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MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS AND DISTRICT COMMANDS

SUBJECT: Required Special Condition of Department of the Army Permits Involving Corps of Engineers Authority Under Section 10 of the Rivers and Harbors of 1899

1. Former and current conflicts, involving Department of the Army permits for submerged structures and Corps water resources development projects, have emphasized the need for more precise wording of the conditions of Corps Section 10 permits than is provided by the standard conditions prescribed in 33 CFR Parts 320 through 330, Appendix A. It is essential that Corps permits notify the permitee that the permitted structure or other work will have to be removed, at the permitee's expense, if the Corps determines at any time after the issuance of the permit, that the authorized work interferes with, or will interfere with, navigation or any existing or future operation of the United States. Although the currently prescribed standard permit conditions may implicitly impose these obligations on the permitee, we have determined that clear and explicit notification is required in all forms of Corps of Engineers permits that provide authorization under Section 10 of the Rivers and Harbors Act, to protect the interests of the United States.

2. Effective immediately, the following special condition will be included in all Corps of Engineers permits, i.e., individual permits, letters of permission, nationwide permits, regional general permits, that provide authorization under Section 10 of the Rivers and Harbors Act, regardless whether the permit provides such authorization under Section 10 alone, or in combination with authorization under other laws:

> *The permitee 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.*

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3. This memorandum will also serve as a reminder of our special obligation to furnish the following:

    a. copies of permits for artificial islands, installations, or other devices on the outer continental shelf which must be forwarded to the National Imagery and Mapping Agency (formerly the Defense Mapping Agency) and to the National Ocean Service;

    b. copies of permits for structures to enhance fish propagation along the coasts of the United States which must be forwarded to the National Imagery and Mapping Agency, to the National Ocean Service, and to the National Marine Fisheries Service; and

    c. copies of permits involving the erection of an aerial transmission line, submerged cable, or submerged pipeline in a navigable water of the United States which must be forwarded to the National Ocean Service.

4. This memorandum will serve as a further reminder that, in addition to the requirement to distribute copies of the permits mentioned in the preceding paragraph, 33 CFR Parts 320 through 330, Appendix A, provides the text of a special condition that must be included in such permits, requiring the permitee to notify the National Ocean Survey, in writing, at least 2 weeks before work begins, and upon completion.

5. Our Regulatory Branch P.O.C. for this action is Mr. Thaddeus Rugiel, (202) 761-0817.

FOR THE COMMANDER:

HANS A. VAN WINKLE
Major General, USA
Deputy Commander for
Civil Works