

September 26, 2011

Subject: Questions and Answers regarding the Pennsylvania State Programmatic General Permit-4.

Q1. Why did the Corps change its process under the Pennsylvania State Programmatic General Permit (PASPGP) with respect to linear projects?

A1. The Corps process for review of linear projects has not changed, but the PASPGP-4 has clarified this process to address concerns that the Pennsylvania Department of Environmental Protection (DEP) and certain members of the public raised regarding the screening of linear projects. The PASPGP-4 uses definitions and an approach that is consistent with the Corps national regulatory program (and earlier versions of the PASPGP) for review of linear projects. To evaluate the discharge of fill material for Clean Water Act authorization, the Corps requires a defined beginning and end point, an overall project purpose, and some form of function.

Q2. What changed between the Corps and Pennsylvania Department of Environmental Protection (DEP)?

A2. The agencies interpret the definitions of “single and complete project,” “independent utility,” and overall project differently. This is understandable because the agencies have different laws and regulations which they must comply and/or implement. The PASPGP is a Federal permit which DEP may verify in conjunction with their authorization. As such, the Corps is responsible for the interpretation of its laws, regulations, and permit language controls. For more information on the terms referenced above, please see the “Definitions” section of the PASPGP-4 dated July 1, 2011.

Q3. What is the purpose of the screening form?

A3. The screening form is a tool to assist the DEP in determining if a project is a Category I, II (DEP review) or Category III activity (Corps review). The applicant completes the form with the application package, which is submitted to DEP (Joint Application for Pennsylvania Water Obstruction Permit and U.S. Army Corps of Engineers Section 404 Permit [form 3930-PM-WM0036]). DEP reviews the information and establishes the level of review. An overall project with cumulative impacts greater than one acre is reviewable as a Category III activity.

Q4. Has the Corps expanded its review with respect to the Endangered Species Act and/or historic properties?

A4. No. The Corps is responsible for establishing the permit area when reviewing projects for Department of the Army authorization. Within the permit area, federal laws require the Corps to assess and consult with other agencies regarding potential impacts to endangered species and/or historic properties. For linear projects, the Corps typically limits the permit area to direct impacts to waters of the United States and any adjacent areas where the Corps determines there is adequate federal control and responsibility (e.g., a stream crossing and its adjacent wetlands).

Q5. How are impacts identified and reviewed for linear projects?

A5. For linear projects, each single and complete project (i.e. typically, each single crossing) and the cumulative impacts of regulated fills needed to accomplish the overall project will be considered to determine the appropriate PASPGP-4 Category of review. An applicant proposing a linear project must submit information describing the locations of the starting point, end point, and all proposed crossings in between, along with all other proposed impacts to aquatic resources.

The overall project, for purposes of PASPGP-4, includes all regulated activities that are reasonably related and necessary to accomplish the project purpose. Linear projects may be composed of more than one “single and complete project”, but require disclosure of all impacts to aquatic resources necessary to accomplish the overall project’s purpose. In addition, the cumulative impacts of all crossings of waters and/or wetlands must be known in order to assess the cumulative impacts of the project and determining the PASPGP-4 Category of activity. *To determine the appropriate category of review under the permit*, the impacts associated with a linear project’s individual crossings are added together to determine if a project is eligible for review under Category I, II or III. The project is reviewed as a Category III activity if the combined crossings’ impacts are greater than one acre. For example, five stream crossings totaling 1.5 acres are a Category III activity even if each crossing is less than an acre. Category III activities are reviewed by the Corps. No single and complete project may impact more than one acre of jurisdictional waters to be eligible for authorization under PASPGP-4. For example, five stream crossings totaling 1.5 acres with no single crossing exceeding one acre is likely eligible for five PASPGP-4 verifications. For more information on the terms referenced above, please see 40 CFR 230 and the “Definitions” section of the July 1, 2011 PASPGP-4.

Q6. What about stream impacts?

A6. A project totaling more than 250 linear feet of stream impacts is sent to the Corps as a Category III activity.

Q7. Are Category III activities the same as Standard Permits?

A7. No. A Standard Permit is an individual permit that requires a Public Notice, environmental assessment, and statement of findings. The three categories in the PASPGP-4 are considered minor activities that require minimal review. Applications for discharges with more than minimal impacts, or that otherwise do not qualify to use the PASPGP-4, will be evaluated as individual permits in accordance with the Corps regulations at 33 CFR Part 325.

Q8. What if coordination is required on historic properties or endangered species?

A8. The application is considered incomplete until the pertinent issues regarding historic properties and/or endangered species are adequately addressed by the applicant and appropriate agency. The Corps’ review can continue once a no effect determination is issued for the defined permit area. Upland areas away from the permit area are typically outside the Corps’ scope and not part of the decision-making process.

Q9. Has any effort been made to streamline the process regarding historic properties in Pennsylvania?

A9. Yes. Representatives from the three Corps districts in Pennsylvania met with the Pennsylvania Historical and Museum Commission (PHMC) to discuss streamlining the review process. PHMC agreed to review the current standard operating procedures for the PASPGP-4 and will specifically address the Corps' permit area during their review of a project.

Q10. How will the screening process work given the differences between what DEP and Corps consider an overall project?

A10. DEP will gather the information necessary to screen the applications in the joint permit application process despite the difference in determining what is considered a project under the different permit programs. Those activities that qualify for Category I and II verifications will continue to be processed and approved by DEP. Only Category III activities and projects requiring an individual permit will be forwarded to the Corps of Engineers.

Q11. What about individual vs. cumulative impacts for linear projects?

A11. For linear projects, each single and complete project and the cumulative impacts of regulated fills needed to accomplish the overall project will be considered to determine the appropriate PASPGP-4 category of review. A cumulative impact analysis also ensures that the overall project will not have more than minimal individual or cumulative adverse environmental impact as determined by the Corps of Engineers. In most cases, each crossing can be separately reviewed against the one-acre threshold under PASPGP-4. For example, five stream crossings totaling 1.5 acres with no single crossing exceeding one acre is likely eligible for five PASPGP-4 verifications.

Q12. What is the difference between Nationwide Permits, Regional Permits, and State Programmatic General Permits (SPGPs)?

A12. Nationwide, Regional, and SPGPs are all types of General permits under the Corps' regulatory program, authorized by Section 404(e) of the Clean Water Act. Nationwide Permits pertain to activities throughout the United States and can have regional conditions implemented by the appropriate Corps districts. SPGPs are general permits typically used by the Corps in cooperation with State regulatory agencies for permits within those states. Regional Permits are general permits for targeted geographic or watershed areas that are authorized by a specific Corps district. Corps districts will typically suspend the Nationwide Permits if a SPGP is being used. While they have many similarities, the different types of general permits and their respective terms and conditions are not identical.

Q13. Does HQ USACE support the Pennsylvania Corps Districts' review of linear projects?

A13. Yes. The approach to review of linear projects in Pennsylvania, and the definitions in the PASPGP-4 has been thoroughly coordinated with HQ USACE. HQ USACE has confirmed that requiring a logical starting and ending point for a linear project is consistent with regulations and that an overall project purpose is an essential element of the application process.

Q14. How are linear projects reviewed in the Nationwide Permits (NWP) (2007)?

A14. NWPs that are duplicative of activities authorized in the SPGPs are often suspended in states where Corps districts have issued SPGPs. Nationwide Permit activity No. 12 (NWP 12) authorizes utility lines in waters of the United States. Although NWP 12 was suspended in Pennsylvania in 2007 (see SPN 07-37), the threshold of loss under NWP 12 is 0.5 acres. A Pre-Construction Notification (PCN) is required for loss of waters greater than 0.1 acres. PCN means that it comes to the Corps for review. A regional condition exists in Pennsylvania that requires a PCN for all activities authorized under NWP 12. Thus, a Corps review under NWP 12 in Pennsylvania would be required in all cases.

Q15. What is the definition of Utility Lines?

A15. Please see the "Definitions" section of the July 1, 2011 SPGP-4. Utility lines are defined in the PASPGP-4 and the Nationwide Permits (2007) as "any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or French drains, but it does apply to pipes conveying drainage from another area."

Q16. How do we ensure successful implementation with the PASPGP?

A16. Monitoring reports are required from the Corps and DEP. Baltimore District Regulatory is currently compiling this information for PASPGP-4. Training to emphasize proper data collection and entry into the relevant databases has been held for DEP and Corps personnel.

Q17. What is the timeframe for PASPGP-4?

A17. PASPGP-4 went into effect on July 1, 2011. Water Quality Certification and Coastal Zone Management were authorized by DEP on July 16, 2011. The PASPGP-4 expires on June 30, 2016.

Q18. Does the Corps review cause significant delays?

A18. No. All linear projects classified as Category III activities, with one exception, have been issued by the Corps within 60 days (that one permit was issued in 62 days). A majority of the applications were issued within 30 days.

Q19. How many projects were authorized under PASPGP-3?

A19. Approximately 21,000 activities were authorized under PASPGP-3 from July 1, 2006 until June 30, 2011. Of these, approximately 17% were considered Category III activities that required review by the Corps of Engineers.

Q20. How many acres of aquatic impacts were authorized under Category III of the PASPGP-3?

A20. Approximately 155 acres of permanent and temporary impact to aquatic impacts was authorized under Category III of the PASPGP-3, which equates to an average of 0.13 acres of impact/permit.

Q21. How many feet of streams were impacted under Category III of the PASPGP-3?

A21. Approximately 68,000 linear feet of streams were impacted per year under Category III of the PASPGP-3, which equates to an average stream impact of 118 linear feet per permit. It should be noted that many of the stream impacts were beneficial and resulted in stream enhancement/restoration and fish enhancement structures.