



Public Notice

DATE : June 11, 2001

In Reply Refer to CE NAB-OP-RPA

Special Public Notice #01-041

**US Army Corps of
Engineers
Philadelphia District
Pittsburgh District
Baltimore District**

Subject: Re-issuance with Modifications of the Pennsylvania State Programmatic General Permit (PASPGP-1), as the PASPGP-2 for a Five-Year Period

This Public Notice is issued jointly by the Philadelphia, Pittsburgh, and Baltimore Districts of the U.S. Army Corps of Engineers (Corps). This Public Notice may be viewed on the Baltimore District web site: <http://www.nab.usace.army.mil/Regulatory/PublicNotice/spnotices.htm>.

On March 1, 1995 the District Engineers for Baltimore, Philadelphia and Pittsburgh Districts, issued the Pennsylvania State Programmatic General Permit (PASPGP-1) for a five year period. The PASPGP-1 was reissued on March 1, 2000, and expires on June 30, 2001.

On November 21, 2000 the District Engineer issued Special Public Notice #01-006 requesting comments on whether to: (1) reissue with the modifications as listed (PASPGP-2), (2) reissue without modifications for a five-year period, or (3) not reissue the PASPGP-1. Following a thorough review of all comments received in response to the special public notice and the public hearing held on May 8, 2000, the Corps has decided to reissue the PASPGP-1 with modifications. This new General Permit is entitled the PAPS GP-2.

The purpose of this Public Notice is to inform the public that the PASPGP-2 has been issued by Colonel Charles J. Fiala, Jr., Lieutenant Colonel Timothy Brown, and Colonel David R. Ridenour, District Engineers for Baltimore, Philadelphia and Pittsburgh Districts of the U.S. Army Corps of Engineers. The PASPGP-2 will be implemented and in full effect within the Commonwealth of Pennsylvania on July 1, 2001. A copy of the PASPGP-2 can be viewed on the Baltimore District web site: <http://www.nab.usace.army.mil/Regulatory/Permit/types.htm>. Interested persons who do not have access to the Internet, but who would like to review the PASPGP-2, may request a copy of this document by calling Ms. Fraun Chambers at (410) 962-5673.

The following modifications have been incorporated into the PASPGP-2:

- 1. The upper threshold of impacts to waters of the United States, including jurisdictional wetlands is reduced from five acres to one acre** for a single and complete project to ensure no more than minimal impacts to the aquatic environment. Under the PASPGP-1, permit applicants have a right to apply for, and expect that any project under five acres of impact, will qualify for and be authorized by the PASPGP-1. Based on our experience and our evaluation of the program, we have found that when impacts are proposed for over one acre, an Individual Permit evaluation is often appropriate. This change in the upper threshold will not adversely affect the overall processing time, or service to the public, since the vast majority of applications in Pennsylvania propose to impact less than one acre of waters of the United States including jurisdictional wetlands. In practice, applications for impacts of more than one acre under the PASPGP-1 have proven to require a process that involves analysis comparable to the Corps' Individual Permits (IPs), providing no additional benefit to the

applicants. With this change, all projects impacting more than one acre of waters of the United States including jurisdictional wetlands will be evaluated by the Corps as an Individual Permit.

2. Proposed activities within a component of a **National Wild and Scenic River System**, or within a river officially designated by Congress as a “study river” for possible inclusion in the system, are now eligible for authorization under the PASPGP-2 (except for excluded portions of Section 10 waters), using reporting procedures. The PASPGP-2 is conditioned to require that the **applicant** coordinate with the Federal agency i.e., the National Park Service (NPS) or United States Forest Service (USFS) having direct management responsibility for the river, to obtain a written determination that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. This determination must be included with the permit application. The list of National Wild and Scenic Rivers has been updated in the PASPGP-2.

3. Regulated activities eligible for multiple PADEP authorizations, such as: PADEP General Permits, Waivers, and Letters of Authorization, are “Reporting” and must receive separate written authorization from the Corps if the total *cumulative* impact of a proposed single and complete project, **exceeds 250 linear feet** of streams, rivers, or other jurisdictional watercourses, including open water areas.

4. Regulated activities eligible for multiple PADEP authorizations such as PADEP General Permits, Waivers and Letters of Authorization are not eligible for PASPGP-2 if the total *cumulative* impact of a single and complete project, **exceeds one acre** of waters of the United States, including jurisdictional wetlands. Applicant must receive separate Federal authorization from the Corps.

5. Work in wetlands, which qualifies for **PADEP General Permit 15** (Private Residential Construction in Wetlands), is not eligible for Federal authorization using PASPGP-2. Such activities will, however, be eligible for Federal authorization using other Corps NWP or an IP.

6. Work associated with maintenance of **bridges and culverts** previously authorized by PADEP is authorized under PASPGP-2 without the need to report the project to the Corps.

7. **The Pennsylvania Wetland Replacement Project (Fund)** is included, and may be used to compensate for impacts approved under the authority of PASPGP-2. After the Corps or PADEP has determined that compensatory mitigation is not practicable, the applicant, on a case by case basis, may be given the opportunity to consider using other forms of acceptable mitigation, including the Pennsylvania Wetland Replacement Project (Fund). The use of the Fund for PASPGP-2 projects will follow the procedures outlined in the PASPGP-2 SOP document.

8. Federal or State Resource Agencies that request the Corps to conduct a formal Federal review of a Category II project specific activity must make the request prior to the expiration of the comment period in the Pennsylvania Bulletin.

9. Several new conditions of the PASPGP-2 authorizations are as follows:

a. That, as a condition of the PASPGP-2, permittees must comply with any conditions of their PADEP authorization, including any conditions of a project-specific Section 401 Water Quality Certification.

b. That, as a condition of the PASPGP-2, permittees must comply with all approved; maps, plans, profiles, or specifications that formed the basis for the PASPGP-2 authorization.

c. For any activity authorized under PASPGP-2, for the purpose of constructing a residential, commercial or industrial subdivision, where wetlands, in addition to those being directly impacted by the proposed activity are located within the subdivision property boundaries; and those wetlands are included as part of platted lot(s) proposed for resale, the following declaration shall be added to the deed descriptions for all such lots containing wetlands: *“This lot contains Federally regulated wetlands. Any disturbance of these wetlands including the discharge of dredged or fill material into these wetlands may require a Department of the Army permit pursuant to Section 404 of the Clean Water Act. Additional information may be obtained by contacting the appropriate Corps District.”* The permittee shall provide verification to the Corps that a deed declaration has been implemented in accordance with this provision by submitting a copy of the recorded deed declaration to the Corps within 30 days of recordation.

d. A compliance certification form, regarding the PASPGP-2 authorized work and required mitigation, will be forwarded to each permittee with the PASPGP-2 authorization. Every permittee, who receives a written PASPGP-2 authorization, shall submit the signed compliance certification form upon completion of the authorized work and required mitigation. The completed form shall be returned to the appropriate Corps District.

d. That requests for modifications of previously issued permits must be approved by PADEP and, in limited situations, by the Corps.

e. That a project-specific PASPGP-2 authorization is valid for the same period as the project-specific PADEP authorization, not to exceed three years, unless modified or extended.

f. That a project-specific PASPGP-2 authorization is valid to perform the authorized activity one time only, except for maintenance activities associated with the authorized activity.

g. That discharge of asphalt into waters of the United States, including jurisdictional wetlands, is prohibited.

10. To clarify that the 250-linear-foot threshold for stream impacts, which triggers the need for reporting to the Corps, is applicable to projects which cross a stream transversely (such as utility lines, causeways, cofferdams, and dams), in addition to those projects which run linear along the stream (such as stream relocation). The 250 linear foot threshold is to be considered cumulatively for any single and complete project.

11. The PASPGP-2 is organized to clarify the Federal categories of similar activities receiving authorization under the PASPGP-2. While many of these categories mirror the categories of activities permitted by the Commonwealth of Pennsylvania, a few do not, or have additional limitations or conditions. **The PASPGP-2 is broken down into three categories (I, II, and III)** as listed below:

a. Category I – Category I activities are authorized by the PASPGP-2 without advanced notification to the Corps and are listed in Part III A. 1 – 17.

b. Category II – Category II activities provide for notification through publication in the PA Bulletin, to determine if Federal review is required on a case-by-case basis, and are listed in Part III B. 1 – 3.

c. Category III – Category III activities are forwarded by PADEP directly to the Corps for Federal

review and coordination as listed in Part III C. 1 – 14.

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 nonwater 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. The Baltimore District Engineer, in consultation with the District Engineers of Pittsburgh and Philadelphia, will reevaluate the PASPGP-2 every 2 1/2 years, to determine if activities have been authorized in accordance with the requirements of the PASPGP-2 and in compliance with Federal Regulations.

The PASPGP-2 will protect the aquatic resources of the Commonwealth of Pennsylvania within the Baltimore, Pittsburgh, and Philadelphia Districts of the U. S. Army Corps of Engineers; reduce the administrative burden of the program for both the Corps of Engineers and the Commonwealth of Pennsylvania through interagency cooperation; improve the Regulatory response time and; add predictability within the specified limits to the permit program for the potential applicant and general public.

The PASPGP-2 will be applicable for regulated activities in waters of the United States, including jurisdictional wetlands in the Commonwealth of Pennsylvania that are located within the geographic regulatory boundaries of the three Corps Districts.

The PASPGP-2 is **not** applicable for Chapter 105 authorizations issued by PADEP Bureau of Mining and Reclamation. Further the PASPGP-2 will **not be applicable** for activities located waterward of the ordinary high water line (OHWL) on non-tidal waters and/or the mean high water line (MHWL) on tidal waters on the following Pennsylvania waterbodies:

- a. All of the Delaware River,
- b. The Schuylkill River downstream of the confluence with Mill Creek at Port Carbon, Pennsylvania,
- c. The Lehigh River downstream from the State Route 940 Bridge,
- d. All of the Ohio River,
- e. All of the Beaver River,
- f. All of the Little Beaver River,
- g. All of the Mahoning River,
- h. All of the Monongahela River,
- i. The Youghiogheny River from its mouth at McKeesport, Pennsylvania to river mile 31.2 at West Newton, Pennsylvania,
- j. The Allegheny River, from its mouth in Pittsburgh, Pennsylvania to river mile 197.4 at Kinzua Dam, north of Warren, Pennsylvania.
- k. The Kiskiminetas River from its mouth near Freeport, Pennsylvania to river mile 26.8 at Saltsburg, Pennsylvania, and
- l. Tenmile Creek from its mouth at Millsboro, Pennsylvania to river mile 2.7.

- m. Activities within Lake Erie which require submittal of a Joint Permit Application or Environmental Assessment to the PADEP.

The decision whether to reissue the PASPGP-1 as PASPGP-2, with or without modifications, was made after a thorough evaluation of the probable impacts including cumulative impacts of the proposed PASPGP-2 on the public interest. This decision reflects the national concern for the protection and utilization of important resources. All factors which may be relevant to the PASPGP-2 were considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, and, in general, the needs and welfare of the people.

Section 401 Water Quality Certification and Coastal Zone Management Act Consistency:

1. Final Conditional 401 Water Quality Certification and Coastal Zone Consistency were issued and published in the PA Bulletin on February 12, 1994 for the activities listed in the PASPGP-2, as set forth at 25 Pa. Code 105.12(a)(1-10) and (12-15) which are waived from the permitting requirements of the Dam Safety and Encroachments Act and which may result in a discharge to waters of the Commonwealth.
2. Final Conditional 401 Water Quality Certification and Coastal Zone Consistency were issued and published in the PA Bulletin on May 9, 1992 for the activities listed in Category I of the PASPGP-2 that are identified as Pennsylvania Department of Environmental Protection Chapter 105 General Permits 1-9.
3. PADEP will issue a 30-day Public Notice through publication in the PA Bulletin requesting 401 Water Quality Certification and Coastal Zone Consistency for item #15, in Category I - *Generic Permits (PADEP Regional General Permits) (E-999X)*. PASPGP-2 will not be implemented for these activities until the 401 Water Quality Certification and Coastal Zone Consistency is issued, and advertised as being issued in the PA Bulletin.
4. Activities eligible for PASPGP-2 authorization as listed in Category II, require written approval from PADEP prior to starting construction. Chapter 105.15(b) requires applicants requesting Water Quality Certification under Section 401 of the Clean Water Act to prepare and submit an environmental assessment for review by PADEP. PADEP publishes a notice in the PA Bulletin for a 30-day comment period. Following review by PADEP, the 401 Water Quality Certification and Coastal Zone Consistency determination is issued with the approved Chapter 105 permit.
5. Activities covered by Category III will be approved using one of the authorizations described in the paragraphs above and will receive Coastal Zone Consistency during their Chapter 105 review.

Other State or local authorizations, which may be required, on a case-by-case basis, must be obtained for the authorization in PASPGP-2 to be valid. A review of the PASPGP-2 indicates that processing procedures and conditions are sufficient such that authorized work will not affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended.

The PASPGP-2 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. The applicant will notify the Pennsylvania Historical and Museum Commission using the PADEP Historical Resources Notification form before applying for PASPGP-2 authorization.

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, Baltimore District Corps of Engineers, P.O. Box 1715, Pennsylvania Section, Baltimore, Maryland 21203.

If an activity was authorized under the PASPGP-1, and the project could be authorized under PASPGP-2 as a Category I or Category II activity, the Federal authorization remains valid until the expiration of the associated PADEP authorization, not to exceed three years from the date of the project specific PASPGP-1 authorization. If additional time is needed, the permittee must submit a new request in writing; the project will then be reviewed under the conditions of the PASPGP-2.

Because the PASPGP-2 is duplicative of some NWP's and offers a more simplified and streamlined regulatory process, the Corps of Engineers has suspended those Nationwide Permits (NWP's), which are applicable to activities qualifying for PASPGP-2. A Corps of Engineers Special Public Notice, further detailing the suspension of the NWP's, will be issued prior to the implementation of PASPGP-2. This Public Notice will be available on the District web site at <http://www.nab.usace.army.mil/Regulatory/PublicNotice/spnotices.htm>.

For the District Engineer:

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Baltimore District