

PUBLIC NOTICE

**CHARLESTON DISTRICT, CORPS OF ENGINEERS
69A Hagood Avenue
Charleston, South Carolina 29403-5107**

REGULATORY DIVISION

15 February 2008

Refer to: General Permit # 2008-00328-8GN

NOTICE

is hereby given that the District Commander, Charleston District proposes to reissue General Permit #2002-14-004 with minor revisions. This permit is issued to the Duke Energy and Lakefront Property Owners and authorizes, where such authorizations are required, the construction, repair and maintenance of private non-commercial piers, docks, boat lifts, moorings, boat houses, marine railways for dry storage, boat shelters, bulkheads, retainer walls, riprap and bio-engineering for erosion control, heat exchange coils for heat pumps, minor intake pipes for residential irrigation, and minor excavation by the adjacent shoreline property owners in the following lakes:

<u>Lake</u>	<u>County</u>	<u>License</u>	<u>Project Boundary</u>
Wylie (SC)	York	2232	569.4
Fishing Creek	Chester/Lancaster	2232	417.2
Great Falls	Chester/Lancaster	2232	355.8
Rocky Creek	Chester/Lancaster/Fairfield	2232	284.4
Wateree	Kershaw/Lancaster/Fairfield	2232	225.5
Keowee	Oconee/Pickens	2503	varies 800.0 – 810.0
Ninety-Nine Island	Cherokee/York	2331	511.1
Gaston Shoals (SC)	Cherokee	2332	605.2

The purpose of this notice is to give all interested parties an opportunity to express their views on the proposed reissuance of the above referenced General Permit before action is taken. The General Permit, if reissued will be effective for a period of five (5) years.

Written statements regarding the reissuance of the General Permit will be received at this office until,

12 O'CLOCK NOON, MONDAY, 17 MARCH 2008

from those interested in the activity and whose interests may be affected by this General Permit.

The District Engineer has concluded that the discharges associated with this project, both direct and indirect, should be reviewed by the South Carolina Department of Health and Environmental Control in accordance with provisions of Section 401 of the Clean Water Act. As such, this notice constitutes a request, on behalf of the applicant, for certification that this project will comply with applicable effluent limitations and water quality standards. The District Engineer will not process this application to a conclusion until such certifications are received. This activity may also require evaluation for compliance with the S.C. Construction in Navigable Waters Permit Program. State review, permitting and certification is conducted by the S.C. Department of Health and Environmental Control. The applicant is hereby advised that supplemental information may be required by the State

to facilitate the review. Persons wishing to comment or object to State certification or the navigable waters permit must submit all comments in writing to the S.C. Department of Health and Environmental Control at the following address within thirty (30) days of the date of this notice.

**THE S.C. DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF ENVIRONMENTAL QUALITY CONTROL
WATER QUALITY CERTIFICATION AND WETLANDS PROGRAMS SECTION
2600 BULL STREET
COLUMBIA, SOUTH CAROLINA 29201**

This notice also initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Implementation of the proposed project would impact waters of the United States upstream of estuarine substrates and emergent wetlands utilized by various life stages of species comprising the red drum, shrimp, and snapper-grouper management complexes. Our initial determination is that the proposed action would not have a substantial individual or cumulative adverse impact on EFH or fisheries managed by the South Atlantic Fishery Management Council and the National Marine Fisheries Service (NMFS). Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NMFS.

Pursuant to Section 7(c) of the Endangered Species Act of 1973 (as amended), the District Engineer has consulted the most recently available information and has determined that Schweinitz's Sunflower (*Helianthus schweinitzii*) and smooth coneflower (*Echinacea laevigata*), Federally endangered species, are present in the vicinity of the project area. However, it has been determined that the activities authorized by the General Permit will have no effect on these species and will not result in the destruction or adverse modification of designated or proposed critical habitat. This public notice serves as a request for written concurrence from the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service on this determination.

In accordance with the NHPA, the District Engineer has evaluated the proposed General Permit regarding its potential to effect cultural resources including registered properties or properties listed as being eligible for inclusion in the National Register. Provisions have been made in the form of general conditions to the proposed General Permit, which should prevent any adverse effect to cultural resources due to the issuance of this General Permit. To insure that issues regarding cultural resources that the District Engineer is not aware of are not overlooked, this public notice also serves as a request to the State Historic Preservation Office to provide any information it may have with regard to impacts this General Permit may have on historic and cultural resources.

Pursuant to Section 106 of the National Historic Preservation Act (NHPA), this public notice also constitutes a request to Indian Tribes to notify the District Engineer of any historic properties of religious and cultural significance to them that may be affected by the proposed undertaking.

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the project must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the project will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general

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environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people. A permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the activity.

If you have any questions concerning this General Permit, please contact Mr. Nat Ball at 843-329-8044 or toll free at 1-866-329-8187.

General Permit No. 2008-00328-8GN
 Name of Applicant: DUKE ENERGY AND LAKE FRONT PROPERTY OWNERS
 Effective Date: _____
 Expiration Date: _____

DEPARTMENT OF THE ARMY

GENERAL PERMIT

A General Permit to perform work in or affecting waters of the United States, both navigable and non-navigable, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and Section 404 of the Clean Water Act (PL 92-500, 33 U.S.C. 1344), is hereby issued by the authority of the Secretary of the Army by the

District Commander
 U. S. Army Corps of Engineers
 Charleston District
 69A Hagood Avenue
 Charleston, South Carolina 29403

to authorize, where such authorizations are required, the construction, repair and maintenance of private non-commercial piers, docks, boat lifts, moorings, boat houses, marine railways for dry storage, boat shelters bulkheads, retainer walls, riprap, bio-engineering for erosion control, heat exchange coils for heat pumps, minor intake pipes for residential irrigation, and minor excavation by the adjacent shoreline property owners in the following lakes:

<u>Lake</u>	<u>County</u>	<u>License</u>	<u>Project Boundary</u>
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Ninety-Nine Island	Cherokee/York	2331	511.1
Gaston Shoals (SC)	Cherokee	2332	605.2

subject to the following conditions:

I. GENERAL CONDITIONS:

a. This General Permit authorizes only those structures and activities specifically addressed below. The permittee must obtain Department of the Army authorization, such as the issuance of an individual permit, for all other activities that are regulated pursuant to Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act within the waters of the above referenced lakes.

b. All activities identified and authorized herein shall be consistent with the terms and conditions of this General Permit; any variance not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit which may result in the modification, suspension, or revocation of the authorization, as set forth more specifically in General Condition h. below and in the institution of such legal proceedings as the United States Government may consider appropriate.

c. All structures authorized by this General Permit shall be designed, located, and/or operated to allow the full and free use by the public of all navigable waters.

d. Activities or structures authorized by this General Permit shall not encroach across any adjacent property line or the imaginary lakeward extension of any adjacent property line without the written permission of the affected property owner.

e. The permittee must make every reasonable effort to conduct the work authorized herein in a manner so as to minimize any adverse impact to fish, wildlife, and other environmental resources.

f. The permittee must make every reasonable effort to conduct the work authorized herein in a manner so as to minimize any degradation of water quality.

g. The permittee shall allow the District Commander or his authorized representative(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

h. Authorization of a specific work or structure authorized herein may be summarily suspended in whole or in part upon a finding by the District Commander that immediate suspension would be in the general public interest or there has been a violation of any terms and conditions of this permit. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by a permittee which are deemed necessary by the District Commander to abate imminent hazards to the general public interest. A permittee shall take immediate action to comply with the provisions of this notice. Within ten (10) days following the receipt of this notice of suspension, the permittee may request a meeting with the District Commander or a public hearing to present information relevant to a decision whether their permit should be reinstated, modified, or revoked. If a public hearing is requested it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the public hearing or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the authorization of the specific work or structure will be reinstated, modified, or revoked. Any modification, suspension, or revocation of authorization under this General Permit shall not be the basis for any claim for damages against the United States.

i. That the permittee, upon receipt of a notice from the District Commander for failure to comply with the terms, conditions, or standards of this General Permit shall, the structure owner must within 60 days without expense to the United States and in such manner as directed by the District Commander or his authorized representative(s), effect compliance with the terms, conditions, and standards or remove the previously authorized structure.

j. This General Permit does not convey any property rights, either in real estate or material, or any exclusive privileges; and it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations or Federal Energy Regulatory Commission regulations, nor does it obviate the requirement to obtain other Federal, State, local or Duke Energy assent or to comply with any applicable standards required by ordinance for the activities authorized herein. Other Federal, State, or local agencies and/or Duke Energy are not limited by this document and may impose more stringent requirements than those identified in this document.

k. This General Permit does not authorize work or structures within areas that are mapped as Environmental in the Duke Energy's Shoreline Management Plan.

l. That the permittee recognizes the possibility that works or structures authorized herein may be subject to damage by wave wash from passing vessels and wind-driven waves. The issuance of this General Permit does not relieve the permittee from taking all proper steps to ensure the integrity of works permitted herein and the safety of boats moored thereto from damage by wave wash and the permittee shall not hold the United States liable for any such damage.

m. That the permittee shall maintain the work or structure authorized herein in good condition. If and when a permittee desires to abandon an authorized structure, unless such abandonment is part of a transfer procedure by which the individual is transferring ownership of the structure, the permittee may be required to remove the structure.

n. That if the display of lights and signals on any structure authorized herein is not otherwise provided for by law, such lights and signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

o. That the term "permittee" means the individual authorized by the District Commander to accomplish work under this General Permit. The activities authorized under this permit are for private, non-commercial use. Work will not be considered private if its planned or ultimate purpose is commercial or industrial in nature, it is in support of operations that charge for the production, distribution, or sale of goods or service, or it will be for the use of the general public.

p. The prospective permittee must notify the District Commander if the activity authorized by this General Permit may affect any federally listed threatened or endangered species, a species proposed for listing, or designated critical habitat. The activity is not authorized until the District Commander determines that the requirements of the Endangered Species Act have been satisfied.

q. The prospective permittee must notify the District Commander if the activity authorized by this General Permit may affect any historic properties listed, or which may be eligible for listing on the National Register of Historic Places. The activity is not authorized until the procedures for the protection of cultural resources (Appendix C to 33 CFR 325) have been completed on the eligible property or structure.

r. If the permittee, prior to or during the performance of the work authorized herein, encounters previously unidentified archeological remains or cultural resources within the area subject to Department of the Army authorization, the applicant agrees to cease work and contact the District Commander, so that further coordination with the South Carolina Institute of Archaeology and Anthropology, the South Carolina Department of Archives and History or the appropriate Tribal Historic Preservation Office may be conducted.

s. This general permit relates only to activities authorized herein and does not convey the right to place any structures for any nonwater-related commercial use on or adjacent to any pier, dock, moorings, boat houses, marine railways for dry storage, bulkheads, retainer walls, and/or riprap without the prior approval of the District Commander.

t. 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.

II. SPECIAL CONDITIONS:

a. Docks and Boat Lifts

(1) Private docks, whether permanent, floating or a combination of both may not exceed 1,000 square feet in overall size (surface area) and 120 feet in length or extend 1/3 the distance across the affected waterway, whichever is less provided that they do not interfere with navigation, or ingress or egress to any adjoining property. In some locations, such as narrow coves, the maximum size may not be permitted or structures may not be permitted at all. Additionally, no new or expanded facilities will be authorized in cove areas less than 25 ft. wide.

(2) Common use structures between adjacent property owners are encouraged. A copy of the written agreement between participating property owners must be furnished to Duke Energy.

(3) All fixed pier decking (not including handrails) be built at least one vertical foot above the referenced project boundary elevation (full pond) of each lake.

(4) Handrailings are permissible provided that the sides of docks are not enclosed so as to obscure cross-vision.

(5) Structures built within the Project Boundaries must not contain sinks, toilets, showers, spigots, or any other type of device, which could cause any liquid or solid waste to be discharged into the lake.

(6) Flotation for all facilities and boat mooring buoys shall be of materials manufactured for marine use. Materials must not lose significant buoyancy if punctured, must not generally be subject to damage by animals, and must resist breaking apart under a broad range of wave energies. The uncoated, beaded polystyrene will not be permitted for any new construction or as replacement for existing facilities. Reuse of plastic, metal or other previously used drums or containers for encasement or flotation purposes is prohibited. Existing approved flotation is authorized until it has severely deteriorated and is no longer serviceable, at which time it must be replaced with approved flotation.

(7) Docks, boat houses, and boat shelters must be single-story structures. They may be roofed to allow second story use (e.g. sundecks); however, the second story must not be roofed creating a two story roofed structure.

(8) Private docks used to moor houseboats for habitation are not allowed by this General Permit. Watercraft used for habitation shall not be moored at private docks. Permanent mooring must be at marinas that provide pump-out facilities for marine sanitation devices.

(9) Boat lifts and lifts for personal watercraft are permissible provided that they do not block cross-vision. No more than two (2) jet ski lifts or jet docks per project-front lot will be allowed.

b. Mooring Structures

(1) Mooring structures, i.e., dolphins, pilings, or buoys must be placed in association with piers and docks and shall not be located beyond 120' from the normal lake shoreline nor extend more than 1/3 the distance across the waterway, whichever is less,. Mooring structures shall not be located in front of the associated pier or dock nor shall they be located greater than 30' laterally from the pier or dock.

(2) All vessels secured to mooring structures must be moored in a manner which will not create any hazards to navigation, or block boating access for others. Vessels secured to mooring structures shall not be located beyond 120' from the normal lake shoreline nor extend more than 1/3 the distance across the waterway.

c. Boat Houses and Boat Shelters

(1) Floating boat houses are permitted. Boat houses must be single-story structures. Boat shelters (pilings with an attached roof) may be permitted provided the sides are not enclosed. Enclosed boat houses are not permitted.

(2) Flotation for all boat houses shall be of materials manufactured for marine use. Materials must not lose significant buoyancy if punctured, must not generally be subject to damage by animals, and must resist breaking apart under a broad range of wave energies. The uncoated, beaded polystyrene will not be permitted for any new construction or as replacement for existing facilities. Reuse of plastic, metal or other previously used drums or containers for encasement or flotation purposes is prohibited. Existing approved flotation is authorized until it has severely deteriorated and is no longer serviceable, at which time it must be replaced with approved flotation.

(3) Structures built within the Project Boundaries must not contain sinks, toilets, showers, spigots, or any other type of device, which could cause any liquid or solid waste to be discharged into the lake. (Exception: Water supply lines supporting approved pump-out facilities are exempted from this requirement.)

(4) Boat shelters (pilings with an attached roof) are permitted. Boat shelters must be single-story structures. Enclosed boat shelters or boat houses are not permitted.

d. Marine Railways

(1) Marine railways extending from on-shore boat houses must not interfere with navigation or ingress or egress to any adjoining property.

e. Bulkheads or Retainer Walls

(1) Bulkheads or retainer walls must be constructed against the existing erosional scarp and landward of any wetland vegetation to prevent the loss of wetlands in areas compatible with the Duke Energy's Shoreline Management Plan for stabilization. The recapturing of land by earthen fill will not be permitted.

(2) Shoreline areas with an average eroded bank height ≤ 2 foot can only be stabilized utilizing approved bio-engineering techniques and enhanced rip rap; seawalls are not allowed.

(3) Bulkheads for erosion control must be constructed from pressure treated wood, metal, concrete, vinyl or fiberglass or some other suitable material that has received prior approval by Duke Energy.

(4) Bulkhead backfill must consist of clean earthen materials free of all potential sources of pollution.

(5) The backfill area must be stabilized with a vegetative cover after construction to minimize erosion.

g. Rip-Rap or Bio-engineering

(1) Rip-rapping and bio-engineering for erosion control at the project boundary contour and below may be permitted provided rip-rap is placed against the existing erosional scarp and landward of any wetland vegetation to prevent the loss of wetlands in areas compatible with the Duke Energy SMP and any rip rap is limited to only that which is necessary to adequately control erosion.

(2) Rip-rap for erosion control must consist of clean stone free of all potential sources of pollution.

(3) Rip-rap use should be limited to only that necessary to adequately stabilize the existing eroded bank. Rip-rap must be confined to the area between six feet below the full pond elevation and full pond elevation except where the entire placement is above the FERC Project Boundaries or where severely eroded banks must be sloped back or terraced to provide minimum bank stability and where permissible based on any local or state buffer requirements.

h. Heat Exchange Coils and Intake Pipes

(1) The heating/coolant medium used within heat exchange coils must be water.

(2) All supply and return piping for heat exchange coils must be buried a minimum of two (2) feet below the lake bed and must comply Duke Energy's requirements for submarine utility lines.

(3) Exposed portions of heat exchange coils and intake pipes must be anchored to the lake bottom to prevent them from floating to the surface.

(4) Material excavated to install heat exchange coils or irrigation pipes that is not used as backfill material within the excavated trench must be disposed properly in uplands.

(5) Clean stone free of all potential sources of pollution may be used as backfill within the excavated trench provided there is no change in preconstruction contours.

i. Minor Excavation Not Affecting the Project Boundary

(1) The quantity of material to be excavated shall not exceed 150 cubic yards for each single and complete project as required for removing accumulated sediments in order to maintain access.

(2) All excavation work and equipment setup must be conducted directly in front of the individual's lot and within the nearest one-third of the cove area and/or within the middle third of the cove area that is controlled by Duke Energy, unless specific written authorization is given by the affected property owner(s) (typically through their participation as co-applicants) . Access channels must run perpendicular to the shoreline/project boundary within the one-third of the cove nearest the applicant's property. Access channels and boat basins must not extend beyond half the cove width in cove areas where the opposing is classified as Environmental (including 50-ft. Environmental offsets) in Duke Energy's SMP.

(3) All displaced soil must be moved above the project boundary in one handling and must be contoured and seeded to prevent erosion. All disturbed shoreline must be adequately stabilized to prevent erosion and runoff into the lake. Best Management Practices as defined by the state must be followed by placing all excavated material a minimum of 50 feet landward of the full pond contour unless approved in writing by Duke Energy.

(4) All excavation must be limited to that work necessary for reasonable access to deep water and may not be located in or impact areas identified as Environmental, Natural and Impact Minimization Zones in the Duke Energy Carolina's SMP where applicable. Excavation and any disturbance must be limited to that which is absolutely necessary to achieve the project's stated purpose.

(5) Access channels must be limited to a maximum bottom width of 10 feet. Side slopes must be excavated to a slope of 3 to 1, except where safety requirements may dictate a more gradual-slope of the sides of the channel created.

(6) The proposed excavation may not be for the purpose of creating additional shoreline, may not alter the project boundary or the full pond contour.

(7). Dredging activities must not occur during the months of March, April, May and June because of potential impacts to spawning fish.

(8). New excavations are not allowed within the 50-ft Environmental offset associated with an Environmental classification identified in Duke Energy's Shoreline Management Plan.

III. Prohibited Activities:

All work that exceeds the terms and conditions specified herein is prohibited unless an Individual or Nationwide Department of the Army Permit has been obtained from the Corps of Engineers. All work for purposes other than those specified herein is expressly not authorized by this document.

IV. Required Authorizations:

(a) Prior to performing the work authorized herein within the prescribed geographical limits of this General Permit, the permittee must obtain written authorization from Duke Energy's Lake Services Office. Applicants may contact Lake Services at 1-800-443-5193.

(b) All lakes within the Catawba-Wateree basin and Lake Keowee are also subject to the Shoreline Management Plan that has been developed by Duke Energy and approved by the Federal Energy Regulatory Commission (FERC). The Shoreline Management Plan is administered by Duke Energy.

(c) Prior to performing any of the work authorized herein that entails discharges of dredged or fill material into navigable waters, the permittee will either confirm that the proposed project complies with the attached South Carolina General Permit #S.C. GP or obtain a Permit to Construct in Navigable Waters from the South Carolina Department of Health and Environmental Control pursuant to R. 19-450. et. eq., 1976 S.C. Code of Laws, as amended.

V. Penalties for Violations:

Authorization obtained under this General Permit limits the size, length and use of structures. Any deviation from the specifications, or other terms or conditions of the General Permit shall constitute a violation of the Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act, and may result in the District Commander seeking judicial relief to have the permittee remove the structure or work and/or restore the project area to its former condition, as well as the imposition of penalties as provided by law.

VI. Revocation of the General Permit:

This permit may be revoked by issuance of a public notice at any time the District Commander determines that the cumulative effects of the activities authorized herein have an adverse effect on the public interest. Following such revocation, any future activities in areas covered by this General Permit will be processed as Individual or Nationwide Permits.

VII. Reporting of Activities Authorized by the General Permit

Duke Energy Company has agreed to furnish the Corps of Engineers with a monthly tabulation and pertinent information on all work or activities authorized under this General Permit, including the location and type of construction. The report is due by the 25th day of the following month.

VII. Duration of the General Permit.

This General Permit will cover activities started within five (5) years and completed within six (6) years after the date of issuance unless this permit is revoked in the interim. Revoking the General Permit will not affect work performed in accordance with the conditions stated herein. At the end of the first year and every succeeding year, the Corps of Engineers and the Federal and State regulatory and resource agencies will jointly review activities authorized by this General Permit to determine if significant cumulative impacts have resulted. If the District Commander determines revocation of this permit, in whole or in part, may be in order

due to cumulative impacts, a public notice of the intention will be issued and after a review of all additional data submitted, action will be taken to amend, modify or revoke this permit as appropriate. Revocation of the General Permit will not affect the work that had been authorized when the General Permit was in effect if such work is in accordance with the provisions contained herein.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

This permit shall become effective on the date of the District Commander's signature.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

J. Richard Jordan, III
LTC, Corps of Engineers
District Commander

Date

or his Designee

Tina B. Hadden
Chief, Regulatory Division