



Public Notice

Public Notice No. - CENAP-OP-R-DE-SPGP18 (revalidation)

In Reply Refer to: CENAP-OP-R DE-SPGP18 Date - November 2, 2007

US Army Corps of Engineers
Philadelphia District
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390

Reference is made to Department of the Army General Permit SPGP-18 dated November 9, 1987 authorizing the construction of structures, work, and the discharge of dredged and fill material in substantially developed artificial tidal lagoons in the State of Delaware. This general permit is applicable to the appropriate navigable waters located within the geographic boundaries of the Philadelphia District of the Corps of Engineers.

Notice is hereby given that the United States Army Corps of Engineers, Philadelphia District, proposes to revalidate and extend the expiration date of the above referenced Department of the Army General Permit from December 31, 2007 until December 31, 2012. This general permit, CENAP-OP-R-SPGP-18, was last revalidated and extended on March 24, 2003 with an expiration date of December 31, 2007.

This general permit has been developed for certain categories of structures and work and the discharge of dredged and fill material in waters of the U.S. that require Department of the Army and State of Delaware authorizations. Activities typically authorized by this general permit include work and structures such as bulkheads, breakwaters, piers, docks, pilings, rip-rap, dredging and filling, etc. The revalidation and extension of General Permit SPGP-18 is being coordinated with other interested Federal agencies, the State of Delaware and the general public. The text of the proposed reauthorization of SPGP-18 is attached.

General permits are developed for certain clearly described categories of structures or work that require Department of the Army permits. Such activities are considered for authorization by general permits because they are substantially similar in nature, they cause no significant adverse cumulative effects, and they are non-controversial in nature.

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 the proposed revalidation and extension of this general permit. Any comments received will be considered by the Corps of Engineers to determine whether or not to modify this general permit. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and 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 proposed reauthorization of this general permit.

The decision whether to reauthorize this general permit will be based on an evaluation of the general permit's probable impact including its cumulative impacts on the public interest. The decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the activities authorized by this general permit, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the general permit reauthorization will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property rights and, in general, the needs and welfare of the people. The Department of the Army general permit will be reauthorized unless the District Engineer determines that it would be contrary to the public interest.

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely effect Essential Fish Habitat (EFH). A preliminary assessment of the impacts of SPGP-18 on winter flounder (*Pseudopleuronectes americanus*) habitat outside of the artificial lagoons indicates that the general permit may cause some loss of demersal eggs, larvae, and juvenile fish during dredging of access channels. Dredging may cause the temporary disturbance of bottom substrates and/or result in the direct mortality of larval/juvenile flounder. In order to mitigate for the impacts to winter flounder outside of the artificial lagoons, the Corps of Engineers is recommending a seasonal restriction on dredging of access channels each year from January 1 to May 31. Because of the relatively poor quality of winter flounder habitat within the artificial lagoons, and the small size of typical dredging operations, no conservation recommendations are being made at this time for dredging operations within the lagoons. The Corps of Engineers has determined that SPGP-18 will not adversely effect EFH, provided the above noted seasonal restriction is implemented for dredging outside of the artificial lagoons. This determination may be modified if additional information indicates otherwise.

No activity would be authorized by General Permit SPGP-18 which is likely to jeopardize the continued existence of a threatened or endangered species as listed or proposed for listing under the Federal Endangered Species Act (ESA), or to destroy or adversely modify the critical habitat of such species. Non-federal applicants shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

No activity would be authorized by General Permit SPGP-18 which may affect properties listed or properties eligible for listing in the National Register of Historic Places without complying with Section 106 of the National Historic Preservation Act. The applicant must notify the District Engineer if the authorized activity may affect any historic properties listed, or determined to be eligible, or which the applicant has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of National Historic Preservation Act have been satisfied and that the activity is authorized.

The proposed revalidation and extension to the General Permit will remain in effect until the general permit expires on December 31, 2012. At that time, this General Permit may be re-issued/extended.

In the event that this General Permit is modified, any activity which has been authorized under the terms and conditions of this General Permit will remain authorized until such time that the required State permit/authorization issued with the general permit expires, provided the authorized activity complies with any subsequent re-authorization or modification of this general permit.

In accordance with Section 307(c) of the Coastal Zone Management Act of 1972, any work performed under this general permit must be consistent with the State's Coastal Zone Management Plan. No permit will be issued until the State has determined that the work is consistent with the Coastal Zone Management Plan or has waived its right to do so. Comments concerning the impact of the proposed revalidation and extension of General Permit SPGP-18 on the State's coastal zone should be sent to this office, with a copy to the Delaware Department of Natural Resources and Environmental Control, Coastal Management Program, 89 Kings Highway, Dover, Delaware 19901.

In accordance with Section 401 of the Clean Water Act, a Water Quality Certificate will be necessary for those activities involving a discharge of dredged or fill material into waters of the United States. The State of Delaware upon receipt of a permit application under this general permit will determine the need for a Section 401 Water Quality Certificate. A separate permit application will not be required for this certification procedure. Any comments concerning this general permit revalidation and extension which relate to Water Quality considerations should be sent to this office, with a copy to the Delaware Department of Natural Resources and Environmental Control, Wetlands and Subaqueous Lands Section, 89 Kings Highway, Dover, Delaware 19901.

The evaluation of the impact of the proposed general permit revalidation and extension described above on the public interest will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 (b) of the Clean Water Act.

Any person may request, in writing, to the District Engineer, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for a public hearing shall state in writing, with particularity, the reasons for holding a public hearing.

Comments on the proposed revalidation and extension to SPGP-18, should be submitted, in writing, within 30 days to John Brundage, U.S. Army Corps of Engineers, Delaware Field Office, 1203 College Park Drive, Suite 103, Dover, Delaware 19904.

The processing of this Department of the Army general permit revalidation and extension is under the statutory authority of Section 10 of the River and Harbor Act of 1899 and Section 404 of the Clean Water Act.

FOR THE DISTRICT ENGINEER:



Frank J. Cianfrani
Chief, Regulatory Branch