GPs are available at <https://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Maine-General-Permit/>

What activities do not require authorization from the Corps?

Uplands: Activities occurring solely in dryland or uplands do not require any authorization from the Corps. The Corps regulates discharges of material in waters of the U.S. and activities in or affecting navigable waters, which include, but are not limited to, most lakes/ponds, rivers, streams, intermittent streams, natural drainage courses, ocean, and wetlands. Activities outside these waters typically do not require authorization.

Pilings in 404-only waters: In most cases, the installation or replacement of pilings (or effectively similar structures) does not require authorization under Section 404, unless they are placed or installed so closely together that they have the effect of fill material (see 33 CFR 323.3(c)).

Excavation in 404-only waters: Sediment and debris removal in Section 404 waters to restore sites to pre-flood conditions may not require a permit if there is no associated discharge of fill material and the work does not occur within Section 10 waters.

Other 404(f) exemptions: In addition to the maintenance exemption described above, the Corps has exemptions at 33 CFR 323.4 for the following activities, with certain limitations:

- Normal farming, silviculture, and ranching activities.
- Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches.

- Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the U.S.
- Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices (BMPs).

What if I do need authorization from the Corps?

Even in non-emergency situations, the Corps utilizes a series of general permits to streamline authorizations as appropriate for minor activities that result in no more than minimal adverse effects to the aquatic environment. For emergency situations the Corps strives to expedite the processing of these general permits with quicker than normal processing times. In many cases we are able to meet the needs of the public and their timeframes in this way.

The current Maine General Permits & application forms can be found here:

<https://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Maine-General-Permit/>

When in doubt, reach out!