



Public Notice

U.S. Army Corps of Engineers

May 2, 2016

Special Public Notice # SPN 16-22

Baltimore District

Philadelphia District

Pittsburgh District

This Public Notice is issued jointly by the Baltimore, Philadelphia, and Pittsburgh Districts of the U.S. Army Corps of Engineers and can be viewed on the Baltimore District's web page at:

<http://www.nab.usace.army.mil/Missions/Regulatory/PublicNotices.aspx>

The purpose of this Public Notice is to inform the public that the Pennsylvania State Programmatic General Permit-5 (PASPGP-5) has been issued for a 5-year period by Colonel Edward P. Chamberlayne, Lieutenant Colonel Michael A. Bliss, and Colonel Bernard R. Lindstrom of the Baltimore, Philadelphia, and Pittsburgh Districts respectively. The PASPGP-5 will be implemented and in full effect in the applicable portions of the Commonwealth of Pennsylvania on July 1, 2016.

The PASPGP-5 can be viewed on the Baltimore District's web page at <http://www.nab.usace.army.mil/Missions/Regulatory/PermitTypesandProcess.aspx>. A hard copy of the proposed PASPGP-5 may be obtained by contacting: Mrs. Patricia Strong, U.S. Army Corps of Engineers, Baltimore District, 10 South Howard Street, Baltimore, Maryland 21203, telephone (410) 962-1847, or by email at Pat.Strong@usace.army.mil.

On September 29, 2015, the Corps issued Special Public Notice 15-60 requesting comments on whether to issue, for a 5-year period, the PASPGP-5. Following a thorough review of all comments received in response to the Special Public Notice, the Corps has decided to issue the PASPGP-5.

Below is a list of some of the changes from the Pennsylvania State Programmatic General Permit - 4 (PASPGP-4) to PASPGP-5:

1. In general, Category I and II Activities under PASPGP-4 are called Non-Reporting Activities under PASPGP-5, and Category III Activities under PASPGP-4 are called Reporting Activities under PASPGP-5;
2. Activities NOT eligible for PASPGP-5:
 - a. Single and complete projects that will result in a permanent loss of more than 1,000 linear feet of a stream (Part III, (A)(3)); and
 - b. The Delaware River, downstream of the U.S. Route 202 Bridge at New Hope, Pennsylvania (Part III, (A)(5)). The limit of eligibility has been reduced;

3. The following Category III Activities under PASPGP-4 are Non-Reporting Activities under PASPGP-5:

- a. Some activities authorized by PADEP GP-1, Fish Habitat Enhancement Structures (Part IV, (A)(1)); and
- b. Some activities waived at 25 PA Code § 105.12(a)(2) – Waiver 2 – Water Obstructions in a Stream or Floodway With a Drainage Area of 100 Acres or Less (250 linear feet of permanent impact to streams and/or rivers must be submitted to the Corps as a Reporting Activity) (Part IV, (A)(13));

4. If PADEP determines that an application is a Reporting Activity, and PADEP is processing other Non-Reporting applications which are needed for the work associated with the reporting application to function and meet its intended purpose, then all such related applications are sent to the Corps as Reporting. Likewise, if the Corps is reviewing a Reporting application and PADEP receives an application for related work that relies on the activities being reviewed by the Corps to function and meet its intended purpose, then the newly received application received by PADEP is a Reporting Activity. (Part IV, (B)(16));

5. Reporting Activities – In most cases, applications for activities where a single and complete project involves one or more of the of the following will be sent to the Corps as a Reporting Activity:

- a. Impacts to more than 0.50 acre of waters of the United States, including jurisdictional wetlands. The 0.50 acre impact includes all attendant features, both temporary and permanent (Part IV, (B)(2));
- b. Permanent conversion of greater than 0.10 acre of forested and/or scrub-shrub wetlands in association with the regulated activity (Part IV, (B)(2));
- c. A utility line crossing of waters and/or wetlands that exceeds 500 linear feet (excluding overhead lines) (Part IV, (B)(3));
- d. A buried utility line placed within a jurisdictional area and the utility line runs parallel to or along the stream located within that jurisdictional area (Part IV, (B)(3));
- e. Activities proposing temporary impacts for greater then a one year period (Part IV, (B)(18)); and
- f. Greater than 250 linear feet of permanent stream impact, with the following exceptions (Part IV, (B)(2)):

i. 500 linear feet or less threshold applies for those activities that involve stream bank stabilization, stream rehabilitation, stream protection and/or enhancement; and

ii. No linear threshold applies for those activities verified under GP-1 for Fish and Habitat Enhancement Structures) and/or activities waived at 25 PA Code § 105.12(a)(16) - Waiver 16 - Restoration Activities), which have been reviewed and approved by the Environmental Review Committee;

6. PADEP will review permit application(s) and identify single and complete project(s) to determine if the application/registration(s) is Reporting or Non-Reporting to the Corps. Threshold calculations to determine if a Corps review is required are based on the impacts of a single and complete project, and not on the overall project as utilized in the PASPGP-4. If an application consists of multiple single and complete projects, and any one of the single and complete projects requires a Corps review, then the entire application/registration is sent to the Corps as a Reporting Activity, (Part IV, (B)(16));

7. Monitoring is required for temporary impacts to wetlands that exceeds 0.10 acre (Part VI, (A)(23)). Monitoring would be completed using a standardized monitoring form which will be available on the Corps website at: <http://www.nab.usace.army.mil/Missions/Regulatory/PermitTypesandProcess.aspx> The monitoring requirement may be waived after Corps consideration of a written request from the applicant; or the monitoring requirement may be superseded if the Corps determines more stringent monitoring is required and incorporates the requirement as a Special Condition of a PASPGP-5 verification;

8. A list of waterways requiring time-of-year restrictions has been added (Part VI, (A)(34));

9. Conservation measures for the Atlantic and Shortnose Sturgeon have been added (Part VI, (A)(35)); and

10. Grandfathered Activities (Part IV, (A)(30)):

a. All activities previously authorized as a Category I or II Activity under PASPGP-4 that meet the PASPGP-5 Non-Reporting criteria and comply with all terms, conditions, limits, and best management practices identified and required by PASPGP-5 and the applicable PADEP authorizations, are reauthorized by the PASPGP-5 without further notice to the applicable Corps District. The duration of these authorizations will be for the term of PASPGP-5 (June 30, 2021) or applicable PADEP Chapter 105 authorization, whichever is less.

b. All activities previously authorized as a Category I or II Activity under PASPGP-4 that do not meet the PASPGP-5 Non-Reporting criteria, or do not comply with all terms, conditions, limits, and best management practices identified and

required by the PASPGP-5, are not automatically authorized by the PASPGP-5. These projects must be submitted to the applicable Corps District to determine if the project qualifies for the PASPGP-5.

c. All activities previously verified as a Category III Activity under PASPGP-4 that comply with all terms, conditions, limits, and best management practices identified and required by the PASPGP-5 and the applicable PADEP authorizations, are authorized by the PASPGP-5 without further notice to the applicable Corps District. In addition, all special conditions attached to the original PASPGP-4 verification are special conditions for the PASPGP-5 authorization. The duration of the authorization is for five years from issuance of the PASPGP-4 verification or when the applicable PADEP Chapter 105 authorization expires, whichever is less. Please note, any request for modification of the authorized work and/or special conditions must be submitted in writing to the applicable Corps District. Previous PASPGP-4 verifications, identified in Non-Reporting Activity 30 (c), will only be considered a Reporting Activity under Part IV, B, 5(d) and 17.

Due to changes in Reporting/Non-Reporting Activities (Category I, II, and III under PASPGP-4) and eligibility limitations (greater than 1000 linear feet of permanent loss of stream channel(s), work in Delaware River downstream of the U.S. 202 Bridge at New Hope, PA., etc.) in the PASPGP-5, it is recommended that permittees contact their appropriate Corps District for further guidance regarding the applicability of the Grandfathered Activities.

The decision to issue the PASPGP-5, with the above modifications, was made after a thorough evaluation of the probable impacts including cumulative impacts of the proposed PASPGP-5 on the public interest. This decision reflects the national concern for the protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal was balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal were considered, including the cumulative effects thereof; conservation, economics, aesthetics, general environmental concerns, wetlands, cultural resources, fish and wildlife resources, flood hazards, floodplain functions, 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 Water Quality Certification (WQC) from the Pennsylvania Department of Environmental Protection is required, in accordance with Section 401 of the Clean Water Act, for any activity that would be authorized by PASPGP-5 and involves the discharge of dredged and/or fill material into waters of United States, including wetlands. The Corps has requested WQC for activities authorized by the PASPGP-5 from PADEP and is awaiting their decision.

Coastal Zone Certification, in accordance with the Pennsylvania Coastal Zone Program, is required for activities to be authorized by the PASPGP-5. The Corps has requested Coastal Zone Management consistency for activities authorized by the PASPGP-5 from PADEP and is awaiting their decision.

The PASPGP-5 processing procedures and conditions ensure that potential impacts on the public interest, resulting from the work authorized by the PASPGP-5, include implementation of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act.

State authorization under PADEP's Chapter 105 regulations is required for most activities to be authorized by the PASPGP-5.

The PASPGP-5 processing procedures and conditions ensure compliance with Section 7 of the Endangered Species Act, as amended, and with Section 106 of the National Historic Preservation Act.

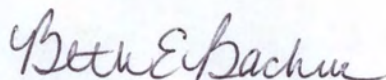
The PASPGP-5 processing procedures and conditions ensure compliance with Executive Order 13175, through coordination with Tribal Nations. Such coordination shall be performed in accordance with the applicable Corps District's tribal coordination procedures.

Section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278 et seq.) provides that no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. PASPGP-5 processing procedures and conditions ensure that authorized work will result in no more than minimal adverse effects on any designated Wild and Scenic River pursuant to the Wild and Scenic Rivers Act, as amended.

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act 1996 (Public Law 104-267), requires all Federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). PASPGP-5 processing procedures and conditions ensure that the required consultation procedures are completed, or that the authorized work will result in no more than minimal adverse effects on EFH pursuant to the Magnuson-Stevens Fishery Conservation and Management Act as amended.

Since the PASPGP-5 is duplicative of some Nationwide Permits (NWP) and offers a more simplified and streamlined regulatory process, those NWP suspended in Baltimore District's Special Public Notice 12-32, dated March 19, 2012, remain suspended. This Public Notice is available on the Baltimore District website at <http://www.nab.usace.army.mil/Missions/Regulatory/PublicNotices.aspx>

If you have any questions concerning this matter, please call Mr. Wade Chandler, Chief Pennsylvania Section, Regulatory Branch at telephone number (814) 235-0572.

A handwritten signature in cursive script that reads "Beth Bachur".

Beth Bachur
Acting Chief, Regulatory Branch
Baltimore District