



Public Notice

**U.S. Army Corps
of Engineers**

Special Public Notice # SPN 15-60

Date: September 29, 2015

Baltimore District

Philadelphia District

Pittsburgh District

The purpose of this 30-day Public Notice is to request comments on whether to issue, for a 5-year period, the Pennsylvania State Programmatic General Permit (PASPGP-5). Comments are requested by October 29, 2015.

This Public Notice is issued jointly by the Baltimore, Philadelphia, and Pittsburgh Districts of the U.S. Army Corps of Engineers.

Section 404(e) of the Clean Water Act (CWA) (33 U.S.C. §1344) provides for the issuance of Department of the Army (DA) general permits (GP) on a statewide basis, which operate in conjunction with a State regulatory program that protects the aquatic environment in a manner equivalent to the DA regulatory program, provided that the activities permitted under each category of such GPs are similar in nature and result in no more than minimal individual or cumulative adverse effects on the aquatic environment.

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 require the PADEP to apply evaluation criteria consisting of alternatives analysis (for non-water 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.

On July 1, 2011 the District Engineers for Baltimore, Philadelphia, and Pittsburgh Districts, issued the Pennsylvania State Programmatic General Permit - 4 (PASPGP-4) for a five year period. The PASPGP - 4 will expire on June 30, 2016, unless a decision is made to suspend, or revoke the permit before that date.

The below list identifies some of the changes from the PASPGP-4 that are proposed to be incorporated into the PASPGP-5. The proposed PASPGP-5 can be viewed on the Baltimore District's web page at www.nab.usace.army.mil/Regulatory/Public_notices.htm

A hard copy of the proposed PASPGP-5 may be obtained by contacting: Mrs. Patricia Strong, U.S. Army Corps of Engineers, Baltimore District, P.O. Box 1715, Baltimore, Maryland 21203, telephone (410) 962-1847, or by email at Pat.Strong@usace.army.mil

Proposed Changes

1. 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)(4)).
2. 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.
3. The following Category III Activities under PASPGP-4 are proposed to be Non-Reporting Activities under PASPGP-5 (Part IV, (A)(14)):
 - a. Activities Waived at 25 PA Code § 105.12(a)(2) - Waiver 2. Waiver 2 includes water obstructions in a stream or floodway with a drainage area of 100 acres or less, and does not apply to wetlands within the floodway. A Waiver 2 activity that impacts greater than 250 linear feet of stream channel would require a Corps review.
4. Reporting Activities – Activities where the single and complete project involves at least one of the following: (Part IV, (B)(2)):
 - a. Greater than 0.50 acre of temporary and/or permanent impact to waters or wetlands;
 - b. A utility line crossing of waters and/or wetlands that exceeds 500 linear feet – excluding overhead lines;
 - c. Greater than 0.10 acre of forested and/or scrub shrub wetland permanent conversion;
 - d. A utility line placed within a jurisdictional area and the utility line runs parallel to or along the stream; and
 - e. Greater than 250 linear feet of permanent stream impact, except for:
 - i. The linear threshold is 500 feet or less, of stream channel for those activities that involve stream bank stabilization, rehabilitation, protection and/or enhancement; and
 - ii. No linear threshold applies for those activities verified under Non-Reporting Activity 1, below, (PADEP GP-1 for Fish and Habitat Enhancement Structures), and/or Non-Reporting Activities 20(b), below, (Activities Waived at 25 PA Code § 105.12(a)(16) – Waiver 16 – Restoration Activities: Other Restoration Activities).

5. Monitoring required for temporary impacts to wetlands that exceed 0.10 acre. Monitoring would be completed using a standardized monitoring report developed by the Corps and made available through the Corps website. The monitoring requirement may be waived in writing by the Corps if requested by the applicant, or may be superseded if more stringent monitoring is required by the Corps as a Special Condition of a PASPGP-5 verification, (Part VI, (A)(23)).
6. PADEP will review permit application(s) and identify single and complete project(s) to determine if the application(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 is sent to the Corps as a Reporting Activity, (Part V, (B)(3)).
7. Applications received by PADEP that depend on another application being reviewed by the Corps as a Reporting Activity to function and meet its intended purpose will be sent to the Corps as a Reporting Activity. Likewise, if PADEP receives a Reporting application which is dependent on a Non-Reporting application they are reviewing to function or meet its intended purpose, then both applications will be sent to the Corps as a Reporting Activity, (Part IV, (B)(16)).

The decision whether to issue the proposed PASPGP-5, with or without modifications, will be based on an evaluation of the probable impacts including cumulative impacts of the proposed PASPGP-5 on the public interest. That decision will reflect the national concern for the protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal will be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, 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.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Federally recognized Native American Nations; and other interested parties in order to consider and evaluate the impacts of this proposed PASPGP-5. Any comments received will be considered by the Corps of Engineers to determine whether to issue with modifications, issue without modifications, or not issue PASPGP-5. To make this decision, comments are used to assess impacts on endangered species, cultural resources, water quality, general environmental effects, and the other public interest factors listed above. Comments will be used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act (NEPA). Comments will also be used to determine the overall public interest of the proposed permit.

A Water Quality Certification 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 Federally regulated waters of the United States, including wetlands. Coastal Zone Certification is also required in accordance with the Pennsylvania Coastal Zone Program. The PADEP will be issuing a joint notice in the Pennsylvania Bulletin regarding issuance of 401 Water Quality Certification and Coastal Zone Consistency for activities authorized PASPGP-5 if issued.

A preliminary review of the PASPGP-5 indicates that processing procedures and conditions are sufficient such that authorized work will be not likely to adversely affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. As the evaluation of the PASPGP-5 continues, additional information may become available which could modify this preliminary determination.

The PASPGP-5 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.

To insure compliance with Executive Order 13175, the PASPGP-5 is conditioned such that the Corps will coordinate with Tribal Nations. 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. A preliminary review of the PASPGP-5 indicates that processing procedures and conditions are sufficient such that authorized work is not likely to have a direct and adverse effect on any designated Wild and Scenic River pursuant to the Wild and Scenic Rivers Act as amended. As the evaluation of the PASPGP-5 continues, additional information may become available which could modify this preliminary determination.

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). A preliminary review of the PASPGP-5 indicates that processing procedures and conditions are sufficient such that authorized work will likely result in no more than minimal adverse effects on EFH pursuant to the Magnuson-Stevens Fishery Conservation and Management Act as amended. As the evaluation of the PASPGP-5 continues, additional information may become available which could modify this preliminary determination.

The evaluation of the impact of the work 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 of the Clean Water Act. Any person who has an interest which may be adversely affected by the issuance of this permit may request a public hearing. The request, which must be in writing, must be received by the District Engineer, U.S. Army

Corps of Engineers, Baltimore District, P.O. Box 1715, Baltimore, Maryland 21203-1715, within the comment period as specified above, to receive consideration. Also, it must clearly state forth the interest which may be adversely affected by this activity and the manner in which the interest may be adversely affected.

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. Questions and comments may be directed to Mrs. Patricia Strong, U.S. Army Corps of Engineers, Baltimore District, Pennsylvania Section, P.O. Box 1715, Baltimore, Maryland 21203. Comments are requested by October 29, 2015.

William P. Seib
Chief, Regulatory Branch
Baltimore District



U.S. Army Corps of Engineers

**PENNSYLVANIA STATE PROGRAMMATIC
GENERAL PERMIT-5
(PASPGP-5)
DRAFT**

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Part I - Authorities:

A. Federal Authorities.

1. Section 404(e) of the Clean Water Act (CWA) (33 U.S.C. §1344) provides for the issuance of Department of the Army (DA) general permits (GP) on a statewide basis, which operate in conjunction with a State regulatory program that protects the aquatic environment in a manner equivalent to the DA regulatory program, provided that the activities permitted under each category of such GPs are similar in nature and result in no more than minimal individual or cumulative adverse effects on the aquatic environment. This Pennsylvania State Programmatic General Permit-5 (PASPGP-5) is issued pursuant to Section 404(e) and is based upon and consistent with the requirements of the CWA 404(b)(1) Guidelines.
2. Upon the recommendation of the Chief of Engineers, the Secretary of the Army hereby authorizes the discharge of dredged and/or fill material into waters of the United States under the provisions of Section 404 of the CWA, as amended (33 U.S.C. §1344) and for structures or work in or effecting navigable waters of the United States under provisions of Section 10 of the Rivers and Harbors Act of 1899 as amended (33 U.S.C § 403).

All regulated work associated with a single and complete project, including all attendant features, both temporary and/or permanent, which individually or cumulatively results in impacts to 1.0 acre or less of waters of the United States including jurisdictional wetlands is authorized provided all terms, conditions, and processing procedures identified in this PASPGP-5 are met.

3. Section 404(q) of the CWA states that agreements are to be entered into in order to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits. Memorandums of Agreements (MOAs) have been developed between United States Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), and the United States Environmental Protection Agency (EPA) to outline the means for establishing these goals. The coordination, communication process, professional partnerships, and cooperative working relationships established by these MOAs will be maintained, where applicable, in this PASPGP-5.
4. Section 404(c) of the CWA authorizes the Administrator of the EPA to prohibit the specification of any defined area as a disposal site, and deny or restrict the use of any defined area for specification as a disposal site, whenever the Administrator determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

B. State Authorities.

1. The Dam Safety and Encroachments Act, Title 32, Pennsylvania Statues, 693.1 – 693.27
2. The Clean Streams Law, 35 P.S § § 69.1.1 – 693.1001
3. Dam Safety and Waterway Management Rules and Regulations, Title 25, Pennsylvania Code, Chapter 105 [hereinafter cited as 25 Pa. Code, Chapter 105; specific sections will be referred to by abbreviation]
4. All other applicable regulations

C. Scope.

1. The PASPGP-5 applies only to those activities described in PASPGP-5 Part I.A.2. within the Commonwealth of Pennsylvania.
2. The PASPGP-5 does not obviate the need to obtain other Federal, State, or local authorizations required by law or to comply with other Federal, State, or local laws. Likewise, the PASPGP-5 does not grant any property rights or exclusive privileges, or authorize injury to the property or rights of others, and/or the interference with any existing or proposed Federal project.
3. In issuing PASPGP-5 the Federal Government does not assume any liability for damages to the permitted project, or use thereof, as a result of other permitted or unpermitted activities, or from natural causes, or from damages that are a result of current or future activities undertaken by, or on behalf of, the United States in the public interest. Additionally, the Federal Government does not assume any liability of damages to persons, property, or to other permitted, or unpermitted activities, or structures caused by the activity authorized by this permit.
4. The Federal Government does not assume any liability for damages caused by design or construction deficiencies associated with the permitted work and/or claims associated with any future modification, suspension, or revocation of this permit.

Part II - Definitions:

The following terms are defined for the purposes of the PASPGP-5:

Direct Impacts – For purposes of this permit, direct impacts to waters of the United States and Navigable Waters includes the impact area from the footprint of the regulated activity (i.e., fill area).

Discharge of Dredged Material – The Term “Discharge of Dredged Material” is defined at 33 CFR § 323.2(d). The definition is defined, in part, as:

“(1) Except as provided below in paragraph 2, the term discharge of dredged material means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States. The term includes, but is not limited to, the following:

(i) The addition of dredged material to a specified discharge site located in waters of the United States;

(ii) The runoff or overflow from a contained land or water disposal area; and

(iii) Any addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized land clearing, ditching, channelization, or other excavation.

(2) The term discharge of dredged material does not include the following:

(i) Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill). These discharges are subject to section 402 of the CWA even though the extraction and deposit of such material may require a permit from the Corps or applicable State section 404 program;

(ii) Activities that involve only the cutting or removing of vegetation above the ground (e.g., mowing, rotary cutting, and chain sawing) where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material; and

(iii) Incidental fallback.”

Dredged Material – The term “Dredged Material” is defined at 33 CFR § 323.2(c) as:

“The term dredged material means material that is excavated or dredged from the waters of the United States.”

(3) The term fill material does not include trash or garbage.”

Discharge of Fill Material – The term “Discharge of Fill Material” is defined at 33 CFR § 323.2(f) as:

“The addition of fill material into the waters of the United States. The term generally includes, without limitation, the following activities: placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States; the building of any structure, infrastructure, or impoundment requiring rock, sand, dirt, or other material for its construction; site development fills for recreation, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills; placement of overburden, slurry, or tailings or similar mining-related materials; and artificial reefs. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products.”

Eligibility Threshold – The maximum acreage/linear footage (one acre of waters of the United States or 1,000 linear feet of stream channel) of temporary and/or permanent impacts, both direct and indirect, to waters of the United States including jurisdictional wetlands as a result of the regulated activity, is used to determine PASPGP-5 eligibility. The eligibility threshold is the sum of all proposed regulated impacts associated with the proposed single and complete project and any compensatory mitigation. For projects where impacts associated with permittee responsible compensatory mitigation cause PASPGP-5 eligibility thresholds to be exceeded, the impacts associated with the compensatory mitigation may be authorized by Nationwide Permit 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities (NWP 27), and the proposed project may be authorized under PASPGP-5 following Corps review.

- Impacts resulting from activities eligible for exemptions under Section 404(f) of the CWA are not included in the eligibility threshold calculation.

Fill Material – The term “Fill Material” is defined at 33 CFR § 323.2(e) as:

“(1) Except as specified in paragraph (3) of this definition, the term fill material means material placed in waters of the United States where the material has the effect of:

- (i) Replacing any portion of water of the United States with dry land; or
- (ii) Changing the bottom elevation of any portion of a water of the United States.

(2) Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structures or infrastructure in the waters of the United States.

Historic Properties – Any prehistoric or historic site, building, structure, district, landscape, or object that is eligible for or listed on the National Register of Historic Places, including Traditional Cultural Properties (TCPs). A TCP is a historic property that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community.

Independent Utility – The term “Independent Utility” is defined as:

A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

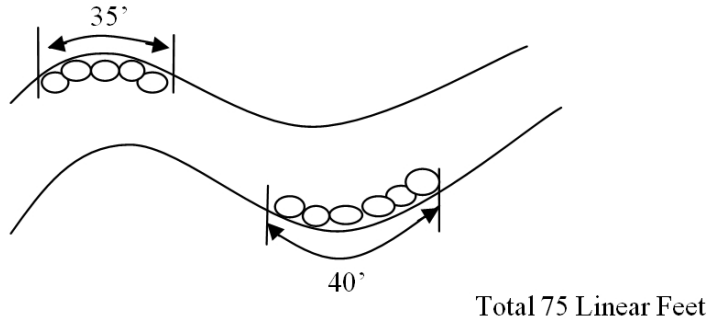
See also discussion under “Single and Complete Project”.

Indirect Impacts – For the purposes of determining eligibility and reporting thresholds for this permit, indirect impacts to waters of the United States and Navigable Waters include the areas indirectly affected by flooding, draining, or excavation as a result of the regulated activity.

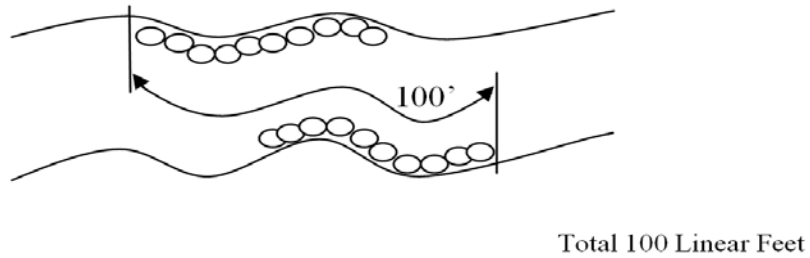
Linear Footage of Stream Impact – For categorical determination (250 linear feet or 500 linear feet) involving stream impacts, the linear footage of stream impact should be measured as follows (this is not used for calculating impacts to wetlands and open water impoundments which are based on square feet):

- a. For regulated work on one stream bank, the linear footage of a stream impact should be measured along the bank being impacted. When both streams banks are being impacted at separate locations, the linear footage of stream impacts is also measured along the banks being impacted.

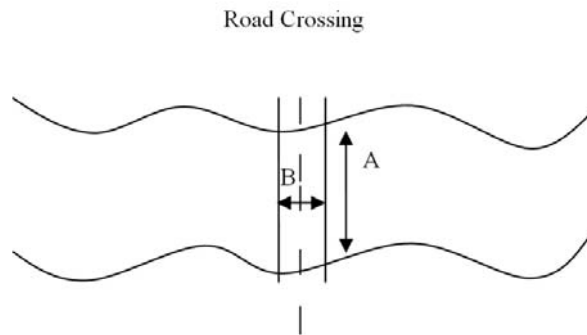
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- b. For regulated work proposed along both stream banks, where at least a portion of the work on the opposing stream bank is overlapping, the linear footage of stream impact should be measured along the centerline of the stream.



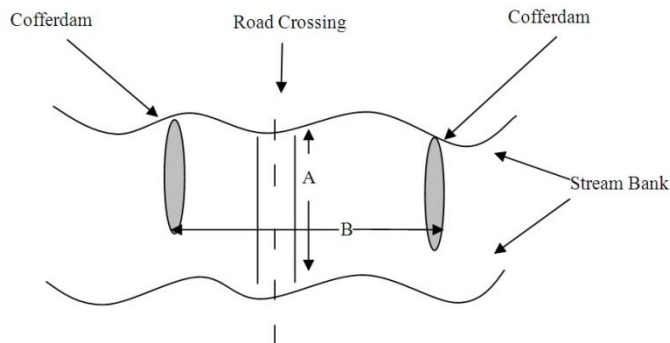
- c. For transverse impacts (perpendicular to the stream bank), the linear footage of the stream impact should be measured from the top of the bank to the top of the opposite bank and from the upstream to downstream limits of work. The linear footage of stream impact, for categorical determination, is the greater of these two measurements.



A (width) or B (length) whichever is greater.

- d. Dewatering – if work involves dewatering of a stream channel, measure the centerline of the stream channel that is impacted through filling, dewatering, and/or flooding, and measure from top of stream bank to top of stream bank. The linear footage of stream impact, for categorical determination, is the greater of these two measurements.

A (width) or B (length) whichever is greater.



Loss of Waters of the United States, including Jurisdictional Wetlands: Waters of the United States, including jurisdictional wetlands that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged and/or fill material that change the aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody.

Mean High Water Line (MHWL) – The term “Mean High Water Line” is used in tidally influenced waters and is described at 33 CFR § 329.12(a)(2) as:

“Shoreward limit of jurisdiction. Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water. Where precise determination of the actual location of the line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the “apparent shoreline” which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.”

Ordinary High Water Mark (OHWM) – The term “Ordinary High Water Mark” is defined at 33 CFR § 328.3(e) as:

“The line, on non-tidal rivers, above the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.”

Pennsylvania Department of Environmental Protection (PADEP) - Use of PADEP throughout this document refers to PADEP and any entity delegated by PADEP to administer the Chapter 105 program.

Pennsylvania Natural Diversity Inventory (PNDI) – as referenced in this permit, PNDI refers to the current on-line environmental review tool for screening of State and Federally-listed threatened and endangered species managed by the Pennsylvania Natural Heritage Program. The term PNDI is inclusive of any future tools approved by the USFWS for screening of Federally-listed threatened and endangered species.

Permanent Conversion – the term as used in this document refers to the permanent conversion of a forested wetland to a scrub-shrub wetland or conversion of a forested or scrub-shrub wetland to an emergent wetland. Such conversion may result in the permanent loss of certain functions and services that may require compensatory mitigation.

Permanent Impacts - Waters of the United States, including jurisdictional wetlands permanently filled, flooded, excavated, or drained as a result of the regulated activity.

Restoration Activities – Activities associated with the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource.

Single and Complete Project – For the purpose of this document this term means:

- a. **Single and complete linear project** - An applicant proposing a single and complete linear project must submit information describing the locations of the overall linear project's point of origin, terminal point, all proposed crossings, and other impacts to aquatic resources. Each single and complete linear project need not have independent utility within the overall linear project. However, separate linear projects may have independent utility. A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waters of the United States at separate and distant locations. The term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of PASPGP-5 verification. 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 crossings of such features cannot be considered separately.

A linear project may involve multiple crossings of streams, wetlands, or other types of waters from the point of origin to the terminal point. Roads and pipelines are examples of linear projects. While each separate and distant crossing of a waterbody associated with a linear project would be considered a separate single and complete project for the

purposes of PASPGP-5, the Corps, when reviewing a Reporting Activity, will evaluate the cumulative effects on the aquatic environment of the overall linear project when determining whether PASPGP-5 verification is appropriate. The acreage and other applicable limits for a PASPGP-5 would be applied to single and complete crossing, as long as those crossings are far enough apart to be considered separate and distant.

- b. **Single and Complete Non-linear Project** – For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owner/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the eligibility thresholds of the PASPGP-5.

To ensure consistency with the requirement of the CWA 404(b)(1) Guidelines and the National Environmental Policy Act, a clear purpose and the ability to function independently is required for all projects.

Structure – The term “Structure” is defined at 33 CFR § 322.2(b) as: “The term structure shall include, without limitation, any pier, boat, dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling aid to navigation, or any other obstacle or obstruction.”

Temporary Impacts – Waters of the United States, including jurisdictional wetlands temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevation

Utility Line – Any pipe or pipeline for 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, including jurisdictional wetlands such as drainage tile or French drains, but it does apply to pipe conveying drainage from another area.

Waterbody – A waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an OHWM or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR § 328.3(b)). If a jurisdictional wetland is adjacent (meaning bordering, contiguous, or neighboring) to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR § 328.4(c)(2)). Examples of “waterbodies” include streams, rivers, lakes, ponds, and wetlands.

Waters of the United States and Navigable Waters of the United States – The terms waters of the United States and Navigable Waters of the United States are defined at 33 CFR Part §

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328.3 and § 329.4. For the purpose of this document, the use of the term “waters of the United States, including jurisdictional wetlands” is inclusive of navigable waters of the United States.

Part III– Eligibility:

A. Activities NOT eligible for PASPGP-5. To receive Federal authorization for these activities, a permit application must be submitted to the appropriate Corps District Office:

1. Single and complete or overall linear projects that will have more than minimal individual or cumulative adverse environmental impacts as determined by the Corps of Engineers.
2. Single and complete projects that do not comply with all terms and conditions of the PASPGP-5, including the terms and conditions specific to each listed category of activities.
3. Single and complete projects that will result in a total of more than 1.0 acre of temporary and/or permanent impacts, both direct and indirect, to waters of the United States, including jurisdictional wetlands, as defined above in Part II.
4. Single and complete projects that will result in a permanent loss of more than 1,000 linear feet of a stream.
5. Activities located waterward of the OHWM on non-tidal waters and/or the MHWL on tidal waters on the following Pennsylvania waterbodies:
 - a. The Delaware River, downstream of the Morrisville-Trenton Railroad Bridge in Morrisville, Pennsylvania;
 - b. The Schuylkill River, downstream of the Fairmount Dam in Philadelphia, Pennsylvania;
 - c. All of the Ohio River;
 - d. All of the Beaver River;
 - e. All of the Little Beaver River;
 - f. All of the Mahoning River;
 - g. All of the Monongahela River;
 - h. The Youghiogheny River, from its mouth at McKeesport, Pennsylvania to river mile 31.2 at Layton, Pennsylvania;
 - i. The Allegheny River, from its mouth in Pittsburgh, Pennsylvania to river mile 197.4 at Kinzua Dam, north of Warren, Pennsylvania;

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- j. The Kiskiminetas River, from its mouth near Freeport, Pennsylvania to river mile 26.8 at Saltsburg, Pennsylvania;
 - k. Tenmile Creek, from its mouth at Millsboro, Pennsylvania to river mile 2.7; and
 - l. Lake Erie activities which require submittal of a Joint Permit Application or Environmental Assessment to the PADEP. For Lake Erie, the OHWM is located at elevation 573.4.
6. Instances where the EPA's Regional Administrator has notified the District Engineer and applicant in writing that he is exercising his authority under 404 (c) of the CWA to prohibit, deny, restrict, or withdraw the use of any defined area for specification as a disposal site for the discharge of dredged and/or fill material.
 7. Designated Special Case circumstances identified by the Regional Administrator of the EPA, as defined in the MOA between the Department of the Army and the EPA concerning the determination and limits of geographic jurisdiction of the 404 program. Geographic areas established by the EPA would be advertised by the Corps Public Notice as ineligible for Federal authorization under the PASPGP-5.
 8. Activities that have been denied a PADEP Chapter 105 Permit, a CWA Section 401 Water Quality Certification, or a Coastal Zone Consistency Determination.
 9. Any activities that would divert more than 10,000 gallons per day of surface water or groundwater in to or out of the Great Lakes Basin (Lake Erie Watershed).

B. Activities Eligible for PASPGP-5:

1. All activities listed as Reporting or Non-Reporting, which the Corps determines will have no more than minimal adverse environmental effects to the aquatic environment, both individually and cumulatively. All authorized activities must be in compliance with all the terms and conditions of the PASPGP-5, including the terms and conditions specific to each listed category of activities. The Corps will consider the comments and concerns of the other regulatory and/or resource agencies and the public, as appropriate, for those Reporting Activities that have been identified as possibly having more than minimal adverse impacts, prior to making a decision.
2. All activities authorized under PASPGP-4 where the verification did not expire prior to June 30, 2016, are reauthorized by the PASPGP-5 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 PASPGP-5; all special conditions attached to the original PASPGP-4 verification; and all applicable PADEP Chapter 105 authorizations. The duration

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of these verifications will be for the term of the PASPGP-5 (June 30, 2021) for Non-Reporting activities, the term of the applicable PADEP Chapter 105 authorization, or five years from the original verification of the PASPGP-4 Category III activities, whichever is less.

Part IV – Categories of Activities Authorized by PASPGP-5:

A. Non-Reporting Activities

The following activities are authorized by the PASPGP-5 without notification to applicable Corps District, provided the proposed regulated activities comply with all terms, conditions, limits, best management practices, and processing procedures identified and required by the PASPGP-5, and all applicable PADEP Chapter 105 authorizations. These activities correspond to specific PADEP Chapter 105 GPs; Waivers; Individual Permits numbered E-999x; Emergency Permits; Letters of Authorization; and Waiver Letters of Maintenance. See Part IV.C.4., for situations whereby these projects are determined to be Reporting to the Corps for additional review to ensure compliance with the Endangered Species Act (ESA).

Project specific activities as listed in activities 1 through 28 below are eligible for PASPGP-5 verification as a Non-Reporting activity provided:

- The single and complete project, including all attendant features both temporary and/or permanent, results in no more than 0.50 acre of direct and/or indirect impacts to waters of the United States, including jurisdictional wetlands and results in no more than 0.10 acre of permanent forested or scrub shrub wetland conversion; or
- The single and complete project, including all attendant features, results in permanent direct and/or indirect impacts to 250 linear feet or less of streams and/or rivers (see exceptions below).

Exceptions to 250 Linear Feet Threshold:

- The linear threshold is 500 feet or less, of stream channel for those activities that involve stream bank stabilization, rehabilitation, protection and/or enhancement.
- No linear threshold applies for those activities verified under Non-Reporting Activity 1, below, (PADEP GP-1 for Fish and Habitat Enhancement Structures), and/or Non-Reporting Activities 20(b), below, (Activities Waived at 25 PA Code § 105.12(a)(16) – Waiver 16 – Restoration Activities: Other Restoration Activities) .

Project specific activities as listed in activities 1 through 21, and 23 through 30 below are eligible for PASPGP-5 verification provided:

- The project/activity receives a “No Effect” determination from the Corps; or the project/activity has received a clearance from the USFWS/NMFS that will not affect Federally-listed species; or

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- The project/activity receives correspondence from the USFWS/NMFS that includes avoidance measures that the applicant has agreed to implement in writing; or
- The applicant or PADEP has a run a PNDI search within the last 24 months and:
- Receives no conflicts related to Federally-listed species; if PNDI search results that include avoidance measures for a Federally-listed threatened or endangered species the application contains a PNDI receipt that has been signed by the applicant thereby agreeing to comply with all avoidance measures or they believe the avoidance measures are outside of the Corps Section 7 Scope of Analysis, then the project/activity must be processed as a Reporting Activity. See “Federal Threatened and Endangered Species Coordination” Section for further guidance.

Project specific activities identified in 22 below, **Emergency Activities**, are eligible for PASPGP-5 verification provided the applicant, PADEP, or the Corps will complete a PNDI search prior to verification of the PASPGP-5 or promptly after issuance of PASPG-5 verification, unless USFWS and/or the Corps determine no effect. Where the PNDI receipt identifies a potential impact or includes avoidance measures related to a Federally-listed species, the Corps will consult with the USFWS in accordance with the Emergency Consultation provisions of the ESA (50 CFR 402.05) unless the applicant agrees to comply with all of the listed avoidance measures on the PNDI receipt or other correspondence from USFWS.

1. **Fish Habitat Enhancement Structures:** This is limited to the construction, installation, operation, and maintenance of fish habitat enhancement structures for a maximum of one acre of waters of the United States. Fish habitat enhancement structures consist of: deflectors, low flow channel structures, channel blocks, muddills and boulders, felled shoreline trees, special tire structures, brush structures, rubble reefs, half-log structures, elevated boulder structures, and spawning/nursery structures placed in streams, lakes, ponds or reservoirs as developed in coordination with the PFBC. This activity must be authorized pursuant to PADEP GP-1.
2. **Small Docks and Boat Launching Ramps:** This is limited to the installation, operation, modification, and maintenance of small docks and boat launch ramps in and along waters of the United States. This activity must be authorized pursuant to PADEP GP-2.
3. **Bank Rehabilitation, Bank Protection, and Gavel Bar Removal:** This is limited to the installation, operation, modification, and maintenance of bank rehabilitation and protection for a maximum of 500 linear feet; and the removal of gravel bars for a maximum of 250 linear feet within the waters of the United States. This activity must be authorized pursuant to PADEP GP-3.
4. **Intake and Outfall Structures:** This is limited to the construction, operation, and maintenance of intake and outfall structures in, along, across, or projecting into waters of the United States. This activity must be authorized pursuant to PADEP GP-4.

5. **Utility Line Stream Crossings:** This is limited to the installation, operation, and maintenance of utility line stream crossings of waters of the United States, except for those activities involving the placement of utility lines parallel to or along a stream bed within that jurisdictional area which must be forwarded to the Corps as a Reporting Activity in accordance with Part V.B.2.iii.b below. This activity must be authorized pursuant to PADEP GP-5.
6. **Agricultural Crossings and Ramps:** This is limited to the installation, operation, and maintenance of agricultural crossings and ramps in the waters of the United States. This activity must be authorized pursuant PADEP GP-6.
7. **Road Crossings:** This is limited to 1) the construction, operation, and maintenance of a minor road crossing across wetlands which individually impacts less than 0.10 acre of wetlands, or all other road crossings associated with a road that cumulatively impacts less than 0.25 acre of wetlands; 2) the construction, operation, and maintenance of a minor road crossing across a stream where the watershed drainage is 1.0 square mile or less; and 3) the removal of an existing minor road crossing across a stream where the drainage area is 1.0 square mile or less. This activity must be authorized pursuant to PADEP GP-7.
8. **Temporary Crossings:** This is limited to the installation of a road crossing or service line crossing intended for a limited period of time, and removed in its entirety after that period of time in waters of the United States. This activity must be authorized pursuant to PADEP GP-8.
9. **Temporary Activities:** This is limited to investigative activities of a temporary nature, intended for a limited period of time, including core boring or placement of sensors to sample or test soil or rock material and other similar or related activities, which will cease or be removed in their entirety after that period of time in waters of the United States. This activity must be authorized pursuant to PADEP GP-8.
10. **Agricultural Activities:** This is limited to the installation, operation, modification, and maintenance of certain agricultural activities. These agricultural activities are grassed or lined waterways, terraces, diversions, waste storage facilities, spring development, and minor drainage that supports these activities and is necessary for contour strips when engaged in as part of an existing agricultural operation and shall only be implemented as part of a conservation plan consistent with the 25 Pa. Code, Chapter 102 (relating to erosion control) and approved by the appropriate County Conservation District. This activity must be authorized pursuant to PADEP GP-9.
11. **Maintenance, Testing, Repair, Rehabilitation, or Replacement of Water Obstructions and Encroachments:** This is limited to any activity eligible for a PADEP GP-11 that permanently impacts less than 0.05 acre of wetlands or less than 250 linear feet of stream. Any work associated with: 1) a Corps Civil Works Project; 2) work on Corps Property; or 3) areas which are part of Corps Rehabilitation and Inspection

Program shall be forwarded to the Corps as a Reporting Activity. This activity must be authorized pursuant PADEP GP-11.

12. **Private Residential Construction in Wetlands:** This is limited to the placement of dredged and/or fill material in, or the excavation of, non-tidal wetlands for the construction or expansion of a single family home for the personal residence of the permittee, including reasonable and necessary features such as a driveway, storage shed and utilities on a residential lot purchased by the permittee prior to November 22, 1991, within the established subdivisions approved by local governing authority where such activities do not impact greater than 0.50 acre of non-tidal wetlands. This activity must be authorized pursuant PADEP GP-15.
13. **Activities Waived at 25 PA Code § 105.12(a)(1) – Waiver 1 – Small Dams Not Exceeding 3 Feet in Height in a Stream Not Exceeding 50 Feet in Width:** This is limited to the construction of small dams not exceeding 3 feet in height in a stream, not exceeding 50 feet in width, except wild trout streams designated by the PFBC in accordance with 58 PA Code § 57.11. This corresponds to activities authorized pursuant PADEP Waiver 1.
14. **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:** Any activity authorized as a Waiver 2, which includes water obstructions in a stream or floodway with a drainage area of 100 acres or less. For projects involving greater than 250 linear feet of impact to streams and/or rivers, an application must be submitted to the Corps as a Reporting Activity. This waiver does not apply to wetlands within the floodway. This corresponds to activities authorized pursuant to PADEP Waiver 2.
15. **Activities Waived at 25 PA Code § 105.12(a)(6) – Waiver 6 – Stormwater Management and Erosion Control:** This is limited to a water obstruction or encroachment located in, along, across, or projecting into an existing storm water management facility or an erosion and sedimentation pollution control facility which meets the requirements in 25 Pa. Code, Chapter 102 (relating to erosion and sediment control), if the facility was constructed and continues to be maintained for the designated purpose. This corresponds to activities authorized pursuant to PADEP Waiver 6.
16. **Activities Waived at 25 PA Code § 105.12(a)(7)(8) – Waiver 7 and 8 – Activities Related to Crop Production:** This is limited to maintenance of field drainage systems for crop production and for plowing, cultivating, seeding or harvesting for crop production. This corresponds to activities authorized pursuant to PADEP Waivers 7 and 8.
17. **Activities Waived at 25 PA Code § 105.12(a)(9) – Waiver 9 – Minor Stream Fords:** This is limited to construction and maintenance of ford crossings of streams for individual private personal use, which require only grading of banks for approach roads and the placement of no more than 12 inches of gravel for roadway stability. Fords may not be used for commercial purposes and shall cross the regulated waters of the United

States in the most direct manner. This does not apply to activities in exceptional value streams, as listed under 25 Pa. Code, Chapter 93 (relating to water quality standards) or in wild trout streams, designated by the PFBC. This corresponds to activities authorized pursuant to PADEP Waiver 9.

18. **Activities Waived at 25 PA Code § 105.12(a)(10) – Waiver 10 - Navigational Aids:** This is limited to a navigational aid or marker, buoy, float, ramp, or other device or structure for which a permit has been issued by the PFBC under Title 30, Pennsylvania Consolidated Statutes, Section 5123(a)(7) (relating to general boating regulations). This corresponds to activities authorized pursuant to PADEP Waiver 10.
19. **Activities Waived at 25 PA Code § 105.12(a)(12) – Waiver 12 – Activities Related to Use of Water Recording, Gauging, and Testing Devices:** This is limited to the construction, operation, or removal of staff gauges, water recording devices, water quality testing devices, including, but not limited to, sensors, intake tubes, weirs, and small buildings which contain required instruments and similar scientific structures. This corresponds to activities authorized pursuant to PADEP Waiver 12.
20. **Activities Waived at 25 PA Code § 105.12(a)(14) – Waiver 14 – Artificial Ponds and Reservoir Maintenance:** This corresponds to activities authorized under PADEP Waiver 14. PADEP Waiver 14 authorizes the maintenance of an artificial pond or reservoir to its original storage capacity where:
 - a. The contributory drainage area is less than or equal to 100 acres;
 - b. The greatest depth of water at maximum storage elevation is less than or equal to 15 feet; and
 - c. The impounding capacity at maximum storage elevation is less than or equal to 50-acre feet.
21. **Activities Waived at 25 PA Code § 105.12(a)(16) – Waiver 16 – Restoration Activities:** Activities undertaken and conducted pursuant to a restoration plan, which has been approved, in writing, by PADEP. These activities include the following:
 - a. **PADEP, Bureau of Abandoned Mine Reclamation approved and/or sponsored restoration activities** – provided the activity impacts less than 0.05 acre of vegetated wetland (as identified by the Corps of Engineers 1987 Wetlands Delineation Manual (1987 Manual), including all applicable guidance and regional supplements) or the body of water or associated discharge from a body of water has a pH less than 5.0, or any of the following elevated metal levels:
 - i. Aluminum greater than 0.6 mg/l
 - ii. Iron greater than 7.0 mg/l

iii. Manganese greater than 4.0 mg/l

- b. **Other Restoration Activities** – Restoration activities whereby PADEP has issued a programmatic 401 Water Quality Certification conditioned upon receiving approval by the Environmental Review Committee (ERC). To be authorized by PASPGP-5, the activity must be approved by the ERC. Note: the activity will be reviewed as a Reporting Activity, if applicable.

22. **PADEP Individual Permits Numbered E-999X:** This is limited to maintenance activities performed in waters of the United States, by following certain Commonwealth of Pennsylvania agencies:

The Pennsylvania Department of Transportation (District 1 – E61-9999; District 2 – E17-9999; District 3 – E41-9999; District 4 – E35-9999; District 5 – E39-9999; District 6 – E23-9999; District 8 – E22-9999; District 9 – E07-9999; District 10 – E32-9999; District 11 – E02-9999; and District 12 – E26-9999);

The Pennsylvania Turnpike Commission (E22-9995);

The Pennsylvania Department of Conservation and Natural Resources, Bureau of State Parks (Region 1 – E12-9998; Region 2 – E10-9998; Region 3 – E05-9998; Region 4 – E09-9998); and

The Pennsylvania Game Commission (SE Region – E06-9996; SC Region – E31-9996; NE Region – E40-9996; NC Region – E41-9996; NW Region – E61-9996; SW Region – E65-9996).

This activity must be authorized pursuant to PADEP Individual Permits numbered E-999X. The maintenance work must be performed as described on a submitted work schedule, submitted to PADEP Regional Offices, with all work performed in accordance with PADEP standards for that particular agency's maintenance agreement.

23. **Emergency Activities:** These activities involve the immediate remedial action when necessary to alleviate an imminent threat to life, property, or the environment. Stream relocation or channelization is not authorized under this category of activities except when a stream has left its channel as a result of a distinct recent storm event and channel work is required to restore the stream flow to pre-storm conditions. These activities must be authorized pursuant PADEP Emergency Permits.
24. **Normal Maintenance and Repair of an Existing Dam:** This is limited to the normal maintenance and repairs of an existing, jurisdictional dam and will not involve major modification to the dam. This activity must be authorized pursuant to PADEP Letter of Authorization.

25. **Existing Structures or Activities Completed Prior to July 1, 1979:** Activities authorized pursuant to 25 Pa. Code § 105.12(b)(1-7):
- a. A dam not exceeding 5-feet in height in a non-navigable stream operated and maintained for water supply purposes;
 - b. A dam of Size Classification C and Hazard Potential Classification 3 and does not have a significant effect on coastal resources or an adverse impact on the environment;
 - c. A fill not located on navigable lake and navigable rivers;
 - d. A stream bank retaining device;
 - e. A stream crossing other than a crossing located on submerged lands of the Commonwealth and a crossing by pipelines for conveyance of petroleum products and gas;
 - f. An outfall, headwall or water intake structure; and
 - g. A culvert, bridge or stream enclosure with a drainage area less than or equal to five square miles.
26. **Operation, Maintenance and Monitoring of Structures and Activities Listed in 23 a-g Above Completed Prior to July 1, 1979:** Activities authorized pursuant to 25 Pa. Code § 105.12(c).
27. **Miscellaneous Activities:** The following activities are not in most cases regulated pursuant to Section 404 of the CWA because they do not involve discharge of dredged and/or fill material, or the activity meets a Section 404(f)(1) exemption. However, in some instances, the work is regulated and will require either a Section 404 or Section 10 permit. These correspond to activities authorized by PADEP Waivers, GPs, and Waiver Letters of Maintenance provided they are implemented as described in the applicable PADEP authorization:
- a. PADEP GP-10 – Abandoned Mine Reclamation;
 - b. PADEP Waiver 15 – Abandoned Mines;
 - c. PADEP Waiver 3 – Aerial Crossings;
 - d. PADEP Waiver 5 – Acid Mine Drainage;
 - e. PADEP Waiver 13 – Abandoned Railroad Bridges and Culverts; and
 - f. Waiver Letter of Maintenance for:

- 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*; or
- Bridge and Culvert Repair – Maintenance to an existing culvert, bridge, or stream enclosure constructed prior to July 1, 1979, on watercourse where the drainage area is five square miles or less.

28. **Activities Related to Residential, Commercial and Institutional Developments:** Any activity for the purpose of constructing new or expanding an existing 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 includes 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 VI.A.24). Applications that do not include a proposed conservation instrument/deed restriction may still qualify for a PASPGP-5, but will be forwarded to the Corps as a Reporting Activity (see Part IV.C.8).

29. **Maintenance:** Activities conducted under the terms and conditions of a previously issued PADEP authorization which requires operation and maintenance in accordance with the terms and conditions of the PADEP authorization.

30. **Activities Published in the Pennsylvania Bulletin:** The following activities require notification through publication in the Pennsylvania Bulletin as required by 25 Pa Code Chapter 105.21(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.1, et seq. These activities may be authorized by the PASPGP-5 after an opportunity for review and comment by the Corps, all other Federal and State resource agencies, and the general public, through publication in the Pennsylvania Bulletin at least 30 days prior to the effective date of the PADEP authorization.

- a. **Activities Requiring Pennsylvania State Permits or Approvals:** This is limited to activities authorized pursuant to PADEP Water Obstruction and Encroachment Permit (including an Individual Permit or Small Projects Permit), Dam Permit, or Environmental Assessment Approval and request 401 Water Quality Certification.
- b. **The Removal of Abandoned Dams, Water Obstructions, and Encroachments:** This is limited to the activities authorized by PADEP for the removal of abandoned dams, water obstructions, or encroachments, where PADEP determines in writing, on the basis of data, information, or plans, submitted by the applicant, that the removal of the abandoned dam, water

obstruction, encroachment will not imperil life or property, have significant effect on coastal resources, or have an adverse impact on the environment, and the plans provide for restoration and stabilization of the project area. This corresponds to activities authorized pursuant to PADEP Waiver 11.

- c. **Restoration Activities:** This is limited to restoration activities undertaken and conducted pursuant to a restoration plan, which has been approved, in writing, by PADEP. This corresponds to activities authorized pursuant to PADEP Waiver 16, except for those activities identified in Part IV.A.20, which do not require publication in the Pennsylvania Bulletin.

31. Grandfathered Activities:

- 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.

Due to changes in Reporting/Non-Reporting Activities (Category I, II, & III under PASPGP-4) and eligibility limitations in the PASPGP-5, it is recommended that permittees contact their appropriate Corps District for further guidance regarding the applicability of the Grandfathered Activities.

B. Reporting Activities:

Activities listed below will receive a project specific review by the Corps of Engineers to verify that no more than minimal adverse environmental impacts will occur. The Corps will coordinate with the appropriate Federal and State agencies in order to make a minimal impact determination and to ensure compliance with other federal laws and regulations. This category includes activities listed as Non-Reporting activities that require additional case-by-case review due to issues of Federal concern as listed below. PASPGP-5 may be verified for use for these projects only after a case-by-case opportunity for review and comment by all appropriate Federal and State resources agencies and a determination by the Corps that the activity will have no more than minimal adverse environmental impacts.

These activities correspond to activities authorized pursuant to Section 7 of the Dam Safety and Encroachments Act, 32 P.S. § 693.1, et seq., and rules and regulations promulgated there under in the Pennsylvania Bulletin (codified at 25 Pa. Code, Chapter 105). In order to qualify for PASPGP-5, these activities must receive the applicable PADEP Chapter 105 authorization and 401 Water Quality Certification, and in where applicable, Coastal Zone Management Consistency.

All Reporting Activities that require PADEP Individual Permits (except for Individual Permits numbered E-999X), Small Projects Permits, Dam Permits, or Environmental Assessment Approvals, will also be reviewed by the general public through publication in the Pennsylvania Bulletin, at least 30 days prior to the effective date of the permit, as required by 25 PA Code Chapter 105.21(a) of the Dam Safety and Encroachments Act, 32 P.S. § 693.1, et seq., and the rules and regulations promulgated there under the Pennsylvania Bulletin (codified at 25 PA Code, Chapter 105). PADEP will forward copies of all applications to the Corps of Engineers for review as a Reporting Activity.

1. **Activities Normally Reviewed as Non-Reporting:** Application for activities whereby the Corps, or other Federal, and/or State resource agencies, has requested a Corps review of the application. The request for the permit to be reported to the Corps must be made prior to PADEP's verification that a activity is authorized by PASPGP-5.
2. **Activities Exceeding Thresholds:** Activities where the single and complete project will:
 - a. Impact more than 0.50 acre of waters of the United States, including jurisdictional wetlands, including all attendant features, both temporary and permanent. The 0.50 acre impact measurement includes the total area of impact to all waters of the United States, including jurisdictional wetlands;
 - b. Permanently impact greater than 250 linear feet of streams, rivers, or other watercourses (not including wetlands) with the following exception: 500 linear feet for those activities that involve stream bank stabilization, rehabilitation, protection and/or enhancement. Note: No linear threshold applies for those activities verified under Non-Reporting Activity 1, above, (PADEP GP-1 for Fish and Habitat

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Enhancement Structures), and/or Non-Reporting Activities 20(b), above, (Activities Waived at 25 PA Code § 105.12(a)(16) – Waiver 16 – Restoration Activities: Other Restoration Activities);

- c. A single and complete project that proposes the permanent conversion of greater than 0.10 acre of forested and/or scrub-shrub wetland; or
 - d. For projects requiring compensatory mitigation, where the combined impacts of the project and the compensatory mitigation exceed the PASPGP-5 eligibility thresholds. The impacts associated with the compensatory mitigation may be authorized through use of NWP 27 by the Corps provided the proposed compensatory mitigation meets the terms and conditions of NWP 27.
3. **Utility line applications that meet the following criteria will be forwarded to the Corps as a Reporting Activity:**
- a. Single and complete utility line crossings in waters of the United States exceeding 500 linear feet (excluding overhead lines); or
 - b. Utility lines placed within a jurisdictional area (i.e., waters of the United States) whereby the utility line runs parallel to or along a stream bed that is within that jurisdictional area.
4. **Single and Complete Projects with previous Federal Authorization:**
- a. Applications proposing additional regulated activities for a previously issued single and complete project authorized by the Corps as a Department of the Army Individual Permit or an NWP;
 - b. Applications proposing additional regulated activities for a single and complete project previously verified by the Corps under PASPGP-4;
 - c. Applications proposing additional regulated activities for a previously issued single and complete project that did not require Corps review but would require being reported to the Corps under PASPGP-5; or
 - d. Applications to authorize additional regulated activities as part of a previously verified overall project as defined in PASPGP-4 can be verified by PADEP without being reported to the Corps provided the additional activities are a standalone single and complete project under PASPGP-5, and therefore, would not be considered a Reporting Activity. Applications for additional regulated activities listed as a Reporting Activity under PASPGP-5 will be sent to the Corps for review.

Note: if the additional work does not meet any of the above (4a through 4d), then PADEP will process the application as a Non-Reporting Activity.

5. Activities Which May Affect Threatened or Endangered Species and Their Critical Habitat Under Section 7 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*):

- a. Activities or projects proposed in waterways occupied by Federally-listed, proposed, or candidate mussels or fish as indicated below, or in waters of the United States within 300 feet of these listed waterways, unless the activities or projects have received documented clearance from USFWS, or a No Effect determination from the Corps.

WATERWAYS	COUNTY
Allegheny River (from Kinzua Dam to the Ohio River)	Armstrong, Clarion, Forest, Venango, and Warren
Conewago Creek	Warren
French Creek	Crawford, Erie, Mercer, and Venango
Conneaut Outlet	Crawford
Conneauttee Creek	Crawford
LeBoeuf Creek	Erie
Muddy Creek	Crawford
Shenago River (Pymatuning Reservoir to Big Bend)	Crawford and Mercer
Delaware River	Monroe, Pike, and Wayne
Cussewago Creek	Crawford
Little Mahoning Creek	Indiana
Little Shenango River	Mercer
Oil Creek	Venango
West Branch of French Creek	Erie
Woodcock Creek	Crawford

- b. Activities or projects with proposed impacts to Federally regulated wetlands, require bog turtle screening procedures in counties of documented bog turtle occurrence listed below, unless the activities or projects have received documented clearance from the USFWS, or a No Effect determination from the Corps.

Counties: Adams, Berks, Bucks, Carbon (only Aquashicola Creek Watershed), Chester, Cumberland, Dauphin (only Swatara Creek), Delaware, Franklin (only Antietam Creek), Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton, Schuylkill (only Swatara Creek Watershed), and York.

- c. Activities or projects, whereby a PNDI search identifies a potential conflict(s) for Federally-listed species, and/or avoidance measures unless:
 - i. The applicant has agreed in writing to implement and comply with all avoidance measures on the PNDI receipt or other USFWS correspondence;

- ii. The activities or projects have received documented clearance from the USFWS; or
 - iii. A “No Effect” determination from the Corps, for the project.
6. **Activities Authorized at 25 PA Code § 105.131(c) – Maintenance of Reservoirs of Jurisdictional Dams:** This work is associated with maintenance dredging of the reservoir’s design storage capacity including the removal of accumulated sediments. This corresponds to activities authorized pursuant to Section 7 of the Dam Safety and Encroachments Act, 32 P.S. § 693.1, et seq., and the rules and regulations promulgated there under in the Pennsylvania Bulletin (codified at 25 PA. Code, Chapter 105, § 105.131(c)).
7. **Activities Potentially Affecting Historic Properties:** Any activity which may adversely affect cultural resources, which are listed or eligible for listing in the National Register of Historic Places pursuant to the requirements of Section 106 of the National Historic Preservation Act (NHPA), and/or tribal Resources. This includes projects where the State Historic Preservation Office (SHPO) (i.e. Pennsylvania Historical and Museum Commission (PHMC)), or a Federally recognized Tribe have determined that archeological or other cultural resources are believed to exist within the permit area.
8. **Activities Potentially Affecting Wild or Scenic Rivers:** Any activity which occurs in a component of the National Wild and Scenic River System or in a river official designated by Congress as a “Study River” under Section 7 (a) Wild and Scenic Rivers Act (16 U.S.C. 1278 *et seq.*) for possible inclusion in the System are forwarded to the Corps as a Reporting Activity, unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect any Wild and Scenic River including study rivers. Additionally, identified designated and study rivers approved and included in the National Wild and Scenic River System subsequent to the publication of this document are to be considered in this sub-category. The designated Wild and Scenic Rivers are:
- a. While the Wild and Scenic portion of the Allegheny River is ineligible for the PASPGP-5, regulated activities in jurisdictional areas occurring landward of the OHWM of this river, are eligible for PASPGP-5 authorization. Allegheny River, from the Kinzua Dam mile 197.2, downstream approximately 7 miles to US Route 6 Bridge, at mile 190.7, in Warren, then from the Buckaloons Recreation Area in Allegheny National Forest at mile 181.7 downstream 47 miles to Alcorn Island just north of Oil City at river mile 133.7, and then continuing from the Franklin Wastewater Treatment Plant at mile 122.7, downstream 31 miles to the refinery at Elmenton mile 90.7;
 - b. Clarion River from mile 91.1 in the Borough of Ridgeway, Elk County, Pennsylvania, at the National Forest and Gamelands boundary to mile 39.4 at the normal pool elevation of Piney Dam;

- c. Upper Delaware Scenic and Recreational River, including the ¼ mile buffer from each bank, beginning at Hancock, New York, and continuing 73.4 river miles to Mill Rift, Pennsylvania;
 - d. Middle Delaware Scenic and Recreational River (from bank to bank) as it flows through the Delaware Water Gap National Recreation Area;
 - e. Lower Delaware River beginning 7 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 ¼ mile buffer from each bank; and
 - f. White Clay Creek watershed including all of its tributaries.
9. **Activities Related to Residential, Commercial and Institutional Developments:** Any activity for the purpose of constructing new or expanding an existing 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 VI.A.24).
10. **Activities Requiring an Environmental Impact Statement (EIS):** Applications containing an EIS, references to an EIS by a Federal agency, or references to the Corps being a cooperating agency on an EIS.
11. **Activities within Portions of the Delaware River:** Any activity located waterward of the OHWM in the Delaware River, upstream of the Morrisville-Trenton Railroad Bridge in Morrisville, Pennsylvania. For additional Category III activities within and adjacent to the Delaware River, see Part IV.C.4.a and 7.c-4. Any activity located waterward of the OHWM in the Delaware River, downstream of the Morrisville-Trenton Railroad Bridge, is ineligible for PASPGP-5.
12. **Activities across State Boundaries:** Activities where the regulated activity or area of indirect (secondary impact) is not wholly located within the Commonwealth of Pennsylvania, i.e. the regulated activity extends across State boundaries.
13. **Coal and Non-Coal Mining Activities:** Activities authorized pursuant to Chapter 105 for coal and non-coal mining permits issued by the PADEP District Mining Offices (Bureau of Mining and Reclamation), including activities authorized pursuant to PADEP Waiver 4 [25 Pa. Code § 105.12(a)(4)] and GP-101 and 102.

14. **Construction of Mitigation Banks and In Lieu Fee Sites:** Regulated activities associated with the construction of Mitigation Banks and In Lieu Fee sites developed to meet the requirements with the Corps and the EPA April 10, 2008 Compensatory Mitigation for Losses of Aquatic Resources: Final Rule.
15. **Activities Affecting Corps Civil Works Projects, Corps Property, or Projects Part of Corps Rehabilitation and Inspection Program:** All activities that may alter, use, build upon, attempt to possess, or that may harm or impair any existing or proposed Corps Civil Works project, any Corps-owned or managed property, or projects that are part of the Corps Rehabilitation and Inspection Program.
16. **Reasonably Related Applications:**
 - a. If PADEP receives multiple applications for the same Single and Complete project, and an application was previously determined to be a Reporting Activity, all subsequent applications for that Single and Complete project are also Reporting Activities.
 - b. 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.
 - c. 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 application received by PADEP is a Reporting Activity.

Part V – Procedures:

A. Application Submittal:

Applicants must submit the required PADEP permit application and completed PASPGP-5 Project Screening Form to the appropriate PADEP office. For Reporting Activities, where PADEP does not require a permit application, information on the proposed project shall be submitted directly to the appropriate Corps District. The information must identify all impacts to waters of the United States, including direct and indirect impacts, both temporary and permanent, for the single and complete project, including all attendant features. The delineation of wetland boundaries shall be accomplished in accordance with the 1987 Manual, including all applicable guidance and regional supplements.

B. PASPGP-5 Review Procedures:

1. **Non-Reporting Activities 1-28, and 30-31:** Permit applications are reviewed by PADEP in accordance with their review procedures and the PASPGP-5 procedures. PADEP will attach verification of the applicability of the PASPGP-5 to the State authorization. PADEP will also provide a copy of the application/registration package, the permit /acknowledgment cover letter and the state authorization (if applicable) will be provided to the applicable Corps District.
2. **Non-Reporting Activity 29:** All Non-Reporting Activities listed under number 30 a. through c. will be published in the Pennsylvania Bulletin, as a Public Notice. The Corps and resource agencies will review the Pennsylvania Bulletin to determine the need for Federal review, on a case-by-case basis. One copy of the permit application will be maintained in the PADEP Regional Office for resource agency review. If the Corps or a resource agency request that the proposed project be reviewed as a Reporting Activity, they must notify the appropriate PADEP Office, prior to the permit issuance. PADEP will forward the application to the appropriate agency. If the application is not forwarded as a Reporting Activity, PADEP will attach the PASPGP-5 verification along with the State authorization to the applicant, and provide a copy of the application, the State authorization, Record of Decision, and the permit cover letter to the applicable Corps District.
3. **Reporting Activities:** Application for projects identified as Reporting Activities will be forwarded to the Corps for review and, when applicable, coordinated with any other Federal and State resource agency to determine eligibility for verification under PASPGP-5. After completion of the Corps review, the Corps will:
 - a. Notify PADEP that the activity is eligible for verification under PASPGP-5, without special conditions, and they should attach PASPGP-5 verification to their authorization when issuing;

- b. Send the PASPGP-5 verification and any Special Conditions if applicable directly to the applicant and copy PADEP if the project is eligible for verification under PASPGP-5;
- c. Notify PADEP and the applicant that the project is not eligible for verification under PASPGP-5 and the work requires another type of Federal authorization; or
- d. Inform the applicant directly that a Section 10 and/or 404 authorization is not required for the proposed work. In such cases, the Corps will copy PADEP with such notification to the applicant.

C. Agency Objection:

Prior to the Corps issuing a project specific PASPGP-5 verification, any Federal or State resource agency may notify the appropriate Corps District of their objection to authorization by the PASPGP-5. The Corps will attempt to resolve the objection and may issue a PASPGP-5 verification with or without project specific special conditions, or may require an alternative form of Federal authorization.

D. Other Types of Corps Permit Review:

If a project is ineligible under the terms and conditions of the PASPGP-5, the Corps will notify PADEP and the applicant that the project will require further evaluation under the alternative permit procedures. All information submitted by the applicant for the PASPGP-5 review will be used to initiate the review by the Corps for the alternative permit review. Additional information may be requested to complete the review. During the alternative permit review, the Corps may determine that the impacts have been reduced such that the activity imposes only minimal adverse environmental effects and the proposed project meets the terms and conditions of the PASPGP-5 applicability for the project.

E. Corps Discretionary Authority:

Notwithstanding, compliance with the terms and conditions of the PASPGP-5, the Corps retains discretionary authority to require a Corps Individual Permit review for any project based on concerns for the aquatic environment or for any other factor of the public interest. This authority is invoked, on a case-by-case basis, whenever the Corps determines that the potential consequences of the proposal warrant individual review, based on the concerns stated above. This authority may be invoked for projects with cumulative environmental impacts that are more than minimal or if there is a special resource or concern associated with a particular project, which is not addressed with stipulations of the PASPGP-5, and warrants greater review.

Part VI – General Conditions and Processing Requirements:

All activities verified under PASPGP-5 must be in compliance with the below conditions. Failure to comply with all conditions of the verification, including any special conditions, will constitute a permit violation and may be subject to criminal, civil, or administrative penalties, and/or restoration:

A. General Conditions:

1. **Permit Conditions:** The permittee shall comply with all terms and conditions set forth in the PADEP authorization, including all conditions of the Section 401 Water Quality Certification, and any subsequent amendments or modifications to such authorizations. The permittee shall conduct all work and activities in strict compliance with all approved maps, plans, profiles, and specifications used by PADEP and/or the Corps in issuing their authorization/verification.
2. **Aquatic Life Movements:** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be appropriately depressed to maintain aquatic life movement and low flow conditions.
3. **Threatened and Endangered Species:** By signing the PNDI receipt, the permittee has agreed to comply with all avoidance measures identified by the PNDI receipt. As such, those avoidance measures associated with Federally-listed threatened or endangered species are a condition of the PASPGP-5 verification, unless modified by the Corps.

If an activity is verified under the PASPGP-5, and a Federally-listed threatened or endangered species, or proposed species, is subsequently found to be present, all work must cease, and the Corps and USFWS (or NMFS) must be notified. The PASPGP-5 verification is suspended and will not be re-issued until consultation pursuant to Section 7 of the ESA is concluded and adverse effects to Federally-listed threatened, endangered and proposed species are avoided.

Furthermore, persons have an independent responsibility under Section 9 of the ESA to not engage in any activity that could result in the "take" of a Federally-listed species.

4. **Spawning Areas:** The permittee shall comply with all time-of-year-restrictions associated with spawning areas as set forth by the PFBC or other designated agency. Discharges or structures in spawning or nursery areas shall not occur during spawning seasons, unless written approval is obtained by the PFBC or other designated agency. In addition, work in areas used for other time sensitive life span activities of fish and wildlife (such as hibernation or migration) may necessitate the use of seasonal restrictions for avoidance of adverse impacts to vulnerable species. Impacts to these areas shall be

avoided or minimized to the maximum extent practicable during all other times of the year.

5. **Migratory Bird Breeding Areas:** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
6. **Shellfish Production:** No discharge of dredged and/or fill material and/or the placement of structures may occur in areas of concentrated shellfish production, unless the discharge is directly related to an authorized shellfish harvesting activity.
7. **Adverse Effects From Impoundment:** If the activity, including the discharge of dredged and/or fill material or the placement of a structure, create an impoundment of water, the adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow, including impacts to wetlands, shall be minimized to the maximum extent practicable.
8. **Obstruction of High Flows:** To the maximum extent practicable, the activity must be designed to maintain pre-construction downstream flow conditions (i.e., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters), and the structure or discharge of dredged and/or fill material shall be designed to withstand expected high flows.
9. **Erosion and Sediment Controls:** During construction, appropriate erosion and sedimentation controls must be used and maintained in effective operating condition in accordance with State regulations. All disturbed soil and other fill material must be permanently stabilized.
10. **Suitable Material:** No activities, including discharges of dredged and/or fill material or the placement of structures, may consist of unsuitable material (i.e., asphalt, trash, debris, car bodies, etc.). No material discharged shall contain toxic pollutants in amounts that would violate the effluent limitation standards of § 307 of the CWA.
11. **Temporary Fill:** Temporary fill in waters and/or wetlands verified by the PASPGP-5 (i.e., access roads and cofferdams) shall be properly constructed and stabilized during use to prevent erosion and accretion. Temporary fill in wetlands shall be placed on geotextile fabric laid on existing wetland grade, unless such requirement is specifically waived by the Corps. Whenever possible, rubber or wooden mats should be used for equipment access through wetlands to the project area. Temporary fills shall be removed, in their entirety, to an upland site, and suitably contained to prevent erosion and transport to a waterway or wetland. Temporary fill areas shall be restored to their preconstruction contours, elevations, and hydrology and revegetated with a wetland seed mix that contains non-invasive, native species, as soon as practicable.
12. **Equipment Working in Wetlands:** Measure must be taken to minimize soil disturbance when heavy equipment is used in wetlands. These measures include, but are not limited

to, avoiding the use of such equipment, use of timber mats or geotextile fabric, and use of low pressure tire vehicles.

13. **Installation and Maintenance:** Any structure or fill verified shall be properly installed and maintained to ensure public safety.
14. **PASPGP-5 Authorization:**
 - a. The PASPGP-5 expires June 30, 2021, unless suspended or revoked.
 - b. PASPGP-5 verifications expire June 30, 2021, unless the PASPGP-5 permit is suspended, revoked, or the PADEP authorization expires, whichever date occurs sooner. Activities authorized under the PASPGP-5 that have commenced construction or are under contract to commence construction will remain authorized provided the activity is completed within 12 month of the date of the PASPGP-5's expiration, modification, or revocation; or until the expiration date of the project specific verification, whichever is sooner.
15. **One-Time Use:** A PASPGP-5 verification is valid to construct the project, or perform the activity, one time only, except for PASPGP-5 verification specifically issued for reoccurring maintenance activities.
16. **Water Supply Intakes:** No activity, including discharges of dredged and/or fill material and/or placement of structures, may occur in the proximity of a public water supply intake and adversely impact the public water supply.
17. **Cultural Resources:** For all activities verified under a PASPGP-5, upon the discovery of any previously unknown historic properties (historic or archeological), all work must cease and the permittee must notify the SHPO and the Corps of Engineers. The Corps will conduct tribal coordination in accordance with each District's Standard Operating Procedures. The PASPGP-5 verification is not valid until it is determined, through the Section 106 consultation process, whether the activity will have an effect on the historic property. The PASPGP-5 may be re-verified and special conditions added if necessary, after an effects determination on historic properties and/or tribal resource is made. The PASPGP-5 verification may be modified and/or rescinded for the specific activity if an adverse affect on the historic property cannot be avoided or mitigated.
18. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting grounds.
19. **Corps Civil Works Projects:** The PASPGP-5 does not authorize any work which will interfere with an existing or proposed Corps Civil Works project (i.e., flood control projects, dams, reservoirs, and navigation projects), unless specifically waived by the Corps in writing.

20. **Navigation:** No activity verified under PASPGP-5 may cause more than minimal adverse affect on navigation. No attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized herein. In addition, activities that require temporary causeways that prohibit continued navigational use of a waterway (i.e., temporary causeways extending greater than $\frac{3}{4}$ the width across the waterway) shall be removed in their entirety upon completion of their use. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulation or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. The permittee understands and agrees that, if further operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
21. **Inspections:** The permittee shall allow a District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary in order to ensure that the work is being performed in accordance with all the terms and conditions of the PASPGP-5. The District Engineer may also require post-construction engineering drawings (as-built plans) for completed work.
22. **PASPGP-5 Permit Compliance Self Certification Form:** A Self Certification Form, will be forwarded to each permittee with a PASPGP-5 verification. Every permittee, who receives a written PASPGP-5 verification, shall submit a signed Self Certification Form upon completion of the verified work and required mitigation, to the appropriate Corps District.
23. **Monitoring of Temporary Wetland Impacts:** For all temporary wetland impacts greater than 0.10 acre, a monitoring report will be submitted to the Corps, using the standard monitoring form available at: <appropriate web address will be added here>, unless this requirement is specifically waived by the Corps in writing, or such monitoring is superseded by more stringent monitoring required by the Corps as a Special Condition of a PASPGP-5 verification. One month after the verified work is completed, and again at the end of the first full growing season (no later than October 31) after the site has been restored, the permittee shall inspect the subject areas. Inspection findings shall be summarized on the form and include:
- a. Photographs of all the verified temporary impact locations; and
 - b. A brief summary of site conditions that includes: a) a statement on whether all fill has been removed; and b) a description of the vegetative growth (condition, type, density, etc.) in the wetland area at the impact location.

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These completed reports shall be submitted within two weeks to the appropriate Corps District. The permittee shall ensure that any fill remaining in areas verified for temporary impact is removed, and that measures are taken to address all unstable or eroding areas.

24. **Permit Modifications:** Any proposed modification of a verified single and complete project that results in a change in the verified impact to, or use of waters of the United States, including jurisdictional wetlands, must be approved by PADEP. Corps approval is also required if the single and complete project had been previously reviewed by the Corps, or if the proposed modification is a reporting activity under PASPGP-5. Project modifications that cause a single and complete project to exceed 1.0 acre of waters of the United States, including wetlands or greater than 1,000 linear feet of stream loss will not be eligible for PASPGP-5 and will be forwarded to the Corps for review.
25. **Recorded Conservation Instruments:** As per Part IV.A.26 and part IV.B4 and Part IV.C.8 of this permit, proposed Draft Conservation Instruments may be submitted by the applicant as part of the permit application package for review and approval. When such proposed Conservation Instruments are submitted by the applicant, proof of the recorded deed restriction, conservation easement, or deed restricted open space area shall be forwarded to the appropriate Corps District and appropriate PADEP offices, prior to the initiation of any permitted work, unless specifically waived by the Corps in writing. Conservation Instrument templates can be found at: <insert web link to NAB webpage>
26. **Property Rights:** This PASPGP-5 does not convey any property rights, either in real estate or material, or any exclusive privileges; nor does it authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.
27. **Navigable Waters of the United States (Section 10 Waters):**
 - a. The PASPGP-5 may be used to authorize work in the following navigable waters of the United States:
 - i. Codorus Creek – from the confluence with the Susquehanna River 11.4 miles upstream to the Richland Avenue Bridge in York, Pennsylvania;
 - ii. Main Stem Susquehanna River – from the confluence with the Chesapeake Bay upstream to Athens, Pennsylvania (approximately 4 miles south from the New York State line);
 - iii. West Branch of the Susquehanna River – from the confluence with the main stem Susquehanna River upstream to the dam at Lock Haven, Pennsylvania;
 - iv. Chester Creek – from the confluence with the Delaware River 2 miles upstream;

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- v. Crum Creek – from the confluence with the Delaware River 1 mile upstream to the upstream side of the Dam at Eddystone;
 - vi. Darby Creek – from the confluence with the Delaware River 5 miles upstream to the upstream side of the 84th Street Bridge in Philadelphia, Pennsylvania;
 - vii. Delaware River – from Morrisville-Trenton Railroad Bridge in Morrisville, Pennsylvania, including the West Branch of the Delaware River, upstream to the Pennsylvania/New York border at the 42nd parallel;
 - viii. Lehigh River – from the confluence with the Delaware River 72 miles upstream to the downstream side of the PA Route 940 Bridge;
 - ix. Neshaminy Creek – the confluence with the Delaware River, including Neshaminy State Park Harbor Project at the mouth of Neshaminy Creek, 4 miles upstream to the downstream side of the Newportville Bridge;
 - x. Pennypack Creek – from the confluence with the Delaware River 2 miles upstream to the downstream side of the Frankford Avenue Bridge in Philadelphia, Pennsylvania;
 - xi. Ridley Creek – from the confluence with the Delaware River 1 mile upstream to the upstream side of the Baltimore and Ohio Railroad Bridge in Chester, Pennsylvania;
 - xii. Schuylkill River – from the Fairmont Dam, 104 miles upstream to Port Carbon, Pennsylvania; and
 - xiii. Schuylkill Navigation Channel (Manayunk Canal) – along the Schuylkill River for 2 miles from the Flat Rock Dam to Lock Street in the Manayunk Section of Philadelphia, Pennsylvania.
- b. In addition to the other general conditions, the following conditions are applicable for navigable waters of the United States eligible for PASPGP-5.
- i. For aerial transmission lines, the following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by the existing fixed bridges, or the clearances which would be required by the United States Coast Guard (USCG) for new fixed bridges, in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlines in the National Electric Safety Code:

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Nominal System Voltage (kV)	Minimum Additional Clearance (ft.) Above Clearance Required for Bridges
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750-765	45

- a. Clearances for communication lines, stream gauging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.

- b. Corps of Engineers regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both regulation and ER 1110-2-4401 apply, the greater minimum clearance is required.
 - ii. Encasement: The top of the cable, encasement, or pipeline shall be located a minimum of three feet below the existing bottom elevation of the streambed and shall be backfilled with suitable heavy material to the preconstruction bottom elevation. Where the cable, encasement, or pipeline is placed in rock, a minimum depth of one foot from the lowest point in the natural contour of the streambed shall be maintained. When crossing a maintained navigation channel, the requirements are a minimum of eight feet between the top of the cable, encasement, or pipeline and the authorized depth of the navigation channel. For maintained navigational channels, where the utility line is placed in rock, a minimum depth of two feet from the authorized depth of the navigation channel shall be maintained.

 - iii. As-Built Drawings: Within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline across a navigable water of the United States (i.e., Section 10 waters), where the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7317, 1315East-West Highway, Silver Spring, Maryland, 20910 with professional, certified as-built drawings, to scale, with control (i.e., latitude/longitude, state plane coordinates), depicting the alignment and minimum clearance of the aerial wires above the MHWL at the time of survey or depicting the elevations and alignment of the buried cable or pipeline across the navigable waterway.

 - iv. Aids to Navigation: The permittee must prepare and provide for USCG approval, a Private Aids to Navigation Application (CG-2554). The form can

be found at: http://www.uscg.mil/forms/cg/CG_2554.pdf . Within 30 days of the date of receipt of the USCG approval, the permittee must provide a copy to the applicable Corps District.

28. **PADEP Waiver:** If the Corps determines a specific activity which is eligible for a PADEP Waiver (No project specific review by either PADEP or the Corps) has a significant adverse impact on life, property or important aquatic resources, the Corps may require the owner to modify the activity to eliminate the adverse condition or to obtain an Individual Permit.
29. **Corps Water Releases:** For projects located downstream of a Corps dam, it is recommended that the permittee contact the appropriate Corps of Engineers, Area Engineer Office, to obtain information on potential water releases and to provide contact information for notification of unscheduled water releases. It is recommended that no in-water work be performed during periods of high water flow velocities. Any work performed at the project site is at the permittee's own risk.
30. **State Authorization:** The activity must receive State authorization. For the purpose of this requirement, any one of the following would be considered as a State authorization:
 - a. A PADEP Chapter 105 Water Obstruction and Encroachment Permit, including PADEP approved Environmental Assessment pursuant to 25 Pa. Code 105.15; or
 - b. A PADEP GP issued pursuant to 25 Pa. Code 105.441-105.449; or
 - c. A PADEP approved Environmental Assessment for activities not otherwise requiring a PADEP permit pursuant to 25 Pa. Code 105.12; or
 - d. A CWA Section 401 Water Quality Certification for activities which qualify for waiver of PADEP permit requirement per 25 Pa. Code 105.12; or
 - e. A PADEP Dam Permit, including maintenance or repairs of existing authorized dams, including maintenance dredging; or
 - f. A PADEP Emergency Permit issued pursuant to 25 Pa. Code 105.64; or
 - g. A PADEP permit for the construction of a bridge or culvert (including bridges and culverts authorized by PADEP prior to implementations of the PASPGP-1 in March 1995), which allows for maintenance activities of bridges and culvert; or
 - h. A PADEP Chapter 105 Dam Safety and Encroachment Enforcement Action; or A project specific CWA Section 401 Water Quality Certification where no other State authorization, as listed above, is required.
31. **Other Authorizations:** Additional Federal, State, and/or local authorizations or approvals may be required and where applicable must be secured by the applicant, prior to

initiating any discharge of dredged and/or fill material, and/or the placement of structures into waters of the United States, including jurisdictional wetlands. These approvals include, but are not limited to:

- a. A 401 Water Quality Certification issued by PADEP pursuant to Section 401 of the CWA;
- b. A Consistency Determination issued by PADEP pursuant to Section 307 of the Federal Coastal Zone Management Act for activities located within the designated Coastal Zone Management Area; and
- c. Fills within the 100-year floodplains. This activity must comply with applicable FEMA approved State or local floodplain management requirements.

32. Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to permitted project or users, thereof, as a result of other permitted or unpermitted activities or from natural causes;
- b. Damages to the permitted project or uses, thereof, as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
- d. Design or construction deficiencies associated with the permitted work; and
- e. Damage claims associated with any future modification, suspension, or revocation of the PASPGP-5.

33. False and Incomplete Information: If any of the information and/or plans is found to be in error, falsified, and/or incomplete, the PASPGP-5 verification may be subject to modification, suspension, or revocation.

B. Processing Requirements for Corps and PADEP:

1. **Waters of the United States Including Jurisdictional Wetlands:** Applicants are responsible for ensuring all boundaries of waters and/or wetlands are accurately shown on the project plans. The delineation of wetland boundaries shall be accomplished in accordance with the 1987 Manual, including all applicable guidance and regional supplements.
2. **Single and Complete Project:** Only one PASPGP-5 may be issued for a single and complete project. Any additional regulated work proposed as part of the single and complete project after issuance of a PASPGP-5 verification shall be processed as a

modification of the original verification. If combined impacts exceed the eligibility threshold of the PASPGP-5, for the single and complete project, the original verification is invalid. In such cases, PADEP will forward the application to the Corps for review.

3. **Corps Special Conditions:** The Corps may impose other special conditions on a project verified pursuant to the PASPGP-5, where it is determined necessary to minimize adverse environmental effects or based on any other factor of public interest.
4. **Avoidance, Minimization, and Compensatory Mitigation:** Discharges of dredged and/or fill material and/or the placement of structures into waters of the United States, including jurisdictional wetlands must be avoided and minimized to the maximum extent practicable. Applicants must avoid and minimize impacts to the aquatic environment, in accordance with the PADEP requirements under Title 25, PA. Code § Chapter 105.1 [definition of *Mitigation*, subsection (i)(A)], 105.13(e)(1)(viii), 105.14(b)(7), and 105.18(a)(3). Once avoidance and the minimization of unavoidable adverse impacts have been demonstrated to the satisfaction of the reviewing office, the Corps or the PADEP, compensatory mitigation may be used to offset unavoidable adverse impacts. All mitigation must be accomplished in accordance with the Corps and the EPA April 10, 2008 Compensatory Mitigation for Losses of Aquatic Resources: Final Rule.
5. **Activities Potentially Obstructing Fish Passage:** Any activity which could potentially obstruct the passage of diadromous fish, including but not limited to, the placement of dams, weirs, or permanent fill, stream channelization, stream relocation or the placement of pilings or structural supports, which have the same effect of discharge of fill material, in the Juniata River main stem, including the Raystown branch to Raystown Lake and Frankstown Branch to Hollidaysburg; the Susquehanna River main stem, to the New York State line; the West branch of the Susquehanna River to Lock Haven; the Delaware River; the Schuylkill River; or the Lehigh River, must be coordinated with the USFWS and/or NMFS, and the PFBC to ensure minimization of impacts upon passage and migration of diadromous fish.
6. **Threatened and Endangered Species:** A PNDI review is required for all activities authorized under PASPGP-5.

No activity is authorized under the PASPGP-5 which is likely to adversely affect a Federally-listed threatened or endangered species or a species proposed for such designation, as identified under the ESA, or which will destroy or adversely modify the critical habitat of such species, unless adverse effects on Federally-listed species and the “take” of such species has been evaluated and authorized via formal Section 7 consultation and/or Section 10 permit under the ESA.

If a proposed activity may affect a Federally-listed threatened, endangered, or proposed species, or its critical habitat, the Corps must initiate a consultation with the USFWS and/or NMFS in accordance with the ESA prior to verification of the activity under the PASPGP-5. If through the formal and/or informal consultation process (50 CFR part 402.13), it is

determined that adverse effects to Federally-listed threatened or endangered species and its critical habitat will be avoided, the activity is eligible for Federal authorization under the PASPGP-5. If, however, adverse effects cannot be avoided, the activity is not eligible for Federal authorization under the PASPGP-5, unless adverse effects on Federally-listed species and the “take” of such species has been evaluated and authorized via formal Section 7 consultation and/or Section 10 permit under the ESA.

7. **Cultural Resources:** Any activity authorized by the PASPGP-5 shall comply with Section 106 of the National Historic Preservation Act (NHPA) and any other federal cultural resources laws as applicable. No activity, which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized under the PASPGP-5, until the Corps has complied with the provisions of 33 CFR Part 325, Appendix C. Historic properties include historic and archeological sites. The applicant must provide evidence that the PHMC has been notified, using the PADEP Cultural Resources Notification Form or the PHMC Project Review Form for all PADEP Individual permits, unless the permittee has a delegated Section 106 programmatic agreement with PHMC. Proof of notification may be the form of a copy of the response letter from PHMC or a copy of the certified mail receipt resulting from sending the Cultural Resources Notifications Form. For permittees with a delegated Section 106 programmatic agreement, proof of compliance with the agreement shall be included with the application. The Corps may require applicants to perform a survey(s) of historic and archeological resources in the permit area. The Corps will conclude all tribal coordination in accordance with each District’s Standard Operating Procedures, prior to verifying an activity is authorized by PASPGP-5.
8. **Permit Transfer:** A request to transfer PASPGP-5 authorization will be forwarded to the appropriate Corps District, using the PADEP Application “For Transfer of Permit and Submerged Lands License Agreement” (Form No. 3930-PM-WM0016).
9. **Commencement of Regulated Work:** For activities that require submittal of an application, the applicant may not begin work until:
 - a. PADEP or the Corps provides written verification to the applicant that the activity is authorized by PASPGP-5;
 - b. The Corps issues another form of Section 10 and/or 404 authorization for the work; or
 - c. The applicant is advised by the Corps that authorization under Section 10 and/or 404 is not required for the proposed work.

Part VII – Enforcement and Compliance:

Any activity performed in waters of the United States, including jurisdictional wetlands, that is not in full compliance with all terms and conditions of the PASPGP-5 constitutes a violation of the terms and conditions of the permit and constitutes either unauthorized or non-compliance work. The performance of such work may be subject to an enforcement action by the Corps and/or the EPA. Violations of a PADEP authorization, including permit conditions are also violations of the PASPGP-5. PASPGP-5 does not delegate Federal Section 10/404 enforcement authority. When a violation of the terms and conditions of the permit occurs in a Federally regulated wetland or other waters, it is subject to one or more of the following responses by the Corps and/or the EPA:

- A.** A Cease and Desist Order and/or an administrative compliance order requiring remedial action.
- B.** Initiation and assessment of Class I administrative penalty orders pursuant to Section 309(g) of the CWA.
- C.** Initiation and assessment of a Class II administrative penalty for a continuing violation.
- D.** Referral of the case to the U.S. Attorney, or the United States Department of Justice with a recommendation for civil or criminal action.
- E.** If the Corps District determines that an after-the-fact permit application is appropriate, it will be evaluated following the appropriate permit processing procedures. The PASPGP-5 may not be issued or modified for authorization of after-the-fact work, nor does it apply to any existing or proposed activity in Corps jurisdiction associated with an on-going Corps enforcement action, until such time as the action is coordinated between the Corps and PADEP; and the Corps agrees with the processing of the after-the-fact permit application.

Part VIII – Miscellaneous Provisions:

A. Duration of Authorization:

1. The PASPGP-5 is authorized for a period of five years. The PASPGP-5 expires and becomes null and void on June 30, 2021, unless suspended and/or revoked earlier by the Corps; or
2. Activities authorized under the PASPGP-5 that have commenced construction or are under contract to commence construction, will remain authorized provided the activity is completed within 12 months of the date of the PASPGP-5's expiration suspension, or revocation; whichever is sooner.
3. Grandfathered Activities - see Part IV(A)(31) - for activities previously authorized by PASPGP-4.

B. Changes to State Statues, Regulations or PADEP Permits:

Proposed changes to all pertinent State programs, regulation or State laws, affecting the implementation of the PASPGP-5, will be reviewed by the Corps of Engineers. In the event that the PADEP regulations are revised in such a manner as to substantively modify the current review mechanisms and/or coordination procedures as defined in this document, including the elimination of the current PADEP equivalent 404(b)(1) review, the PASPGP-5 will be reassessed to determine its legality. A determination will be made through a public interest review, including consultation with appropriate resource agencies, to determine whether or not to continue use of the PASPGP-5 in light of the modified State regulation, State law, or programmatic changes.

C. Changes to the Federal Program:

A Corps Public Notice will be issued to solicit comments before making any substantive changes to the PASPGP-5. A determination will be made through a public interest review, including consultation with appropriate resource agencies, to determine whether or not to continue use of the PASPGP-5 in light of the modified Federal regulation, guidance or programmatic changes.

D. Reporting and Evaluation:

1. The Baltimore District, in consultation with the other Corps Districts in Pennsylvania and the PASPGP-5 Interagency Monitoring Committee, shall review operational issues related to successful implementation of the PASPGP-5 and shall coordinate and provide modifications to the operational procedures and/or the PASPGP-5 as appropriate.
2. PADEP will provide the following data and statistics on an annual basis to the Corps:

Pennsylvania State Programmatic General Permit-5

- a. The number of Individual Chapter 105 Water Obstruction and Encroachment Permits, Dam Safety Permits, Environmental Assessment Approvals for Waived Activities (11 and 16) and Water Quality issued by each PADEP Office and/or Delegated County Conservation Districts;
 - b. The processing time associated with each permit type;
 - c. The number, type, and scope of permitted wetland and stream impacts, including both temporary and permanent impacts;
 - d. The number, type, scope, acreage and/or linear footage of, and location of wetland replacement or other mitigation areas;
 - e. Pertinent data concerning operation of the Pennsylvania Wetlands Replacement Project or other in-lieu fee programs, if appropriate; and
 - f. Total number of Chapter 105 General Permit types processed by county.
3. Prior to expiration of the PASPGP-5 the Corps, based on Corps and PADEP data and recommendations from the resource agencies, will evaluate the PASPGP-5, including its terms and conditions, and will determine if:
 - a. The PASPGP-5 has met its intended goal of reducing duplication;
 - b. Verifications comply with applicable laws and regulations; and
 - c. Only projects with minimal adverse environmental effects were verified.

Based on this review and evaluation, the Corps will further determine whether reissuance, modification, suspension, or revocation of the PASPGP is appropriate. These determinations will be in writing, will include the basis for each determination, and will be available to the public.

E. Modification, Suspension, or Revocation:

1. The Corps may suspend, modify, or revoke the PASPGP-5 permit in its entirety or for any specific geographic area, class of activities, or class of waters within the affected District in accordance with 33 CFR 325.7. In such a case the Corps will notify PADEP and issue a public notice advising the general public. The notice will state the concerns regarding the environment or other relevant factors of the public interest. Before the Corps modifies, suspends, or revokes such PASPGP-5 authorizations, the Corps will provide, if appropriate, a grandfathering period for those who have commenced work or are under contract to commence work in reliance on a PASPGP-5 verification. Affected parties will be notified of the modification, suspension or revocation, including the effective date.

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2. The Corps may modify the PASPGP-5 as necessary to ensure compliance with other federal laws and regulations. The Corps will notify the PADEP and issue a public notice advising the general public of any such modifications.
3. The Corps may modify or rescind a previously issued project specific verification, if determined that the original verification was issued based on false, incomplete and/or inaccurate information; or other information becomes available whereby such action is necessary to ensure compliance with other federal laws and regulations.
4. Substantive changes to the Pennsylvania Chapter 105 program may require immediate suspension and revocation of the PASPGP-5 in accordance with 33 CFR 325.7, or formal modification subject to public review and input.

Part IX. Corps District Contact Information:

Pittsburgh District

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

William S. Moorhead Federal Building
1000 Liberty Avenue
Regulatory Branch
Pittsburgh, Pennsylvania 15222-4186
412-395-7155

Baltimore District

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

U.S. Army Corps of Engineers
State College Field Office
1631 South Atherton Street
State College, Pennsylvania 16801
814-235-0570

Philadelphia District

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

Wanamaker Building
100 Penn Square East
Regulatory Branch
Philadelphia, Pennsylvania 19107-3390
215-656-6728

Part X. District Engineer Signatures:

By Authority of the Secretary of the Army:

Edward P. Chamberlayne
Colonel, Corps of Engineers
District Engineer, Baltimore

Michael A. Bliss
Lieutenant Colonel, Corps of Engineers
District Engineer, Philadelphia

Bernard R. Lindstrom
Colonel, Corps of Engineers
District Engineer, Pittsburgh