



US Army Corps
of Engineers
Seattle District

Department of the Army Regional General Permit (RGP)



RGP-9 Port of Chehalis Industrial Developments Within the State of Washington Terms and Conditions

Effective Date: October 23, 2018

Expiration Date: October 23, 2023

Permit Number: RGP-9, NWS-2008-549

Permit Title: Port of Chehalis Industrial Developments within the State of Washington

Authority: In accordance with 33 CFR Part 325.2(e)(2), the U.S. Army Corps of Engineers (Corps), Seattle District is issuing a regional general permit (RGP) that authorizes certain activities in waters of the United States pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

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Purpose: The purpose of this RGP reissuance is to authorize the discharge of dredged or fill material into waters of the United States by the Port of Chehalis for the construction or expansion of industrial facilities. The Port of Chehalis, as the permittee, is responsible for complying with all applicable terms and conditions of this RGP. Failure to abide by the requirements of this RGP may constitute a violation of the Clean Water Act.

This RGP contains provisions intended to protect the environment, endangered species, and historic properties and to ensure activities authorized by this RGP would cause no more than minimal individual and cumulative environmental impact. Work that will not comply with these provisions is not authorized by this RGP and may require Department of the Army authorization by a standard individual permit. Moreover, compliance with the provisions of this RGP does not itself guarantee that the work would be authorized under this RGP.

Activities authorized by this RGP: This RGP authorizes the discharge of dredged or fill material into waters of the United States for the construction or expansion of industrial facilities (building foundations and building pads) and attendant features that are necessary for the use and

maintenance of the industrial facilities. Examples of industrial facilities include buildings for warehousing, distributing, and manufacturing activities. Attendant features may include, but are not limited to roads, parking lots, yards, utility lines, and stormwater management facilities. Typical non-industrial facilities not authorized by this RGP include, but are not limited to, retail stores, restaurants, office buildings, shopping centers, and government buildings. The authorization of discharges of dredged or fill material into wetlands is limited to only those wetlands that provide low functions and minimal services (e.g., farmed wetlands) as determined by the district engineer. This RGP authorizes in total the loss of up to 25.7 acres of waters of the United States for all activities authorized by this RGP.

Location of Authorized Activities: This RGP is applicable in waters of the United States located within the RGP boundary area near Chehalis, Lewis County, Washington and at the Pleasant Valley Wetland Mitigation Site located near Adna, Lewis County, Washington. See RGP 9 Figures 1-5 dated May 31, 2016.

Use of this RGP: To use RGP 9, the Port of Chehalis must notify the district engineer by submitting a pre-construction notification in accordance with the RGP terms and conditions as early as possible. Use of this RGP is for projects being applied for by the Port, which take place on property that the Port owns an interest in either via fee simple ownership or an easement. The Port of Chehalis shall not begin the activity until notified in writing by the district engineer that the activity may proceed under the RGP with any special conditions added by the district engineer.

Compliance with Terms and Conditions: Projects authorized by this RGP shall comply with all terms and conditions herein and any case-specific special conditions added by the district engineer and the Washington Department of Ecology as a result of a water quality certification. Activities requiring Department of the Army authorization that are not specifically authorized by this RGP are prohibited unless authorized by another Department of the Army permit.

RGP 9 GENERAL CONDITIONS

Introduction. In the following general conditions the term “applicant” and “permittee” and their derivatives means the Port of Chehalis. Reference to the “Corps” and “district engineer” means the U.S. Army Corps of Engineers and the district engineer of the Seattle District, U.S. Army Corps of Engineers, respectively. The terms “activity” or “project” means the single and complete plan or design proposed for authorization by the RGP. To qualify for RGP authorization, the prospective permittee must comply with all general conditions and State 401 conditions, as applicable, in addition to any case-specific special conditions imposed by the district engineer. The permittee must comply with all of the applicable following general conditions:

1. Pre-Construction Notification.

(a) Timing: The Port of Chehalis must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The Port of Chehalis shall not begin the activity until notified in writing by the district engineer that the activity may proceed under the RGP with any special conditions imposed by the district engineer.

(b) Contents of Pre-Construction Notification: The PCN must be in writing, prominently be identified as an application for RGP 9 and list the reference number NWS-2008-549. The PCN must include the following information:

- (1) Name, address and telephone numbers, and point of contact for the Port of Chehalis;
- (2) Location of the proposed project;
- (3) Purpose and need for the proposed activity;
- (4) A complete description of the proposed project/activity. All activities the applicant plans to undertake, which are reasonably related to the same project and for which a Department of the Army permit would be required, must be in the same permit application;
- (5) A list of any other Department of the Army permit(s) (e.g., Nationwide Permit, regional general permit, or individual permit) used or intended to be used to authorize any part of the proposed project or any related activity;
- (6) Project drawings to include vicinity map, section and plan views. Drawings shall be prepared in accordance with the current *Drawing Checklist* available at www.nws.usace.army.mil, (Regulatory – Regulatory/Permits – Forms). Detailed engineering plans and specifications are not required;
- (7) For the discharge of dredged or fill material into waters of the United States, provide the source of the material and a description of the type, composition, and quantity of the material;
- (8) A delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps;
- (9) A functional assessment of wetlands on the project site;
- (10) Scheduling of the proposed activity;
- (11) A survey for Nelson’s checker-mallow (*Sidalcea nelsoniana*) at the project site. The survey must be conducted in accordance with U.S. Fish and Wildlife Service protocols and

include a vicinity map indicating the location of any Nelson's checker-mallow plants or communities (see General Condition 2 for additional information regarding Endangered Species);

(12) A survey for historic properties at the project site. For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work and include a vicinity map indicating the location of the historic property (see General Condition 4 for additional information regarding historic properties).

(13) Written documentation demonstrating how impacts to waters of the United States are to be avoided and minimized. The demonstration must include a description of how the project was designed and how it would be constructed to avoid and minimize adverse effects. For activities that impact waters of the United States the PCN must include a mitigation plan (either conceptual or detailed) describing how unavoidable impacts to waters of the United States are to be compensated, to include all on-site and off-site mitigation measures. The description of the mitigation proposed shall include the mitigation type(s) and amount(s) that will be provided and an explanation of how the proposed compensatory mitigation will provide the required compensation for unavoidable impacts to aquatic resources resulting from the project. For activities that propose to use the Pleasant Valley Wetland Mitigation Site to meet mitigation requirements, the PCN must include the proposed amount of "credit" to be obtained from the mitigation site (also see General Condition 5 for additional information regarding mitigation);

(14) A list of authorizations required by other federal, interstate, state, or local agencies for the work, including all approvals received or denials already made;

(15) Signature on application.

(c) Agency Coordination:

(1) The district engineer may coordinate with Federal and state agencies and Native American Nations or tribal governments and will consider any comments concerning the proposed activity's compliance with the terms and conditions of the RGP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all permit applications for this RGP, the district engineer will notify the U.S. Environment Protection Agency after receiving a complete PCN. The district engineer will immediately provide (e.g., via email) a copy of the PCN to the EPA and any other appropriate Federal, state or tribal offices. The EPA, and other agencies as applicable, will then have 10 calendar days from the date the material is transmitted to submit comments or to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the PCN. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency; however, the district engineer will indicate in the administrative record associated with each PCN that the resource agencies' concerns were considered.

(d) District Engineer's Decision:

(1) In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest.

(2) The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal submitted with the PCN may be either conceptual or detailed, but a final mitigation plan accepted by the district engineer will be required prior to final authorization.

(3) If the district engineer determines that the activity complies with the terms and conditions of the RGP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any special conditions the district engineer deems necessary. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the RGP.

(4) If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant that the project does not qualify for authorization under the RGP and instruct the applicant on the procedures to seek authorization under a standard individual permit

2. Endangered Species.

(a) No activity is authorized by this RGP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under this RGP which “may affect” a listed species or critical habitat, unless ESA Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) The prospective permittee shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized.

(c) As a result of formal or informal consultation with the U.S. Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS) the district engineer may add species-specific endangered species special conditions to the RGP verification.

(d) Authorization of an activity by this RGP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their web pages at <http://www.fws.gov> and <http://www.noaa.gov/fisheries.html> respectively.

3. Essential Fish Habitat.

(a) An activity which may adversely affect essential fish habitat, as identified under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), may not be authorized

by this RGP until essential fish habitat requirements have been met by the applicant and the Corps.

(b) The prospective permittee shall notify the district engineer if essential fish habitat may be affected by, or is in the vicinity of, a proposed activity and shall not begin work until notified by the district engineer that the requirements of the essential fish habitat provisions of the MSA have been satisfied and the activity is authorized. Information about essential fish habitat is available at www.westcoast.fisheries.noaa.gov/.

4. Historic Properties.

(a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) The pre-construction notification to the district engineer shall include a survey for historic properties at the project site and identify any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties that might be affected or is in the vicinity of the project. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work and include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties.

(c) Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on historic properties.

(d) For activity that may have the potential to cause effects to an historic property, the applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If Section 106 consultation is required and will occur, the district engineer will notify the applicant and the applicant shall not begin work on the activity until notified by the district engineer that the requirements of Section 106 of the NHPA have been satisfied and that the activity is authorized.

(e) The prospective permittee should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation

with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

(f) The permittee must immediately stop work and notify the district engineer within 24 hours if, during the course of conducting authorized work, human burials, cultural resources, or historic properties, as identified by the NHPA, are discovered and may be affected by the work. Failure to stop work in the area of discovery until the Corps can comply with the provisions of 33 CFR 325 Appendix C, the NHPA, and other pertinent laws and regulations could result in a violation of state and federal laws. Violators are subject to civil and criminal penalties.

5. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation will be required for all losses of special aquatic sites (e.g., wetlands).

(d) For losses of streams or other open waters the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation plans shall be prepared in accordance with the Federal Compensatory Mitigation for Losses of Aquatic Resources Final Rule (33 CFR Parts 325 and 332, April 10, 2008) and the Washington State Department of Ecology Publication #06-06-011a, *Wetland Mitigation in Washington State – Part 1: Agency Policies and Guidance and Part 2: Developing Mitigation Plans (Version 1)*, dated March 2006. The Ecology publication is available at the following website address: <https://ecology.wa.gov/About-us/Online-tools-publications/Publications-forms> .

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, this may be

the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis.

(g) The permittee may propose the use of mitigation banks, in-lieu fee arrangements or separate permittee responsible activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Pleasant Valley Wetland Mitigation Site: RGP 9 includes the district engineer's approval of the Port of Chehalis advanced compensatory wetland mitigation site entitled the Pleasant Valley Wetland Mitigation Site, provided the site meets performance standards. Any proposed use of the Pleasant Valley Wetland Mitigation Site as compensatory mitigation shall be included with the pre-construction notification, as applicable. The Pleasant Valley Wetland Mitigation Site may be used under this RGP by the Port of Chehalis to meet Corps and Washington Department of Ecology compensatory mitigation requirements. The Pleasant Valley Wetland Mitigation Site may also be used to meet mitigation requirements for Port of Chehalis activities authorized by other Department of the Army permits at the district engineer's discretion. Mitigation "credit" from the Pleasant Valley Wetland Mitigation Site shall not be sold or transferred to another party. The Pleasant Valley Wetland Mitigation Site shall provide compensation on an acreage-based ratio of 1.25:1 (mitigation:impact) for authorized impacts to wetlands that provide low functions and minimal services as determined by the district engineer. Wetlands that provide low functions and minimal services may include wetlands that have reduced water quality, hydrological, and/or habitat functions due to past alterations (e.g., farming, ditching, etc.). The district engineer has the discretion to re-evaluate this mitigation ratio and increase or decrease the ratio during the five-year term of the RGP. The Port of Chehalis also has the option to request the Corps re-evaluate and modify the mitigation ratio at any time depending on the establishment success of the Pleasant Valley Wetland Mitigation Site.

6. 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.

7. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

8. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
9. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.
10. Adverse Effects from Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
11. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
12. Fills Within 100-Year Floodplains. Permanent above-grade fills and other activities that would reduce the flood storage capacity of the 100-year floodplain are not authorized by this RGP.
13. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
14. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow. The permittee shall remove all installed controls as soon as they are no longer needed to control erosion or sediment.
15. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged into waters of the United States must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).
16. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be re-vegetated with native plants, as appropriate.
17. Vegetation Protection and Restoration. Permittees must clearly mark all construction area boundaries before beginning work and minimize the removal of native vegetation in riparian areas and wetlands to the maximum extent practicable. Areas subject to temporary vegetation removal in wetlands or riparian areas during construction shall be replanted with appropriate

native species by the end of the first planting season following the disturbance except as waived by the district engineer.

18. Tribal Rights. No activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.
19. Water Quality. For activities where the State has not previously certified compliance with Section 401 of the Clean Water Act, individual 401 Water Quality Certification must be obtained or waived. The district engineer or State may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.
20. Special and Case-By-Case Conditions. The activity must comply with any special conditions that may have been added by the district engineer and with any specific conditions added by the State in its Section 401 Water Quality Certification, as applicable.
21. Transfer of Regional General Permit Verifications. RGP 9 authorizes work by the Port of Chehalis and is a non-transferable permit. The Port of Chehalis, as the permittee, is responsible for complying with all applicable terms and conditions of this RGP regardless of transfer in ownership. If the Port of Chehalis sells the property associated with an RGP 9 verification, the Port of Chehalis shall include in the transferred property real estate documentation a copy of the applicable RGP 9 verification letter(s) and a declaration identifying the Port of Chehalis as the responsible party for compliance with the permit terms and conditions. The Port of Chehalis shall notify the Corps, Seattle District of any property transfer associated with an RGP verification within 60 day of the final transfer.
22. Access. The permittee shall allow representatives of the U.S. Army Corps of Engineers, Seattle District and the Washington Department of Ecology to inspect the authorized activity and any mitigation sites at any time deemed necessary by the district engineer to ensure that the work is being, or has been, accomplished in accordance with the terms and conditions of the RGP verification.
23. Maintenance. The permittee must maintain the activity authorized by this permit in good condition and in accordance with the terms and conditions of this permit, including maintenance to ensure public safety. The permittee is not relieved of this requirement if the permitted activity is abandoned. Should the permittee wish to cease to maintain the authorized activity or should the permittee desire to abandon it, the permittee must obtain a modification to this permit, which may require restoration of the area.
24. Contractor's Copy of Permit. The permittee shall provide a copy of the RGP verification letter, the permit terms and conditions, and permit drawings to all contractors performing any of the authorized work.
25. Compliance Certification. Within 30 days of completing the authorized work, the Port of Chehalis must submit a signed compliance certification form regarding completion of the work and any required mitigation for each RGP 9 verification it receives from the Corps. The

compliance certification form will be forwarded by the Corps with the RGP 9 verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the RGP authorization, including all general and special conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

26. Limits of Authorization.

- (a) The district engineer has authority to determine if an activity complies with the terms and conditions of the RGP.
- (b) The RGP does not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
- (c) The RGP does not grant any property rights or exclusive privileges.
- (d) The RGP does not authorize any injury to the property or rights of others.
- (e) The RGP does not authorize interference with any existing or proposed Federal project.

27. Limits of Federal Liability. This permit is not an approval of the design features of any authorized project or an implication that such project is adequate for the intended purpose. In issuing this RGP, 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 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.

28. Reliance on Permittee's Information. In verifying a permittee's authorization under this RGP, the district engineer has relied, in part, on the information provided by the permittee. If this information proves to be false, incomplete, or inaccurate, the permittee's authorization may be modified, suspended, or revoked, in whole or in part.

29. Modification, suspension, or revocation of the RGP.

- (a) This RGP may be modified, suspended, or revoked in whole or in part if the Secretary of the Army or his authorized representative determines that the individual or cumulative impacts of work that would be authorized using this procedure are contrary to the public interest. Any such modification, suspension, or revocation shall become effective 30 days after the issuance of a public notice announcing such action. The final decision whether to modify, suspend, or revoke this permit, in whole or in part, shall be made pursuant to procedures prescribed by the Chief of Engineers. Following such revocation, any future activities heretofore authorized by this RGP will require alternate Department of the Army authorization.

(b) The authorization of an individual project under this RGP may also be summarily modified, suspended, or revoked, in whole or in part, if the permittee fails to comply with the terms and conditions of the permit, if the information provided by the permittee in support of its application proves to have been false, incomplete, or inaccurate, or if significant new information surfaces which the district engineer did not consider in reaching the original permit decision. If a permittee's authorization is revoked, the permittee shall, upon notice of such revocation, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the waterway to its former condition. If the permittee fails to comply with the direction of the Secretary of the Army or his authorized representative, the Secretary or his designee may restore the waterway to its former condition, by contract or otherwise, and recover the cost thereof from the permittee.

30. Expiration of the RGP. This permit shall be valid from the effective date and will automatically expire 5 years from that date unless the permit is modified, revoked, or re-issued prior to that date. Activities authorized by this RGP that have commenced (e.g., are under construction) or are under contract to commence in reliance upon this permit will remain authorized provided that the activity is completed within 1 year of the date of this permit's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization.

State 401 Water Quality Certification Conditions

Introduction. Under Section 401 of the Clean Water Act, an activity involving the discharge into waters of the United States authorized by a federal permit or license must receive water quality certification from the affected certifying agency. The Washington Department of Ecology is the 401 certifying agency for activities that may be authorized by RGP 9. Section 401 water quality certification signifies that the certifying entity has reasonable assurance that the project will comply with all applicable Federal and State effluent limitations and water quality standards, as well as other applicable aquatic resource protection requirements under the certifying entity's authority. A 401 water quality certification can authorize both construction and operation of a project.

The permittee must comply with all of the applicable following State 401 Water Quality Certification conditions:

1. Ecology provides certification for placement of fill in up to 25.7 acres of Category IV wetlands for the construction or expansion of industrial facilities and attendant features. The 25.7 acres aligns with the remaining mitigation area that is available at the Port of Chehalis Pleasant Valley Mitigation site. Any proposed impacts over the authorized 25.7 acres will require authorization from Ecology.
2. Individual 401 review is required if the post-development stormwater controls for the project or activity are not designed in accordance with Ecology's most recent stormwater manual or an approved equivalent stormwater manual.

3. Individual 401 review is required for projects or activities authorized under this RGP if the project or activity will discharge to the following waterbodies **and** may result in further exceedences of a specific parameter that the waterbody is listed for on the state's list of impaired waterbodies (the 303(d) list).
 - Berwick Creek
 - Dillenbaugh Creek
 - Newaukum River
4. Section 401 Water Quality Certification for this RGP will expire on the date that the RGP expires.

RGP 9 Definitions (in alphabetical order)

Compensatory mitigation: The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Discharge: The term “discharge” means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

Essential Fish Habitat: Waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for a general permit; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Native Species: Species that historically occur in a particular ecosystem and are not introduced.

Open water: For purposes of the RGP, open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Permanent Adverse Impacts: Resource losses that are specifically identifiable, reasonably likely to occur, and of importance to the human or aquatic environment and which result in an irreversible or irretrievable commitment of resources. Filling a wetland and covering it with a parking lot is an example of a permanent adverse impact; temporarily stockpiling excavated soil in a wetland is an example of a temporary adverse impact. In addition, a permanent adverse impact could be one where the magnitude and type of action and its resulting impact, even if short-term and temporary, results in specifically identifiable irreversible or irretrievable commitment of resources.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the applicant to the Corps for confirmation that a particular activity is authorized by the RGP.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riparian areas: Riparian areas are lands adjacent to streams and lakes. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian area encompasses the area beginning at the ordinary high water mark and extends to that portion of the terrestrial landscape that directly influences the aquatic ecosystem by providing shade, fine or large woody material, nutrients, organic and inorganic debris, terrestrial insects, or habitat for riparian associated wildlife. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality.

Special Aquatic Sites: Special aquatic sites include wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes, and sanctuaries and refuges as defined in 40 CFR 230.40 through 230.45 (*Guidelines for Specification of Disposal Sites for Dredged or Fill Material*).

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Waterbody: For purposes of the RGP, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.