

Public Notice

DATE: June 12, 2006

In Reply Refer to CENAB-OP-RPA
Special Public Notice #06-35

US Army
Corps of
Engineers

Baltimore District

Philadelphia District

Pittsburgh District

Subject: Re-issuance with Modifications of the Pennsylvania State Programmatic General Permit-2 (PASPGP-2), as the Pennsylvania State Programmatic General Permit-3 (PASPGP-3) for a Five-Year Period

This Public Notice is issued jointly by the Baltimore, Philadelphia, and Pittsburgh Districts of the U.S. Army Corps of Engineers (Corps). This Public Notice may be viewed on the Baltimore District web site: <http://www.nab.usace.army.mil/Regulatory/PublicNotice/spnotices.htm>.

On July 1, 2001 the District Engineers for Baltimore, Philadelphia, and Pittsburgh Districts issued the Pennsylvania State Programmatic General Permit (PASPGP-2) for a five-year period. The PASPGP-2 expires on June 30, 2006.

On December 27, 2005 the District Engineer issued Special Public Notice #05-54 requesting comments on whether to: (1) reissue, with the modifications listed, as (PASPGP-3); (2) reissue without modifications for a five-year period; or (3) not reissue the PASPGP-2. Following a thorough review of all comments received in response to the special public notice, the Corps has decided to reissue the PASPGP-2 with modifications. This new General Permit is entitled the PPSGP-3.

The purpose of this Public Notice is to inform the public that the PASPGP-3 has been issued by Colonel Robert J. Davis, Lieutenant Colonel Robert J. Ruch, and Colonel Stephen Hill, District Engineers for Baltimore, Philadelphia and Pittsburgh Districts of the U.S. Army Corps of Engineers. The PASPGP-3 will be implemented and in full effect within the Commonwealth of Pennsylvania on July 1, 2006. A copy of the PASPGP-3 can be viewed on the Baltimore District web site:

<http://www.nab.usace.army.mil/Regulatory/Permit/PASPGP-3.pdf>. Interested persons who do not have access to the Internet, but who would like to review the PASPGP-3, may request a copy of this document by calling Ms. Tarrie Ostrofsky at (410) 962-4522.

The following modifications have been incorporated into the PASPGP-3:

1. Activities Listed As Not Requiring Federal Authorization Under PASPGP-2 Moved to Category I Activities Under PASPGP-3: Part II.B. of the PASPGP-2 identified the following list of Pennsylvania Department of Environmental Protection (PADEP) authorizations as activities not regulated pursuant to Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act:

- a. PADEP General Permit #10, Abandoned Mine Reclamation
- b. PADEP Waiver #3, Aerial Crossings
- c. PADEP Waiver #5, Acid Mine Drainage
- d. PADEP Waiver #13, Abandoned Railroad Bridges and Culverts
- e. PADEP Waiver #15, Abandoned Mines
- f. Waiver Letters of Maintenance for:

1. Channel Cleaning at Bridges and Culverts – Stream channel maintenance within 50 feet upstream and downstream of an existing bridge or culvert, performed in accordance with the maintenance provision of a previously issued PADEP permit and the PADEP *Standards for Channel Cleaning at Bridges and Culverts*.

2. Bridge and Culvert Repair – Maintenance to an existing culvert, bridge, or stream enclosure constructed prior to July 1, 1979, on a watercourse where the drainage area is five square miles or less, performed in accordance with the PADEP *Standards for Bridge and Culvert Repair*.

It has been determined that the activities listed above could require a Section 10 permit if occurring in a Section 10 waterway. Since the PASPGP-2 and now the PASPGP-3 is available for use in some Section 10 waterways, this list of authorizations has been removed from the current section identifying them as activities not regulated by the Corps, and moved to the list of Category I Activities under PASPGP-3.

2. Category III Activities In PASPGP-2, To Be Moved To Category I Activities Under PASPGP-3: The following activities from the list of Category III Activities (**although a subset of these activities - those with the potential for more than minimal impact - will still be Category III Activities**), are moved to Category I Activities under PASPGP-3. Those projects with the potential for "more than minimal" impact will continue to be forwarded to the Corps for review. Specifically, projects in counties of documented bog turtle occurrence will be forwarded to the Corps and reviewed in accordance with the bog turtle screening procedures; projects proposed in waterways occupied by Federally listed, proposed, or candidate mussels or fish, as identified in the PASPGP-3, or in waters of the United States within 300 feet of these waterways occupied by Federally listed, proposed, or candidate mussels or fish, will be forwarded to the Corps and U.S. Fish and Wildlife Service (USFWS) for review; and all applications for work impacting greater than 250 linear feet of a stream channel will be forwarded to the Corps for review. The following activities previously listed under Category III in PASPGP-2 are moved to Category I Activities under PASPGP-3:

a. PADEP General Permit-3: To eliminate reporting to the Corps of gravel bar removal activities registered under PADEP General Permit #3 (GP-3), when the activity is within 50 feet of a culvert or bridge, or when the length of stream affected is 250 linear feet or less. The Corps will continue to review gravel bar removal activities registered under PADEP GP-3 that impact greater than 250 linear feet of stream, in accordance with Category III requirements.

b. PADEP General Permit-11 (Maintenance, Testing, Repair, Rehabilitation, or Replacement of Water Obstructions and Encroachments): All GP-11 projects with the potential for "more than minimal" impacts will be forwarded to the Corps for review. Specifically, GP-11 projects in counties of documented bog turtle occurrence will be forwarded to the Corps and reviewed in accordance with the bog turtle screening procedures; GP-11 projects proposed in waterways occupied by Federally listed, proposed, or candidate mussels or fish, as identified in the PASPGP-3, or in waters of the United States within 300 feet of these waterways occupied by Federally listed, proposed, or candidate mussels or fish will be considered a Category III Activity and sent to the USFWS for review and comment; and all GP-11 projects that impact greater than 250 linear feet of stream will be forwarded to the Corps for review. New conditions regarding GP-11 have been added to PASPGP-3 to address additional concerns raised by the Corps or other agencies. These conditions relate to navigability, including public safety and minimization of impacts to the aquatic environment. To address the concern of public safety on waterways, the following has been added as a condition to PASPGP-3:

“Activities that require temporary causeways that prohibit continued navigational use of a waterway (i.e., temporary causeways that extend greater than $\frac{3}{4}$ the width across the waterway) shall be removed in their entirety as soon as is practicable and shall be clearly marked for purposes of public safety.”

To address minimization of impacts, comprehensive maintenance conditions were developed for maintenance of existing Federal or State constructed flood control facilities by a Corps and PADEP workgroup. The following conditions are required for projects eligible for GP-11:

1. *“Dredging and channel cleaning are authorized only within the established limits of the project and only within previously constructed channels. Dredging and channel cleaning shall be limited solely to restoring channel width and depth to design configurations as clearly described in the baseline maintenance plan.”*

2. *“When working within the channel, dredging must be accomplished using bucket-type equipment. Siphon-type equipment may be used when a separate de-watering structure and clean return-water procedure is used. In no instance shall sediment be bulldozed or graded within the channel”*

3. *“An approved baseline maintenance plan shall be available on-site or at the project sponsor’s office. The baseline maintenance plan consists of as-built project plans provided by PADEP or the Corps. The maintenance plan shall include the name and address of the project sponsor; the name and address of the contractor; a copy of the latest inspection report from PADEP or the Corps; a suitable work plan, detailing the length and width (in plan view or cross section) of the intended maintenance work; and current photographs of the work area.”*

c. PADEP Waiver 1: (Small Dams Not Exceeding 3 Feet in Height in a Stream Not Exceeding 50 Feet in Width). Waiver 1 activities are moved to Category I.

d. PADEP Waiver 14: (Artificial Ponds and Reservoir Maintenance). Waiver 14 activities are moved to Category I. Review of activities similar to those authorized by Waiver 14, but for larger maintenance projects authorized at 25 PA Code § 105.131(c) – Maintenance of Reservoirs of Jurisdictional Dams will continue to be processed as Category III activities.

e. PADEP Emergency Permits (EP): Projects issued under PADEP Emergency Permits, resulting in greater than 250 linear feet of impact to a stream channel were listed as Category III activities under PASPGP-2. For clarification purposes, PADEP EPs will only be listed under Category I, as all projects exceeding the 250 linear feet threshold (with the exception of bank stabilization projects) are automatically Category III activities.

3. Protection of Wetlands on Residential, Commercial and Institutional Developments:

The PASPGP-3 includes language that will add protection for aquatic resources subject to piecemealing impacts as part of these developments. In response to comment received, this language was revised, such that a **draft, proposed** conservation instrument/deed restriction, not a final, recorded conservation instrument/deed restriction be submitted with the permit application. Specifically, the following has been added as a Category III activity under PASPGP-3:

*Any activity for the purpose of constructing or expanding a residential, commercial, or institutional subdivision or development where greater than 0.25 acre of wetlands (in addition to those being directly impacted by the proposed project) are located within the property boundary; and the application does not include a **proposed** deed restriction, conservation easement, or deed restricted open space area, that protects such wetlands from activities such as filling, draining, mowing, placement of structures, cutting of vegetation, clearing or plowing of natural vegetation. (Also see **Part V. - General Condition #25**). This activity does not apply to linear transportation projects.*

Maintaining wetlands as protected open-space is environmentally preferable, although it is recognized that this will not always be feasible, particularly where developers may have already received local subdivision final approval, or the local municipality ordinances restrict the opportunity for open space. The Corps and PADEP project managers will continue to work closely with developers and their professional staff to insure timely permit issuance without costly delays or changes to the design of a project. With this more comprehensive approach, activities associated with commercial, residential, or institutional developments will result in “no more than minimal” impacts, including secondary impacts to the aquatic environment.

This approach is consistent with, and has been embodied within, the Corps’ Nationwide Permit (NWP) program. Specifically, the Corps’ Nationwide Permit Regional Conditions for Nationwide Permit #39, Residential, Commercial, and Institutional Developments, states in part that:

“Under the terms of this NWP, wetlands, which are located within the platted lot lines of any residential, commercial, or institutional development, will be

considered adversely affected, unless the wetlands are protected by conservation easement, deed conveyance or covenants, or any other real estate mechanism that can demonstrate to the District Engineer that these areas will be protected and preserved in perpetuity.”

The implementation date for this activity is July 1, 2007, one year from the inception date of PASPGP-3, due to the nature and scope of this recommendation; the need to educate developers, consultants, agency staff in all six PADEP Regions, and all three Corps Districts; and the need to develop consistent deed restriction language throughout the Commonwealth.

4. Expiration Date of PASPGP-2 Authorizations: The PASPGP-2 will expire on June 30, 2006. Part VII.A.3. of the PASPGP-2 identifies time extension provisions which allow authorized work to continue after this date, provided certain conditions are met. To further clarify these time extension provisions and insure that activities authorized late in the PASPGP-2 timeframe do not become unauthorized on July 1, 2006, the Corps has added the following language to PASPGP-3:

All activities issued under PASPGP-2 that did not expire prior to June 30, 2006, are reauthorized by the PASPGP-3 without further notice to the applicable Corps District provided the proposed regulated activities comply with all terms, conditions, limits, and best management practices identified and required by the PASPGP-3; all special conditions attached to the original PASPGP-2 authorization; and all applicable PADEP Chapter 105 authorizations. The duration of these reauthorizations will be for the term of the applicable PADEP Chapter 105 authorization or for 3 years from the date of the original PASPGP authorization, whichever is less.

5. Potential Obstruction of Fish Passage: Projects which potentially obstruct fish passage are listed as Category III Activities in the PASPGP-2. This activity description has now been added as a condition to PASPGP-3 that prohibits the unnecessary obstruction of a waterway. Through inclusion of this condition, the concerns with regard to obstruction of fish passage will be addressed. The condition states:

“Any activity which could potentially obstruct the passage of diadromous fish, including but not limited to the placement of dams, wiers, or permanent fill, stream channelization, stream relocation or the placement of pilings or structural supports which have the same effect of a discharge of fill material in the Juniata River main stem, including the Raystown Branch to Raystown Lake and Frankstown Branch to Hollidaysburg; or the Susquehanna River main stem, to the New York State line and the West Branch Susquehanna River to Lock Haven, must be coordinated with the USFWS, and the Pennsylvania Fish and Boat Commission (PFBC), to insure minimization of impacts upon passage and migration of diadromous fish.”

In addition, the following clarifications have been incorporated into the PASPGP-3:

1. Revise/update references to Federal regulations/guidance, where appropriate.

2. Threshold Calculations: Clarification on calculation of the 1.0 acre upper threshold limitation. The following standard language has been added to clarify the eligibility threshold throughout the PASPGP-3 document:

The Secretary of the Army hereby authorizes the discharge of dredged or fill materials and/or the placement of structures, that are components of a single and complete project, including all attendant features both temporary and/or permanent, which individually or cumulatively result in impacts to 1.0 acre or less of waters of the United States. For linear projects, the eligibility threshold will apply to each crossing of a separate water of the United States including wetlands, or to each crossing of a single waterbody or wetland, at separate and distant locations. However, individual channels in a braided stream or river, or individual arms of a large irregularly shaped wetland or lake, etc., are not separate waterbodies, and the threshold calculation will apply to the cumulative total. The term "impacts to waters of the United States" as used herein for the purpose of the PASPGP-3 eligibility threshold means the acreage of impacts to waters of the United States, including jurisdictional wetlands, which includes the direct impact (i.e., the fill area), plus the area of waters of the United States, including jurisdictional wetlands, which are indirectly affected by flooding, excavation, or drainage as a result of the regulated activity. For the purposes of this determination, the linear footage of stream impact shall be measured along the centerline of the watercourse when both streambanks of the watercourse are involved or along a single streambank when one streambank is involved, or measured across the watercourse, from top of bank to top of bank, when the project extends transversely across the watercourse. Individual or cumulative impacts from single and complete projects to waters of the United States, including jurisdictional wetlands, streams, and open water areas totaling up to 43,560 square feet (1.0 acre) are eligible for authorization under PASPGP-3.

3. Threshold Calculations for Linear Projects: Clarification on calculation of the 1.0 acre threshold for linear projects (i.e., sewerline, waterline, roadway, and other utility line projects) is provided in the PASPGP-3. For linear projects, the PASPGP-3 explicitly states that the 1.0 acre eligibility threshold applies to *each* crossing of a separate water of the United States, including jurisdictional wetlands, or to each crossing of a single waterbody or wetland at separate and distant locations. However, individual channels in a braided stream or river, or individual arms of a large irregularly shaped wetland or lake, etc., are not separate waterbodies, and the threshold calculation should apply to the cumulative total. This recommendation is consistent with the Corps' Nationwide Permit program and guidance on threshold eligibility for linear projects, and is consistent with the thresholds and procedures under PASPGP-2.

4. Organization of Conditions: The Conditions of the PASPGP-3 have been reorganized to identify actual conditions of the authorization for which the permittee is responsible for compliance. Permit review requirements have been placed in the appropriate section of the PASPGP-3 document.

5. Wild and Scenic River Designation: The Lower Delaware River designation was revised in order to incorporate the most recent designated limits as indicated below (in bold):

*Lower Delaware River beginning seven river miles north of Belvidere, New Jersey, continuing to Washington Crossing, Pennsylvania, including Paunacussing Creek within Solebury Township, all of the Tinicum Creek including Rapp Creek and Beaver Creek Tributaries, and **Tohickon Creek from the mouth to the Lake Nockamixon Dam, including a 1/4 mile buffer from each bank.***

6. In addition, the following have been revised and/or updated:

*Self Certification Form, Bog Turtle Habitat Assessment Form, Single and Complete Project Form

The Commonwealth of Pennsylvania's Dam Safety and Waterway Management Rules and Regulations establish a Statewide permit program for protecting the waters of the Commonwealth. The Commonwealth's procedures for the granting of permits requires the PADEP to apply evaluation criteria consisting of alternatives analysis (for nonwater dependent activities), avoidance techniques, the minimization of impacts, and if a permit is to be granted, compensatory mitigation. The evaluative criteria within the Commonwealth's program are similar to Federal criteria under Section 404(b)(1) of the Federal Clean Water Act. The Baltimore District Engineer, in consultation with the District Engineers of Philadelphia and Pittsburgh, will continue to evaluate the PASPGP-3 process, to determine if activities have been authorized in accordance with the requirements of the PASPGP-3 and in compliance with Federal Regulations.

The PASPGP-3 will protect the aquatic resources of the Commonwealth of Pennsylvania within the Baltimore, Philadelphia, and Pittsburgh Districts of the U. S. Army Corps of Engineers; reduce the administrative burden of the program for both the Corps of Engineers and the Commonwealth of Pennsylvania through interagency cooperation; improve the Regulatory response time and; add predictability within the specified limits to the permit program for the potential applicant and general public.

The PASPGP-3 will be applicable for regulated activities in waters of the United States, including jurisdictional wetlands, in the Commonwealth of Pennsylvania that are located within the geographic regulatory boundaries of the three Corps Districts.

The PASPGP-3 is **not** applicable for Chapter 105 authorizations issued by PADEP Bureau of Mining and Reclamation.

The PASPGP-3 is **not applicable** for activities located waterward of the ordinary high water line (OHWL) on non-tidal waters and/or the mean high water line (MHWL) on tidal waters on the following Pennsylvania waterbodies:

- a. All of the Delaware River,
- b. The Schuylkill River downstream of the confluence with Mill Creek at Port Carbon, Pennsylvania,
- c. The Lehigh River downstream from the State Route 940 Bridge,
- d. All of the Ohio River,
- e. All of the Beaver River,
- f. All of the Little Beaver River,
- g. All of the Mahoning River,
- h. All of the Monongahela River,
- i. The Youghiogheny River from its mouth at McKeesport, Pennsylvania to river mile 31.2 at West Newton, Pennsylvania,
- j. The Allegheny River, from its mouth in Pittsburgh, Pennsylvania to river mile 197.4 at Kinzua Dam, north of Warren, Pennsylvania.
- k. The Kiskiminetas River from its mouth near Freeport, Pennsylvania to river mile 26.8 at Saltsburg, Pennsylvania, and
- l. Tenmile Creek from its mouth at Millsboro, Pennsylvania to river mile 2.7.
- m. Activities within Lake Erie which require submittal of a Joint Permit Application or Environmental Assessment to the PADEP.

The decision to reissue the PASPGP-2 as PASPGP-3, with the above modifications, was made after a thorough evaluation of the probable impacts including cumulative impacts, of the proposed PASPGP-3 on the public interest. This decision reflects the national concern for the protection and utilization of important resources. All factors which may be relevant to the PASPGP-3 were considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain 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.

Section 401 Water Quality Certification (WQC) and Coastal Zone Management Act Consistency (CZM):

1. PADEP published a notice in the May 27, 2006 PA Bulletin indicating its intent to issue a 401 WQC and CZM Determination for the PASPGP-3.

2. Activities eligible for PASPGP-3 authorization as listed in Category II, require written approval from PADEP prior to starting construction. Chapter 105.15(b) requires applicants requesting WQC under Section 401 of the Clean Water Act to prepare and submit an environmental assessment for review by PADEP. PADEP publishes a notice in the PA Bulletin for a 30-day comment period. Following review by PADEP, the 401 WQC and CZM determination is issued with the approved Chapter 105 permit.

3. Activities covered by Category HI will be approved using one of the authorizations described in the paragraphs above and will receive CZM during their Chapter 105 review.

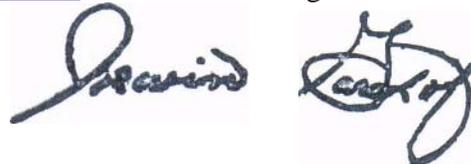
State or local authorizations, may be required, on a case-by-case basis, for the PASPGP-3 authorization to be valid. A review of the PASPGP-3 indicates that processing procedures and conditions are sufficient such that authorized work will not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended.

The PASPGP-3 is conditioned to assure that on a case-by-case basis, cultural resources listed in the latest published version of the National Register of Historic Places or properties listed as eligible or potentially eligible for inclusion therein, will be given the consideration required by Section 106 of the National Historic Preservation Act. The applicant will notify the Pennsylvania Historical and Museum Commission using the PADEP Historical Resources Notification form before applying for PASPGP-3 authorization.

It is requested that you communicate the foregoing information to any persons known by you to be interested and not being known to this office who did not receive a copy of this notice. Point of Contact for this action is Irwin Garskof, Chief, Pennsylvania Section, and can be reached at U.S. Army Corps of Engineers, Baltimore District, State College Field Office, 1631 South Atherton Street, Suite 102, State College, Pennsylvania, 16801.

All activities issued under PASPGP-2 that did not expire prior to June 30, 2006, are reauthorized by the PASPGP-3 without further notice to the applicable Corps District provided the proposed regulated activities comply with all terms, conditions, limits, and best management practices identified and required by the PASPGP-3; all special conditions attached to the original PASPGP-2 authorization; and all applicable PADEP Chapter 105 authorizations. The duration of these reauthorizations will be for the term of the applicable PADEP Chapter 105 authorization or for 3 years from the date of the original PASPGP authorization, whichever is less.

Because the PASPGP-3 is duplicative of some NWP's and offers a more simplified and streamlined regulatory process, the Corps of Engineers has suspended those Nationwide Permits (NWP's), which are applicable to activities qualifying for PASPGP-3. Corps of Engineers Special Public Notice # 02-07, issued May 7, 2002, further detailing the suspension of the NWP's, remains in effect. This Public Notice will be available on the Baltimore District web site: <http://www.nab.usace.army.mil/Regulatory/PublicNotice/spnotices.htm>. For the District Engineer:



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