



Public Notice

U.S. Army Corps
of Engineers
Baltimore District

Date: May 22, 2013

Special Public Notice # 13-33

Subject: Requirement for Corps Review of Maryland State Programmatic General Permit (MDSPGP-4) Applications When Use of Current Maryland In-Lieu Fee Program (a.k.a. Tidal Wetlands Compensation Fund and the Nontidal Wetland Compensation Fund) is proposed.

The purpose of this Special Public Notice is to inform the public of the expiration of the current, federally approved Maryland In-Lieu Fee (ILF) program to provide compensatory mitigation for Department of the Army permits authorized under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act authorizations. After June 9, 2013, all Maryland State Programmatic General Permit (MDSPGP-4) permit applications that propose to use the current Maryland In-Lieu Fee Program (a.k.a. Maryland Wetland Compensation Fund) as compensatory mitigation must be reviewed by the U.S. Army Corps of Engineers (Corps).

The Maryland Department of the Environment (MDE) established an in-lieu fee program (ILF) in 1991. The Corps accepted MDE's ILF program to compensate for unavoidable impacts to waters of the United States, including wetlands, as part of the U.S. Army Corps of Engineers' regulatory responsibilities under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. An ILF program involves the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for Department of the Army permits. In Maryland, the MDE ILF program is comprised of the Tidal Wetlands Compensation Fund and the Nontidal Wetlands Compensation Fund (FUND).

On April 10, 2008, the Corps of Engineers and Environmental Protection Agency issued the Compensatory Mitigation for Losses of Aquatic Resources: Final Rule (Mitigation Rule). In accordance with 33 CFR Part 33.8(v)(2), an ILF program operating under instruments approved prior to July 9, 2008 may continue to operate under those instruments for no more than five years, after which time the ILF program must meet the requirements of the Mitigation Rule or terminate operation for purposes of providing federal compensatory mitigation. The current FUND program does not comply with the 2008 Compensatory Mitigation Rule requirements. Therefore, the FUND cannot be used by the Corps as compensation for impacts associated with Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act authorizations after June 9, 2013.

On October 1, 2011, the Baltimore District Corps of Engineers (Corps) issued the Maryland State Programmatic General Permit (MDSPGP-4) authorizing certain activities that require Department of the Army permits under Section 10 of the Rivers and Harbors Act of 1899 (33

U.S.C. 403) and/or Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). Under MDSPGP-4, the majority of applications do not require a Corps review and are reviewed by MDE to confirm whether the proposed activities qualify for MDSPGP-4 authorization. These activities are called Category A activities. Only a portion of submitted applications require a Corps review to confirm whether the proposed activities qualify for MDSPGP-4 authorization. These activities are known as Category B activities. A copy of the MDSPGP-4 can be viewed on our web page at:


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

After June 9, 2013, MDE will not issue any MDSPGP-4 verifications where a determination is made that mitigation requirements can be met by using the current FUND. All MDSPGP-4 applications, including Category A applications, that propose to use the current FUND will still be reviewed by MDE, but must also be sent to the Baltimore District for a case-by-case determination regarding project eligibility under the MDSPGP-4 and whether alternative mitigation is required to compensate for impacts to the aquatic environment to ensure compliance with the terms and conditions of the MDSPGP-4 and the 2008 Compensatory Mitigation Rule. All compensatory mitigation for impacts associated with Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act authorizations must be in compliance with the 2008 Compensatory Mitigation Rule.

MDE is actively working to replace their current FUND program with a new ILF program that will comply with federal regulations. The Corps will issue a public notice advising interested parties of the new proposed MDE ILF program prospectus and to solicit comments and information necessary to evaluate the probable impacts on the public interest. The new MDE ILF program may be used to satisfy compensatory mitigation requirements for Department of the Army permits once the new MDE ILF program instrument has been approved in accordance with the 2008 Compensatory Mitigation Rule.

Based on data provided by the MDE, the FUND was used as compensatory mitigation for approximately 22 Category A authorizations during the period October 1, 2011 through December 31, 2012. No additional review time is expected while the current FUND program is being replaced with a new ILF program that will comply with federal regulations.

Please communicate the foregoing information to any persons who did not receive this notice and may have an interest in this issue. If you have any questions regarding this matter, please contact Ms. Beth Bachur, Baltimore District Corps of Engineers, Regulatory Branch, P.O. Box 1715, Baltimore, Maryland 21203 or via e-mail at beth.bachur@usace.army.mil.


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