

**Pennsylvania State Programmatic General Permit
(PASPGP-2)**

**2 ½ Year Monitoring Report
June 2004**

**Prepared by
The U.S. Army Corps of Engineers
and the
Pennsylvania Department of Environmental Protection**

With support from:
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service
Natural Resources Conservation Service
Pennsylvania Fish and Boat Commission
Pennsylvania Game Commission
Pennsylvania Historical and Museum Commission
Pennsylvania County Conservation Districts

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I. PURPOSE:

The Pennsylvania State Programmatic General Permit (PASPGP-2) requires the preparation of a 2½ year monitoring report to evaluate the existing PASPGP-2 program. The purpose is to determine whether modification, suspension, or revocation of the PASPGP-2 is appropriate.

II. BACKGROUND:

The Commonwealth of Pennsylvania's Chapter 105 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 Pennsylvania Department of Environmental Protection (PADEP) to apply evaluation criteria consisting of alternatives analysis (for nonwater dependent activities), impact avoidance, impact minimization, 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.

Based upon the existence of this comparable State program, the U.S. Army Corps of Engineers (Corps) was able to work with the PADEP and other Federal and State resource agencies, and the public, to develop a statewide programmatic general permit.

The Pennsylvania State Programmatic General Permit-1 (PASPGP-1) and later the PASPGP-2 were issued to: 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.

On March 1, 1995, the Baltimore District issued the PASPGP-1 for a five-year period effective until March 1, 2000, and subsequently reissued (extended) without modification for eight months until October 31, 2000. On October 31, 2000, the PASPGP-1 was reissued (extended) for an additional eight months. As a result, the reissued PASPGP-1 expired on June 30, 2001.

The decision to reissue the PASPGP-1, with modifications as PASPGP-2, was made after a thorough evaluation of the effect of the proposed PASPGP-2 on the public interest. This decision reflected the national concern for the protection and utilization of important resources. All factors relevant to the PASPGP-2 were considered including the cumulative effects thereof; among those were 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.

On July 1, 2001, the PASPGP-2 was issued by Colonel Charles J. Fiala, Jr., Lieutenant Colonel Timothy Brown, and Colonel David R. Ridenour, District Engineer, respectively, for Baltimore,

Philadelphia, and Pittsburgh Districts of the U.S. Army Corps of Engineers. A copy of the PASPGP-2 can be viewed on the Baltimore District web site:

<http://www.nab.usace.army.mil/Regulatory/> . 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 Knight at (410) 962-5673.

The PASPGP-2 is 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 (except as noted below). The PASPGP-2 is not applicable for Chapter 105 authorizations issued by PADEP Bureau of Mining and Reclamation. Further, the PASPGP-2 is not 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 following modifications were incorporated into the PASPGP-2:

1. The upper limit of impacts to waters of the United States, including jurisdictional wetlands was reduced from five acres, under the PASPGP-1 to one acre, under the PASPGP-2 for a single and complete project to ensure that only projects with minimal impacts, individually and cumulatively to the aquatic environment are authorized by the PASPGP-2. This change in the upper threshold did not adversely affect the overall processing time, or service to the public, since the vast majority of applications in Pennsylvania have proposed to impact less than one acre of waters of the United States including jurisdictional wetlands. With this change, the Corps has evaluated as applications for an individual Department of the Army authorization, all projects that impact greater than 1.0 acre of waters of the United States including wetlands.

2. The PASPGP-2 is organized to clarify the Federal categories of similar activities qualifying

for authorization under the PASPGP-2. While many of these categories mirrored 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) of activities as listed below:

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

Table 1: Category III Activities

ACTIVITY #	DESCRIPTION
1	Category Is that have been requested by Corps or agencies
2	Category IIs that have been requested by Corps or agencies
3	Activities exceeding Cat I or II limits
4	Activities affecting Federally Threatened or Endangered Species
5	Activities authorized by PADEP Waiver – Dam Not Exceeding Three Feet in Height in a Stream Not Exceeding 50 Feet in Width
6	Activities authorized by PADEP Waiver 2 – Water Obstructions in Streams with a Drainage Area of Less Than 100 Acres
7	Activities authorized by PADEP Waiver 14 – Maintenance of an Artificial Pond or Reservoir to its Original Storage Capacity
8	Activities authorized by maintenance of jurisdictional dams Chapter (105.131)
9	Activities potentially obstructing fish passage
10	Activities potentially affecting Historic or Cultural resources
11	Activities potentially affecting Wild or Scenic Rivers
12	Permit modifications
13	Gravel bar removal activities authorized by PADEP GP-3
14	PADEP Emergency Permit activities

3. 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, were made eligible for authorization under the PASPGP-2 (except for excluded portions of Section 10 waters). 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, and the application processed as a Category III Activity. The list of National Wild and Scenic Rivers has been updated in the PASPGP-2.

4. Regulated activities eligible by Category I for multiple PADEP authorizations, such as:

PADEP General Permits, Waivers, and Letters of Authorization, were made “Category III” (must receive separate review and written authorization from the Corps) when 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.

5. The PASPGP-2 clarified that the greater than 250-linear-foot threshold for stream impacts, which triggers the need for Corps review, is applicable to projects that cross a stream transversely (such as utility lines, causeways, cofferdams, and dams), in addition to those projects that 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.

6. Regulated activities eligible for authorization by Category I, were made Category III (must receive a Corps review) when individual components of a single and complete project, result in the discharge of dredged or fill materials or the placement of structures, resulting in the permanent loss of more than 0.25 acres of Waters of the United States, including jurisdictional wetlands.

7. 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.

8. The single and complete project form is now required as part of the PADEP General Permit (GP) registration.

9. 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 are eligible for Federal authorization using other Corps authorizations such as Nationwide Permits (NWPs) or Corps Individual Permits (IPs).

10. Work associated with maintenance of bridges and culverts previously authorized by PADEP could be authorized under PASPGP-2 without a separate review by the Corps.

11. The Pennsylvania Wetland Replacement Project (Fund) was incorporated into the PASPGP-2, and can be used to compensate for unavoidable impacts approved under the authority of PASPGP-2, after the Corps or PADEP has determined that other forms of compensatory mitigation are not practicable. Procedures for the use of the Fund for PASPGP-2 projects are outlined in the PASPGP-2 Standard Operating Procedures (SOP) document.

12. 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.

13. The following conditions were added to the PASPGP-2:

a. 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. 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.

e. Requests for modifications of previously issued permits must be approved by PADEP and, in limited situations, by the Corps.

f. 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.

g. 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.

h. The discharge of asphalt into waters of the United States, including jurisdictional wetlands, is prohibited.

III. REPORT AND EVALUATION REQUIREMENTS:

The PASPGP-2, Part VII D. requires that:

1. The Baltimore District in consultation with the other Corps Districts, U.S. Environmental Protection Agency (EPA), and PADEP will periodically review the PASPGP-2, and its terms, conditions and processing procedures.
2. Every 2 ½ years, the Corps, with the recommendations from the resource agencies, will evaluate the PASPGP-2, including its terms and conditions to determine if the PASPGP-2: (1) has met its intended goal of reducing duplication; (2) that authorizations/verifications comply with applicable laws and regulations; and (3) that only projects with not more than minimal adverse environmental effects were verified.
3. Every 2 ½ years, coordinated with the required review and evaluation (item #2 above), the Corps will further determine whether modification, suspension, or revocation of the PASPGP-2

is appropriate. These determinations will be in writing, include the basis for each determination, and be available to the public.

4. The formation of an interagency review panel (Panel) and monitoring of the PASPGP-2 program. The Panel consists of representatives from the Pennsylvania Department of Environmental Protection (PADEP), the three Corps Districts, U.S. Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), Pennsylvania Game Commission (PGC), Pennsylvania Fish and Boat Commission (PFBC), the Pennsylvania Historical and Museum Commission (PHMC) and one or two representatives from the delegated County Conservation Districts (CCDs). Each listed agency has designated a specific point of contact (POC) to serve on the Panel. Any concerns from an agency or office have been directed to the Panel through the designated POC.

The interagency monitoring effort has been ongoing since the inception of the PASPGP-2 with the following goals in mind:

- a. To create a record of monitoring, discussion and actions that suitably addresses the requirements of the PASPGP-2 and SOP as outlined above.
- b. To examine procedural and case specific concerns as they arise, relative to implementation and administration of PASPGP-2.
- c. To provide constructive recommendations for resolving procedural problems in a timely and proactive manner.
- d. To provide a forum for all participating agencies to resolve differences, procedural questions, and program objectives.
- e. To produce 2 ½ year and 5 year monitoring reports.

The PASPGP-2 Standard Operating Procedures (SOP) further indicates that the 2 ½ year report will address the following questions:

- a. Were PASPGP-2 permits processed in a timely manner?
- b. Is the PASPGP-2, as implemented, in compliance with the 404(b)(1) Guidelines?
- c. Is the PASPGP-2, as implemented, in compliance with the Endangered Species Act (ESA)?
- d. Were mitigation efforts successful?
- e. Are all other applicable Federal permit guidelines being reasonably followed?
- f. Are there additional ways to streamline the permit procedures?

IV. PANEL MEETINGS - OVERVIEW:

Background

The Panel, co-chaired by PADEP and the Baltimore District Corps of Engineers, met eight times over the past two years. Agenda items have consisted of procedural and case-specific concerns related to the administration and implementation of PASPGP-2. Agenda items were submitted to either of the co-chairs or the agency representatives for inclusion on the agenda. Minutes of the Panel meetings were recorded by the Baltimore District and distributed to the panel (see appendix enclosure 1). The Panel has issued guidance to the agencies in letter or memorandum form and has provided recommendations to the Corps and PADEP concerning any proposed changes to the PASPGP-2 or the SOP. Compilations of meeting minutes are an integral component of the 2 ½ Year Monitoring Report.

As necessary, additional coordination meetings and work sessions were held with the Corps Districts and PADEP Central office to discuss PASPGP-2 related Federal/State coordination issues, and proposed changes to the State and Federal regulatory programs that could effect PASPGP-2 implementation. Additional meetings were also held with the Corps Districts and USFWS to clarify, amend and improve the endangered species coordination procedures.

Examples of issues coordinated at Panel meetings included the following:

1. Endangered Species Act Coordination

-Procedures for bog turtle surveys for PADEP General Permits 5, 6, 7, 8 and 9 in the 15 counties were refined and clarified.

-Procedures for forwarding PADEP Chapter 105 Individual Obstruction and Encroachment (E) and Dam (D) permits, including Individual and Small Projects Permits were clarified and refined as requested by USFWS.

-Addressed newly discovered bog turtle populations in the Swatara Creek watershed (Schuylkill County) through issuance of a Public Notice on March 13, 2003. The Public Notice added this watershed as the 15th listed bog turtle area and required all applications proposing wetland impacts within this watershed to be Category III Activities.

-Clarified coordination procedures between USFWS and PFBC for cases involving Pennsylvania Natural Diversity Inventory (PNDI) conflicts with endangered species.

-Discussed procedures for private consultants submitting Phase 1 bog turtle habitat surveys.

-Clarified interagency coordination on enforcement issues in bog turtle counties.

2. National Historic Preservation Act Coordination

-Clarified reporting procedures for Category III activities requiring Section 106 of the National Historic Preservation Act clearance from the PHMC.

-Implemented changes to the SOP for Parts A-5 and A-6 regarding coordination.

-Developed local operating procedures to expedite review.

-Suggested revisions to standard PHMC letters to better explain requirements and the basis for PHMC involvement.

3. Other Issues Addressed

-Revised SOP to clarify resource and regulatory agency coordination requirements.

-Clarified that when a waiver is issued with other PADEP permits, the total impacts associated with the total project are reviewed by PADEP. If inclusion of the waived impacts exceeds Category III limits, the application is forward to the Corps.

-Discussed maintenance work associated with Pennsylvania Department of Transportation (PADOT) projects.

-A Draft GP-11 was recently introduced by PADEP to cover maintenance (repair, rehabilitation and replacement) activities and will need to be further coordinated with the Panel.

-Developed a Federal application form for Waiver 2 projects.

-Reviewed the PADEP Bureau of Abandoned Mine Reclamation (BAMR) request to raise PASPGP-2 impact limit to greater than one acre for reclamation projects. The panel determined that such change was not appropriate. Identified and clarified other appropriate avenues for review.

-Developed coordination protocols with BAMR and PADEP Bureau of Waterways Engineering (BWE).

-Clarified that GP-1s (Fish Habitat Enhancement Structures) and GP-3s (Bank Rehabilitation, Bank Protection and Gravel Bar Removal) affecting greater than 500 linear feet are elevated to Cat III activities. Also clarified the method to calculate the 500 feet reporting limit – For GP-1, and for GP-3 projects, the total length of affected stream (not the structure length) was determined to be the measure for determining reporting requirements. Amended the PASPGP-2 and SOP to reflect clarification.

-Updated PASPGP-2 by adding Section 105.12(b) to correct omission of this section, through Corps Special Public Notice #03-02 dated March 11, 2003.

-Discussed and clarified procedures for rescinding a PASPGP-2 permit issued as a Category I activity. If the Corps does not agree with a PADEP general permit registration, the first recourse is to notify the appropriate PADEP Regional Office. If resolution of the issue is not achieved, the Corps may bring the matter to PADEP Central Office for resolution.

-PADEP presented and the Panel discussed the Fund procedures and statistics. Panel members were invited to visit completed mitigation sites.

-Planned and presented a Consultants' Workshop in May 2003 for the dissemination of information concerning the PASPGP-2 process and related programmatic issues.

-Discussed proposed revisions to Corps Jurisdictional Determinations (JD) letters to address differences in Corps and PADEP jurisdiction, to insure that all wetlands are identified during initial site investigations and that all wetland impacts are addressed in State/Federal permit review.

-Reviewed Corps jurisdiction changes and developed methods to insure that all wetlands continued to be identified as appropriate for PADEP and the Corps (i.e. revisions to Corps JD process and letters for non-jurisdictional wetlands). Discussed various interpretations concerning 'regulated' vs. 'non-regulated' activities such as hydro-raking, and dredging and excavation activities that generate not more than incidental fallback.

-Refined coordination procedures for Category III activities with the Pennsylvania Game Commission in accordance with their request.

V. SECTION 404(b)(1) COMPLIANCE

Background

The PASPGP-2 was assessed for compliance with the Section 404(b)(1) Guidelines, as contained in the Environmental Protection Agency's Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR Part 230). A Finding of Compliance was detailed in the PASPGP-2 Environmental Assessment/Statement of Findings (EA/SOF) document (July 2001). The 404(b)(1) Guidelines in 40 CFR Part 230.7 set forth conditions for the issuance of Federal General Permits, which include State Programmatic General Permits (SPGPs). Specifically, compliance with the 404(b)(1) Guidelines is accomplished if the SPGP meets the applicable restrictions on the discharge in 40 CFR Part 230.10, and the permitting authority determines that:

- 1) The activities in such category are similar in nature and similar in their impact upon water quality and the aquatic environment;
- 2) The activities in such category will have only minimal adverse effects when performed separately; and,
- 3) The activities in such category will have only minimal cumulative adverse effects on water quality and the aquatic environment.

To reach these determinations, an evaluation of the potential individual and cumulative impacts of the activities under each category of the PASPGP-2 (Category I, II, and III) was undertaken. This evaluation was based upon the criteria listed above, and upon consideration of the prohibitions listed in Section 230.10(b), the factors listed in Section 230.10(c), and the factual determination in Section 230.11 (based upon Subparts C through F of the Guidelines). The consideration of "off-site" alternatives in Section 230.10(a) is not directly applicable to Federal

GPs.¹ However, for any project specific activity to be determined in full compliance with the Section 404(b)(1) Guidelines, and therefore eligible for authorization by the PASPGP-2, the activity must meet the applicable restrictions in Section 230.10(d) which requires appropriate and practicable steps to minimize potential adverse impacts of the discharge on the aquatic ecosystem. Such project specific evaluations, by the Corps and/or the PADEP, may therefore require appropriate and practicable conditioning of permits, including requiring compensatory mitigation, to ensure that adverse impacts to the aquatic ecosystem are not more than minimal. The PASPGP-2 General Conditions require that all discharges of dredged or fill materials into waters of the United States are avoided or minimized on the project site to the maximum extent possible. This condition is verified on a project specific basis at the time the application is evaluated.

Where the District Engineer determines that any proposed work, will result in more than minimal adverse effects on the aquatic ecosystem, either individually or cumulatively, discretionary authority will be exercised to require a Corps Individual Permit evaluation. Discretionary authority may also be asserted for any proposed activity where there are concerns for high quality aquatic resources, other environmental concerns under the 404(b)(1) Guidelines, or otherwise may be considered contrary to the public interest.

The PASPGP-2 and Section 404(b)(1) Compliance

The basic structure and design of the PADEP 105 permitting program provides an appropriate framework for compliance with the 404(b)(1) Guidelines given the specific and parallel language of the PADEP Chapter 105 regulations. The PASPGP-2, has incorporated measures to maintain compliance with the 404(b)(1) Guidelines. By reducing the upper impact limit from five to one acre, projects with the greatest inherent potential for ‘more than minimal impacts’ due to their scope have been removed from the PASPGP-2 process. We also believe that this lower impact level for PASPGP-2 has the added benefit of encouraging applicants to reduce their overall wetland impacts in order to qualify for the PASPGP-2.

In addition, the PASPGP-2 process insures a single and complete review process for projects with multiple components or phases. Staff and consultant training and the addition of a ‘single and complete’ data form to the PADEP General Permit registration packages are new mechanisms to help insure that projects are not inadvertently or intentionally piecemealed. To date we have not had documented complaints of occurrences brought before the Panel to indicate an ongoing piecemealing issue.

Interagency preapplication meetings remain an important component of the permit process. The PASPGP-2 has continued to foster close working relationships at the field level and these coordinated efforts have been a powerful tool in helping to implement the avoidance and minimization goals and requirements of the 404(b)(1) Guidelines.

¹ Some projects otherwise eligible for authorization by the PASPGP-2 may require that off-site alternatives be explored. These activities also require compliance with the Chapter 105 alternatives analysis provisions contained in 25 Pa. Code Section 105.18a., which are consistent with the language contained in the Section 404(b)(1) Guidelines, 40 CFR Part 230.10 (a)-(d).

As evidence of the effectiveness of these processes, of the 344 wetland fill projects processed by PADEP as Category II projects, there have been no instances brought to the attention of the Panel where appropriate avoidance or minimization of impacts was not achieved.

Based upon the information evaluated from July 1, 2001, to June 30, 2003, the Corps has determined that the discharges authorized by the PASPGP-2 remain in compliance with the 404(b)(1) Guidelines.

VI. OPERATIONAL DATA: JULY 1, 2001 – JUNE 30, 2003

Operational data is provided for the first two years of the PASPGP-2 from July 1, 2001 through June 30, 2003. Total numbers of permits issued are provided for all three review Categories as well as for each Corps District. District totals and Corps-wide totals are presented. The Category III data is further broken down into each of the 14 Activity categories. Additionally, compliance and enforcement, jurisdictional determinations and pre-application meeting data is also presented.

Data was collected from the regulatory databases in each Corps District. These systems differ among the three Districts in the data collected as well as the form in which it can be retrieved. Where data was incomplete, Districts manually assembled data from permit files or from queries directed to project managers. As such the numbers are approximate. The Corps will attempt to address this administrative deficiency in the final 5-year report.

Operational data is also presented below for the PADEP Chapter 105 program for the same review period. Detailed operational data is provided concerning Chapter 105 Individual Permits, General Permit registrations, the Fund, wetlands mitigation, and stream impacts.

Figure 1. Approximate Number of PASPGP-2's issued during the review period

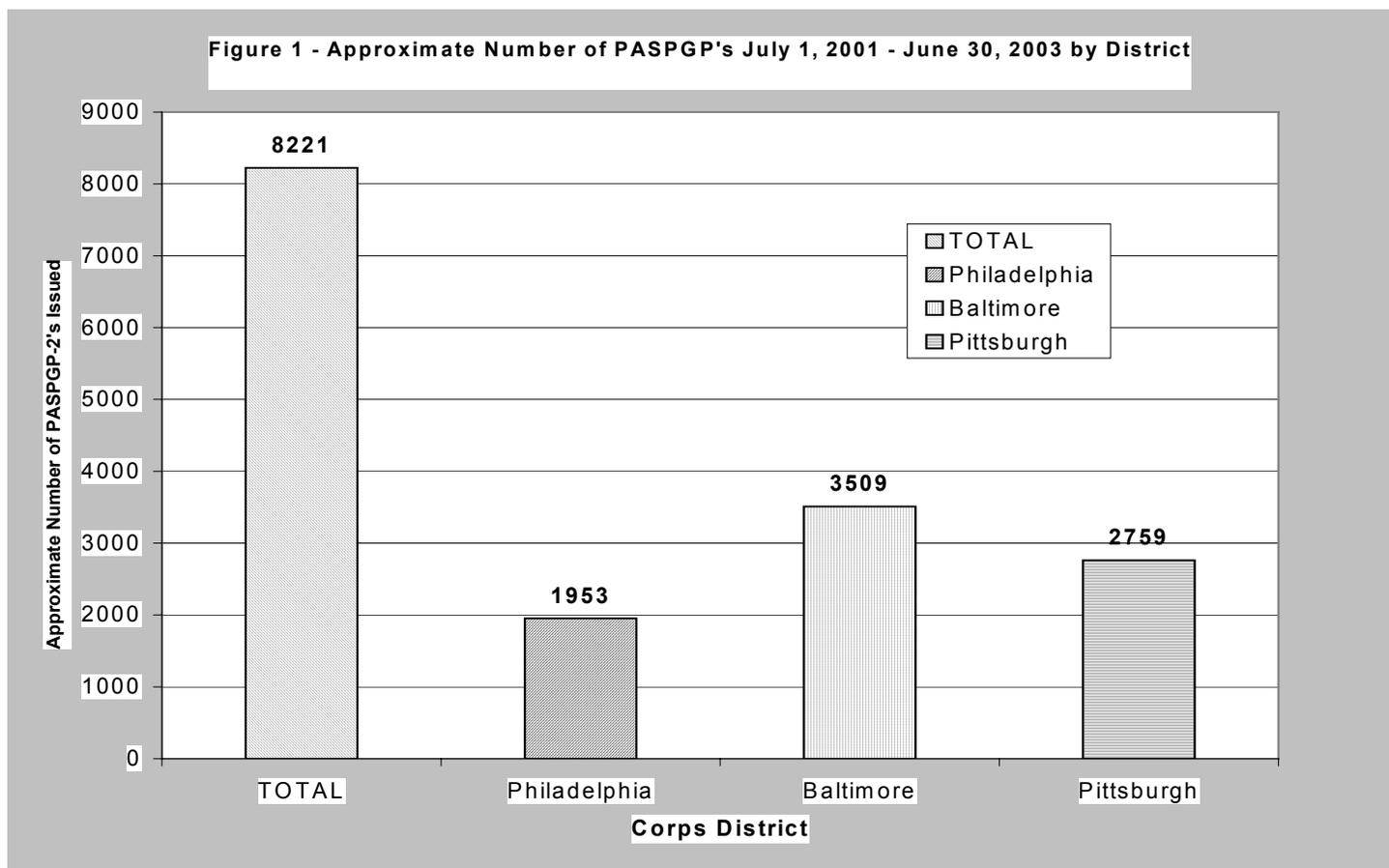
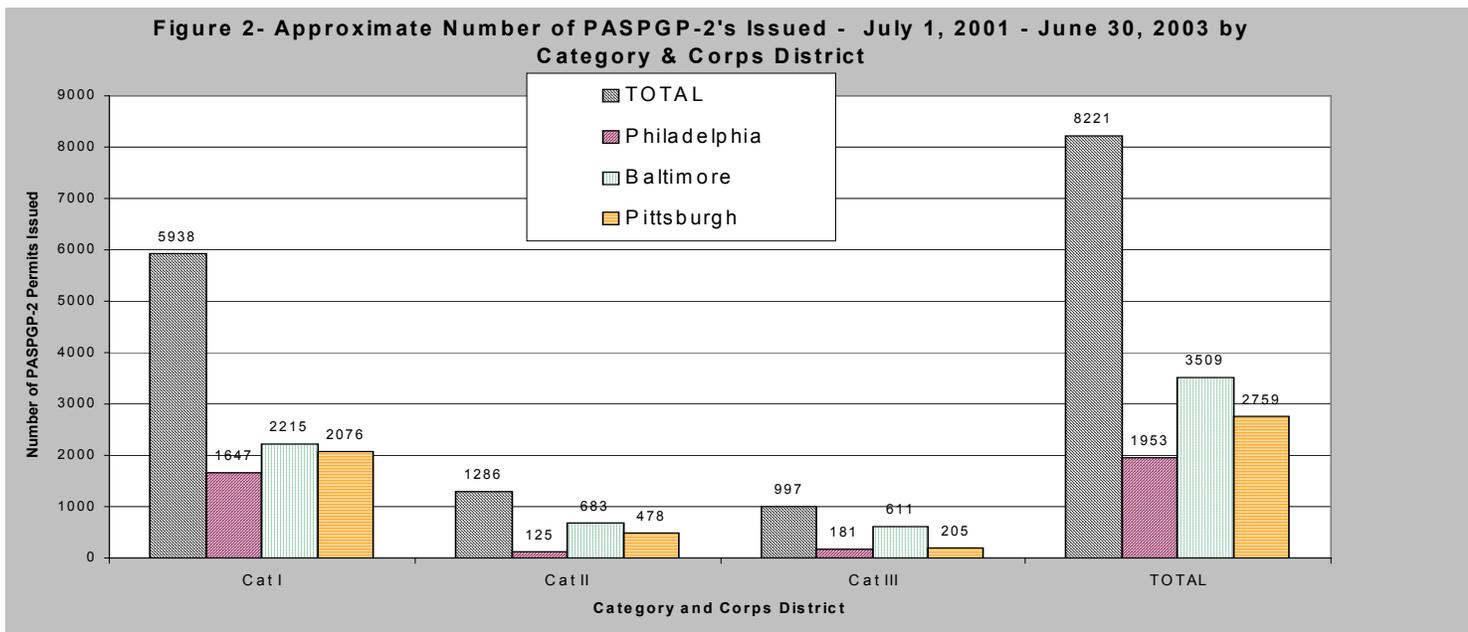


Figure 2.
 Approximate number of PASPGP-2s issued by Category and Corps District.



Figures 3a-d. Approximate Percentage Distribution by Activity for Basis for Category III Referrals by Corps Districts (Combined and Separately)

Figure 3a: All Districts, Bases for Category III Referrals

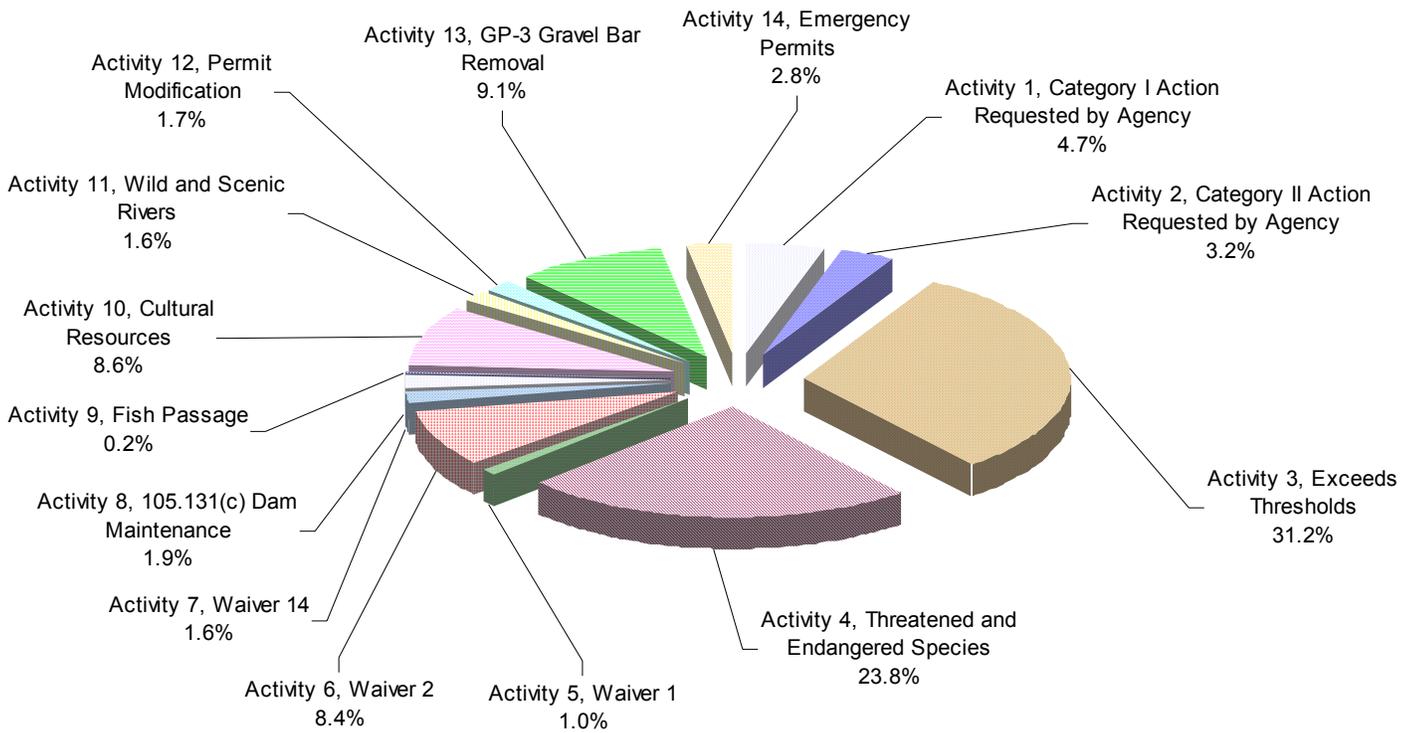


Figure 3b: Philadelphia District, Bases for Category III Referrals

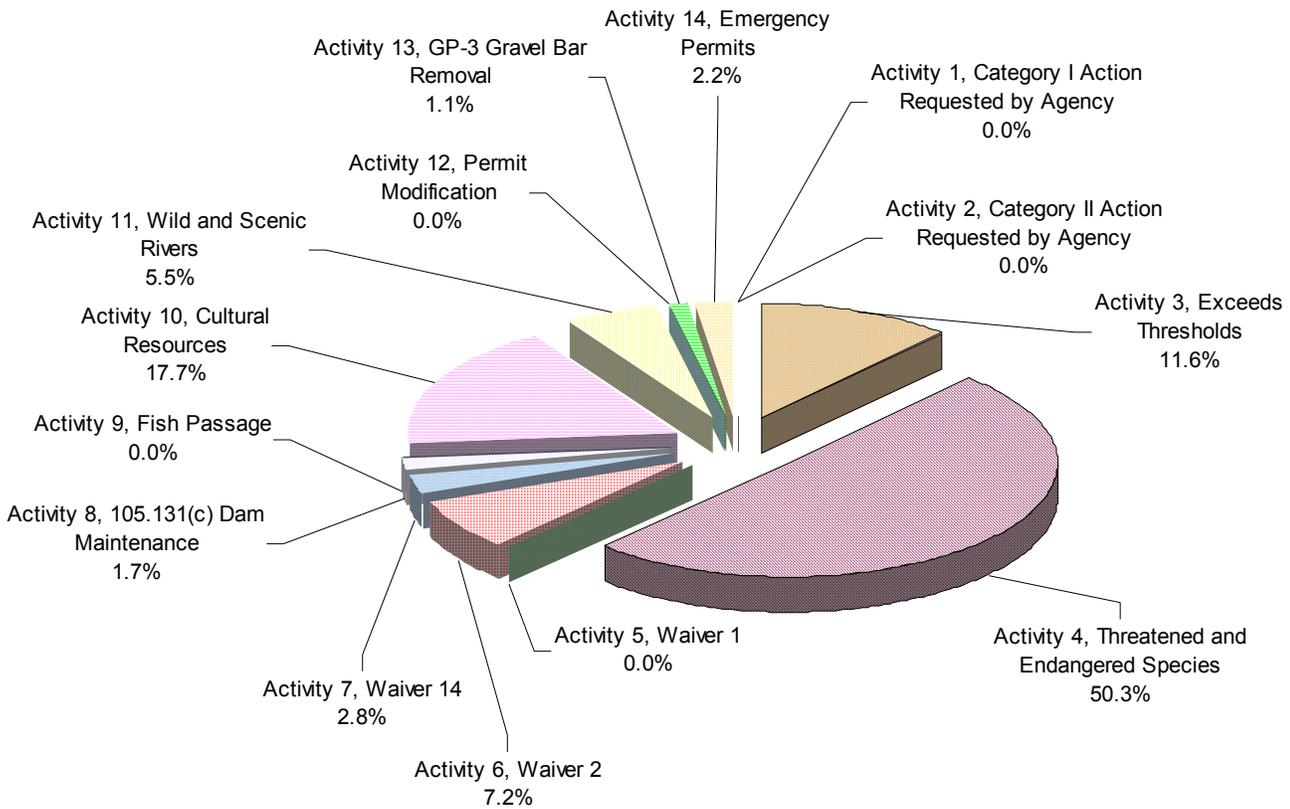


Figure 3c: Baltimore District, Bases for Category III Referrals

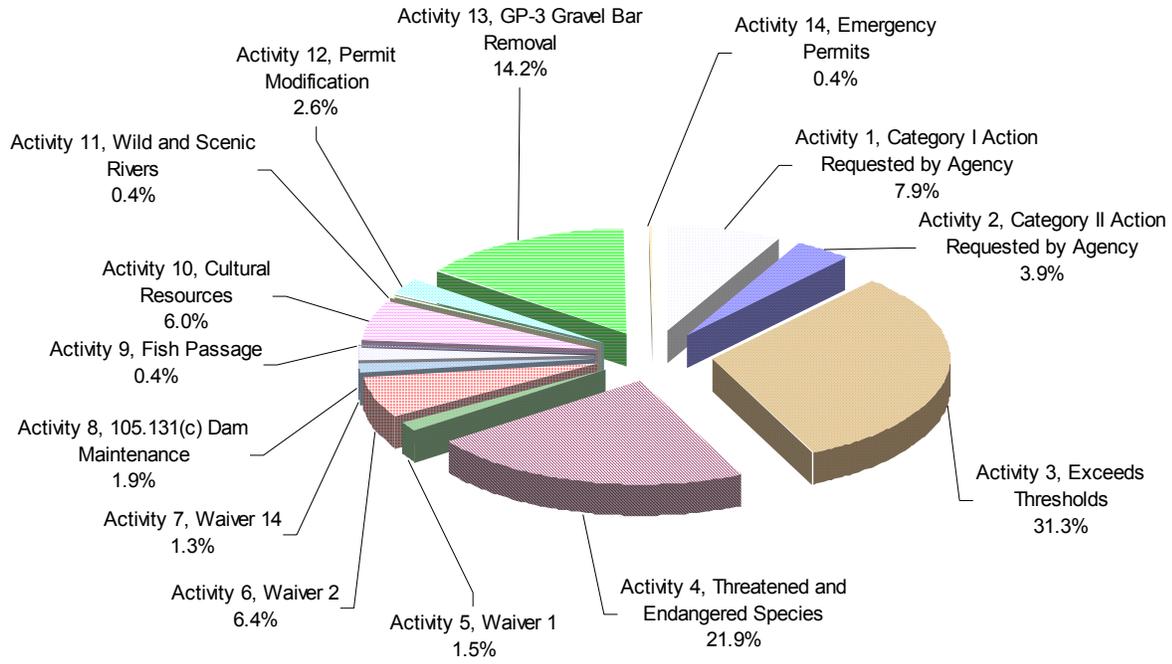


Figure 3d: Pittsburgh District, Bases for Category III Referrals

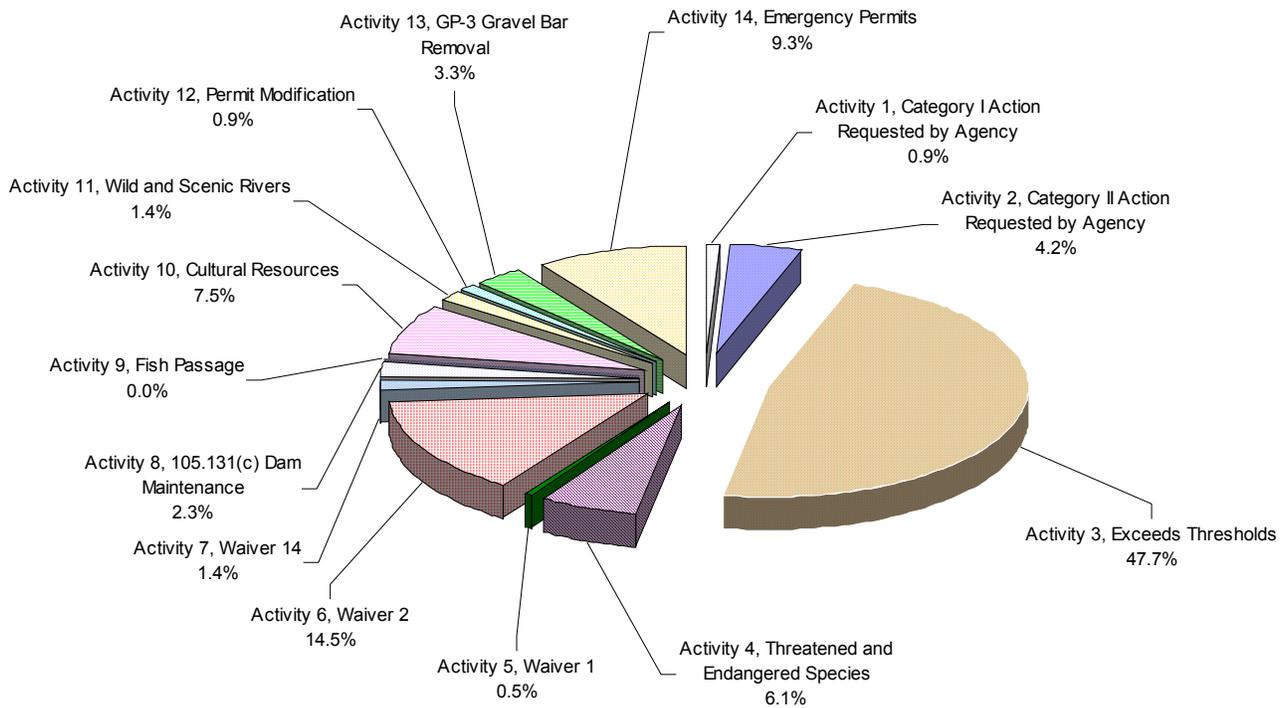


Figure 4 . Provides data for Category III activities of expressed interest to Panel members based upon new Category III reporting procedures

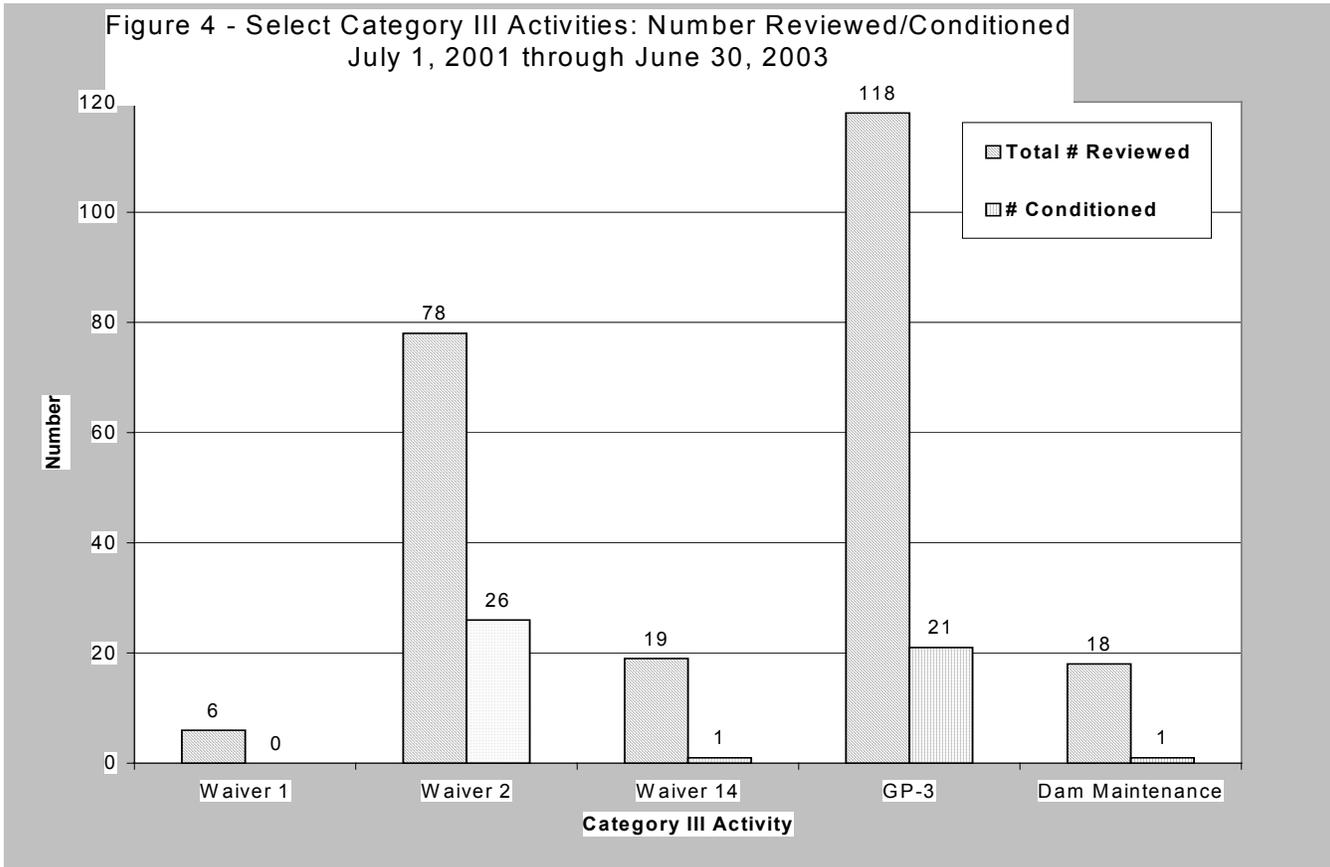


Figure 5a. Approximate open water and wetland acreage reviewed and permitted by the Corps for select Category III activities.

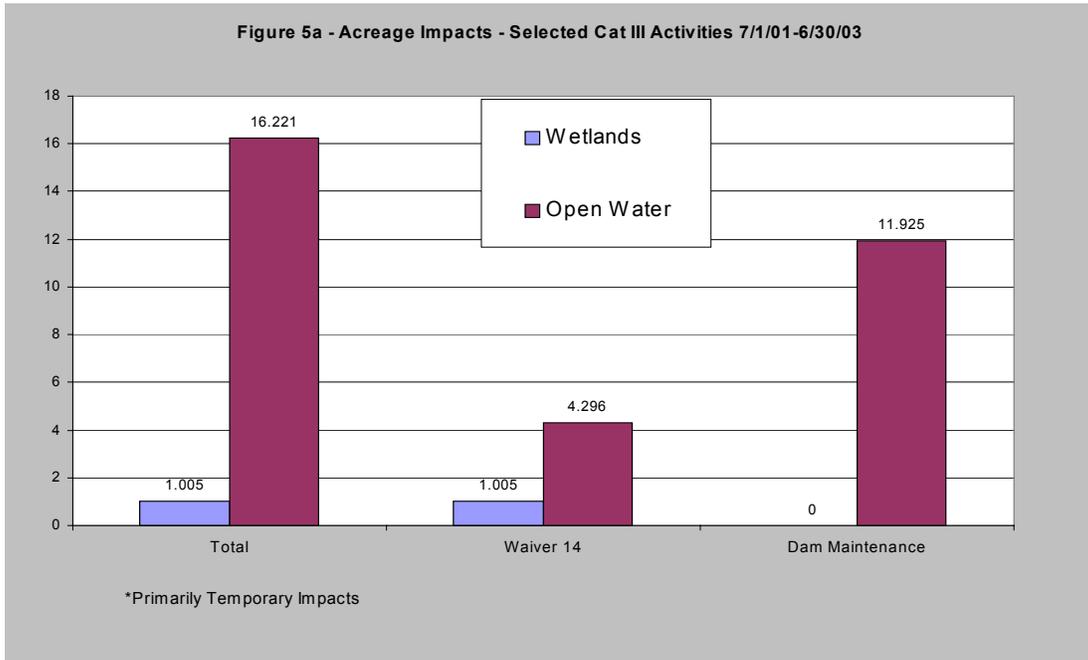


Figure 5b. Approximate stream length reviewed and permitted by the Corps for select Category III Activities

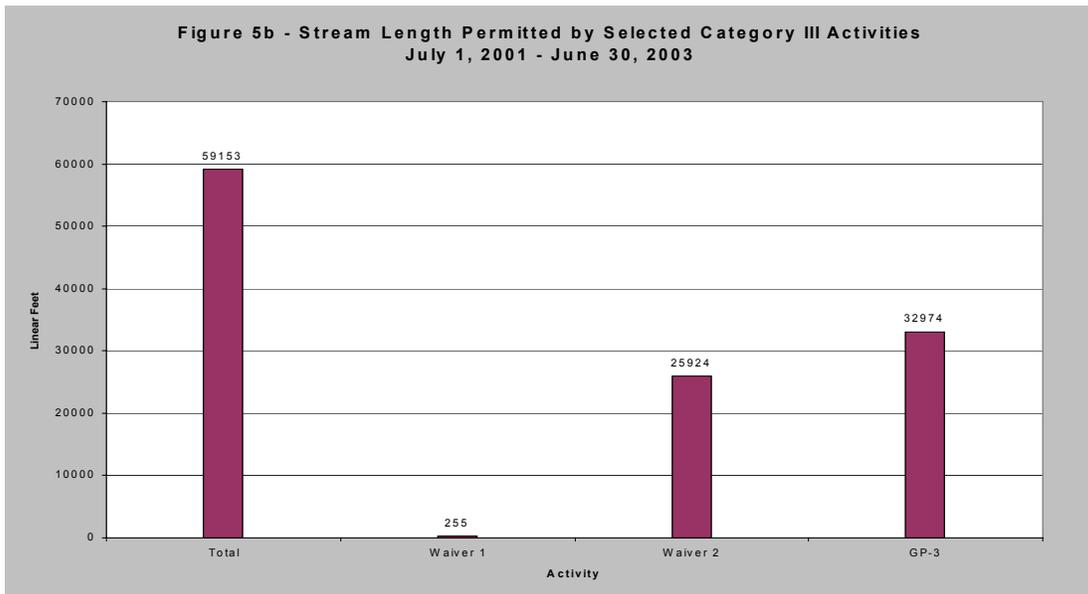


Figure 6. Approximate number and types of special conditions incorporated into PASPGP-2 Category III projects.

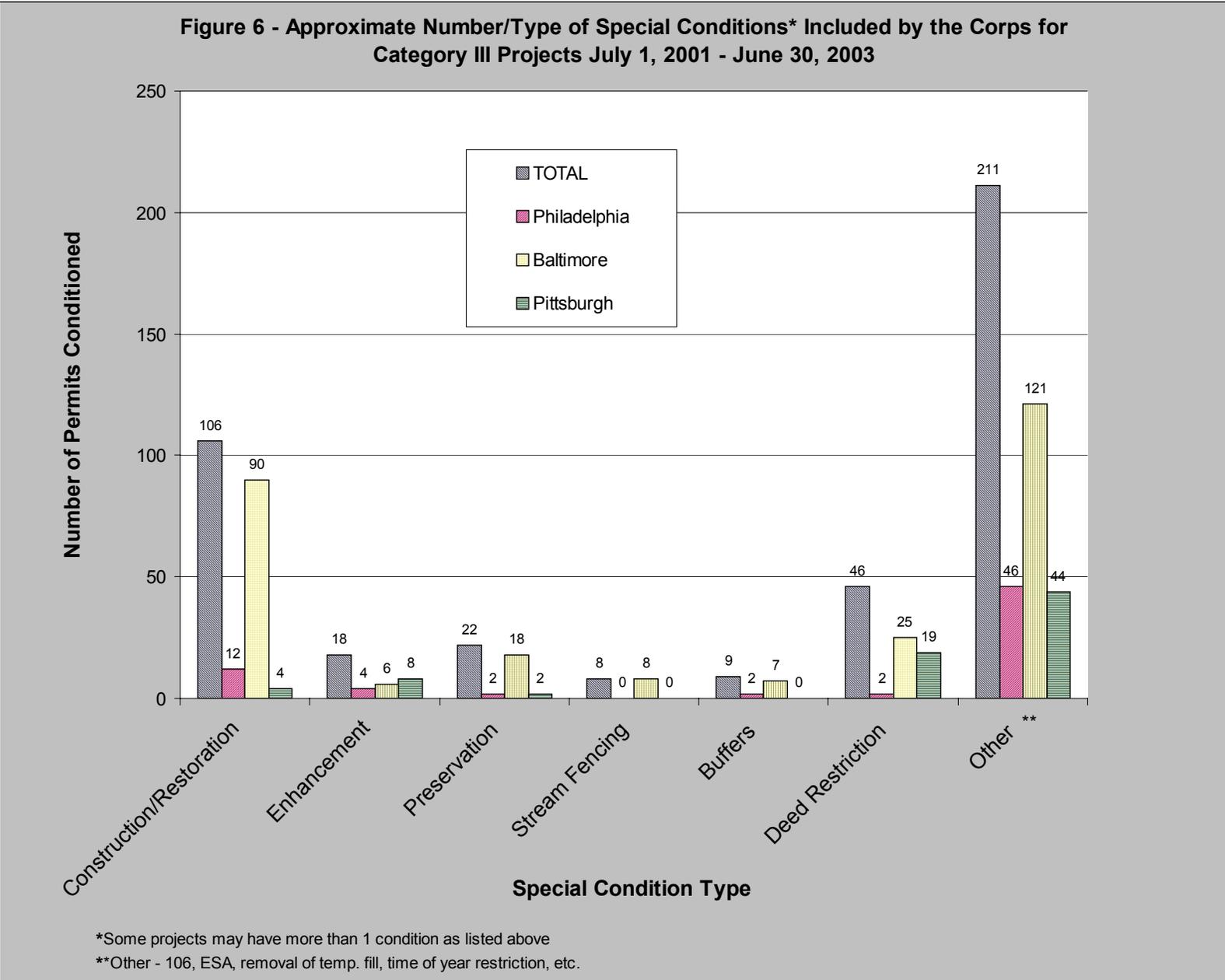
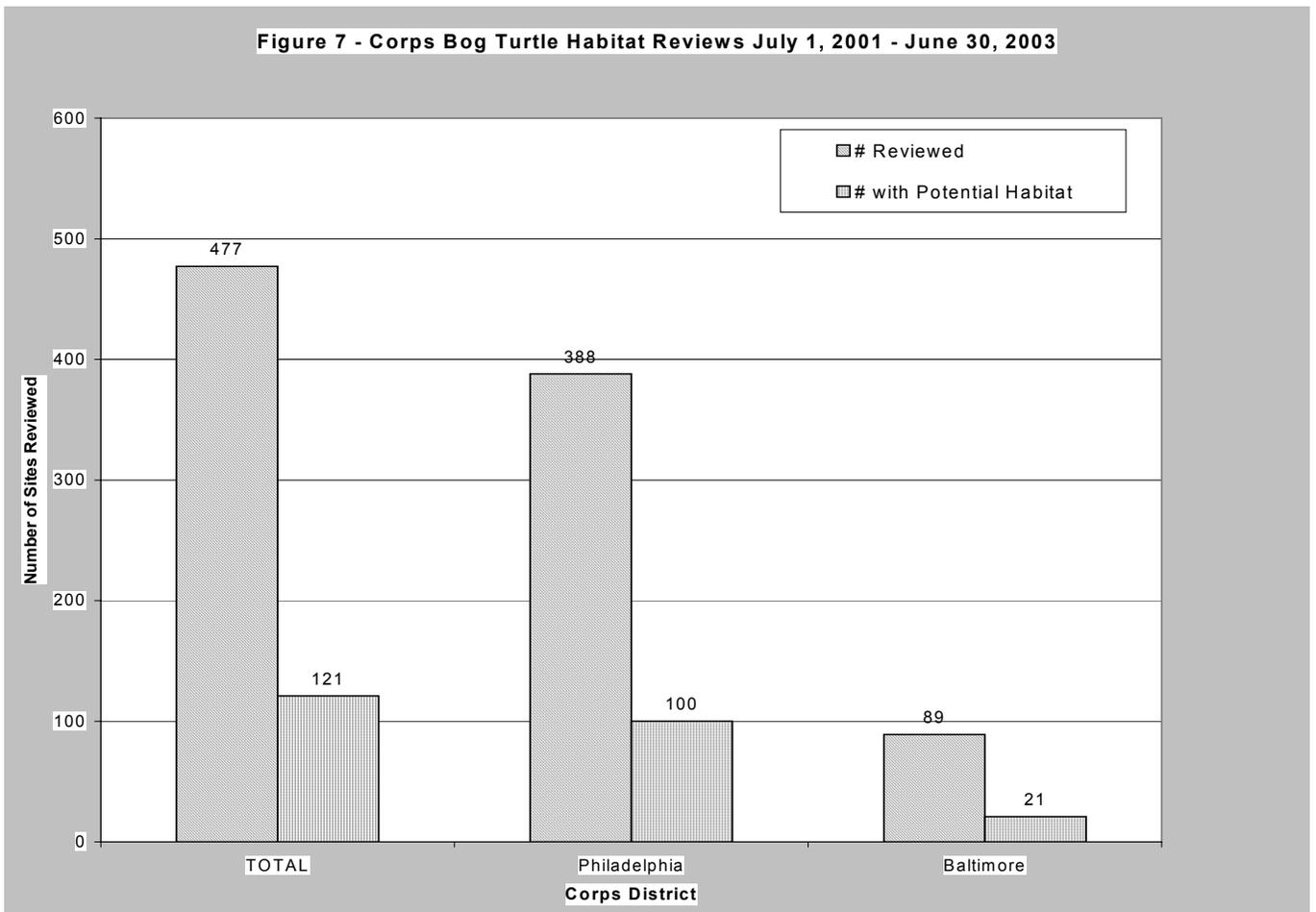


Figure 7. Bog Turtle Habitat Reviews conducted by the Corps.



In addition to the permits processed as indicated above the following three Figures (8-10) reflect other Corps workload. This includes pre-application meetings, jurisdictional determinations, and other Federal Authorizations. Specifically, there have been a total of 861 jurisdictional determinations performed by the Corps and 484 interagency pre-application meetings performed during this period.

In addition to the above, other Corps and PADEP workload includes many consultations with applicants during field and office meetings, through e-mails, and during telephone conversations. These informal consultations advised applicants on how to reduce and avoid impacts prior to the formal permit application process and have resulted in a reduced number of application submittals, expedited reviews and decisions, and more environmentally sound projects.

Figure 8. Approximate number of Jurisdictional Determinations performed by the Corps.

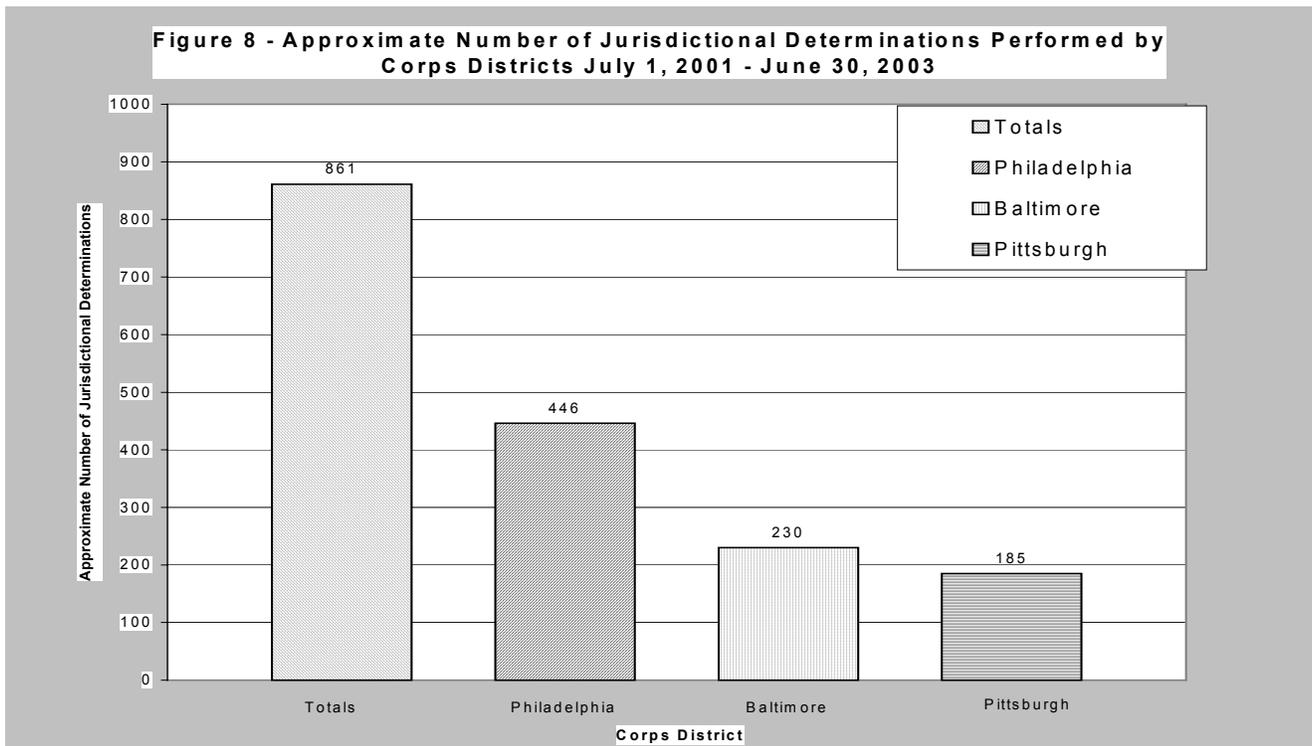


Figure 9. Approximate number of pre-application meetings performed by the Corps.

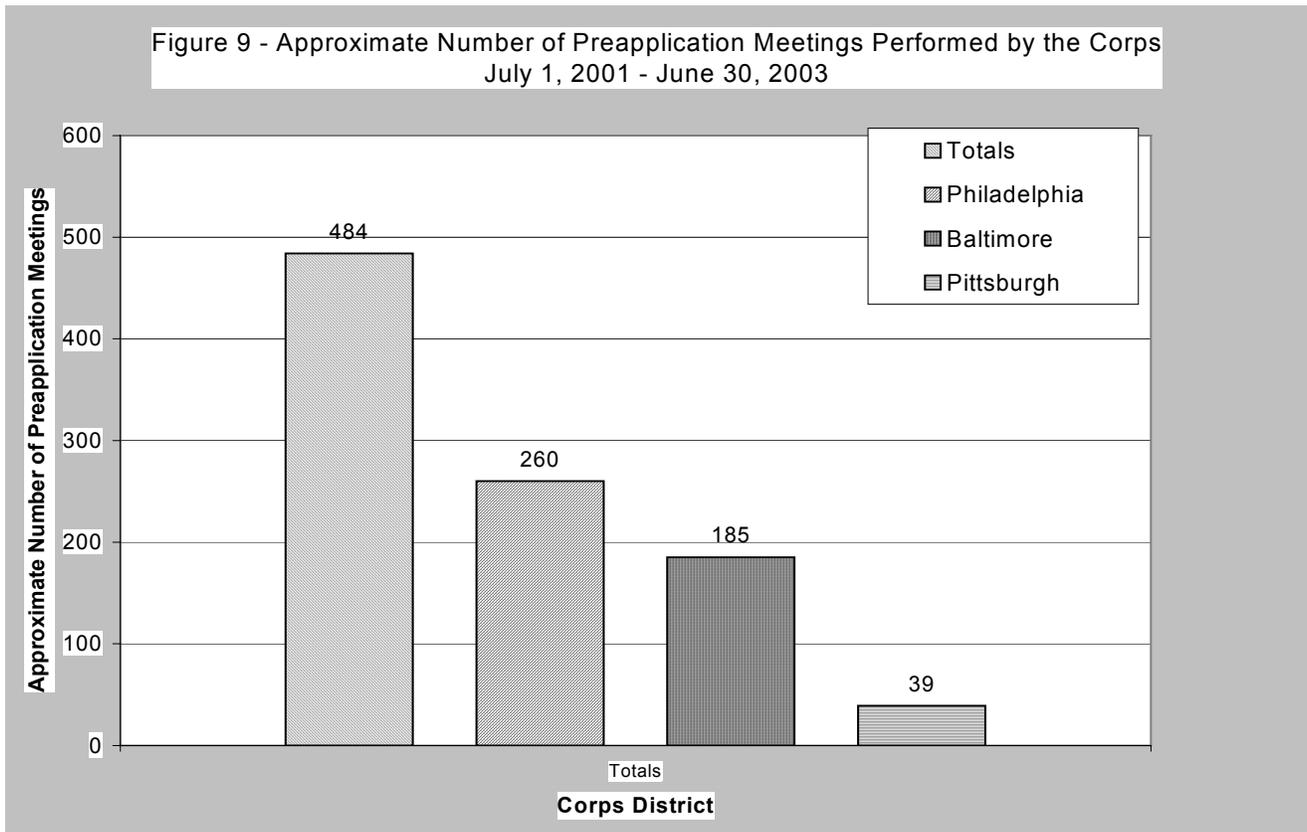
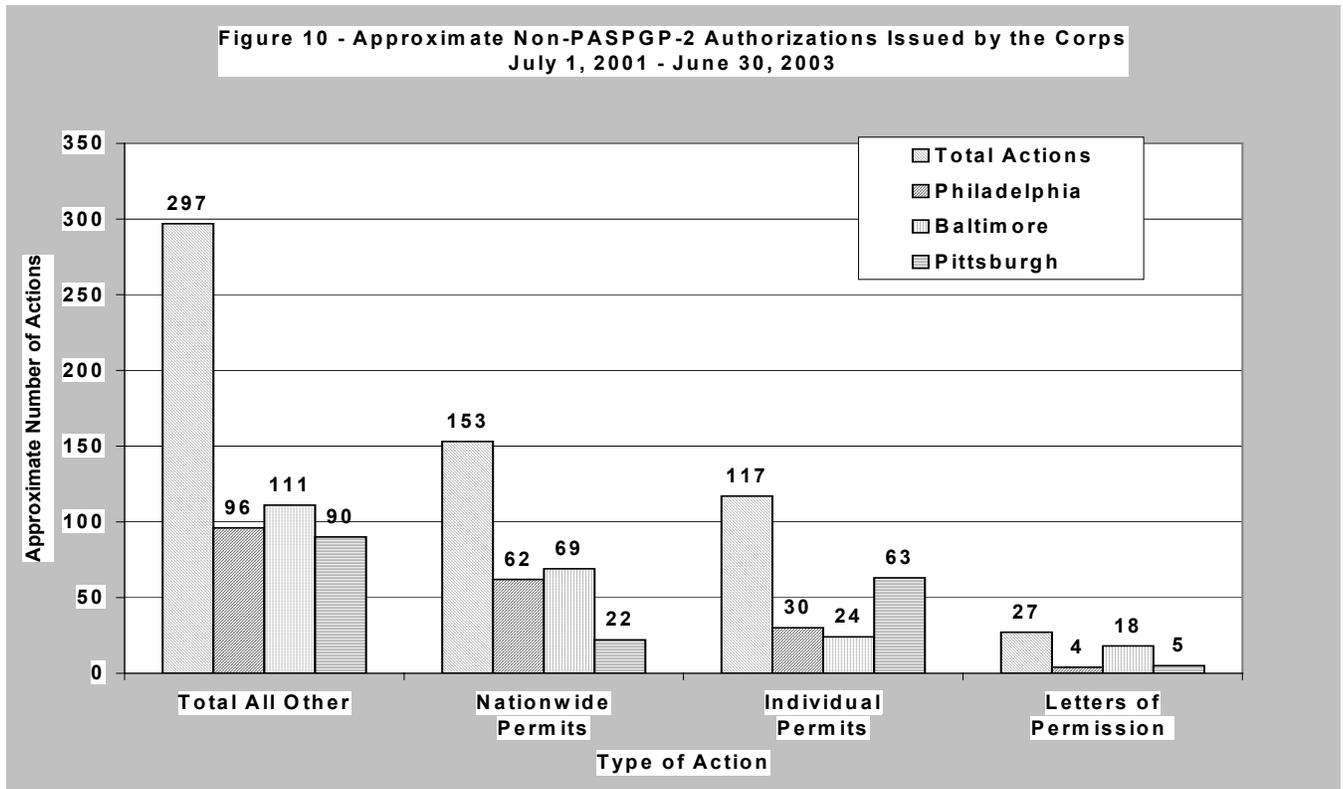


Figure 10 provides data concerning additional Corps regulatory workload not specifically related to the PASPGP-2.



Timeframes for Permits processed

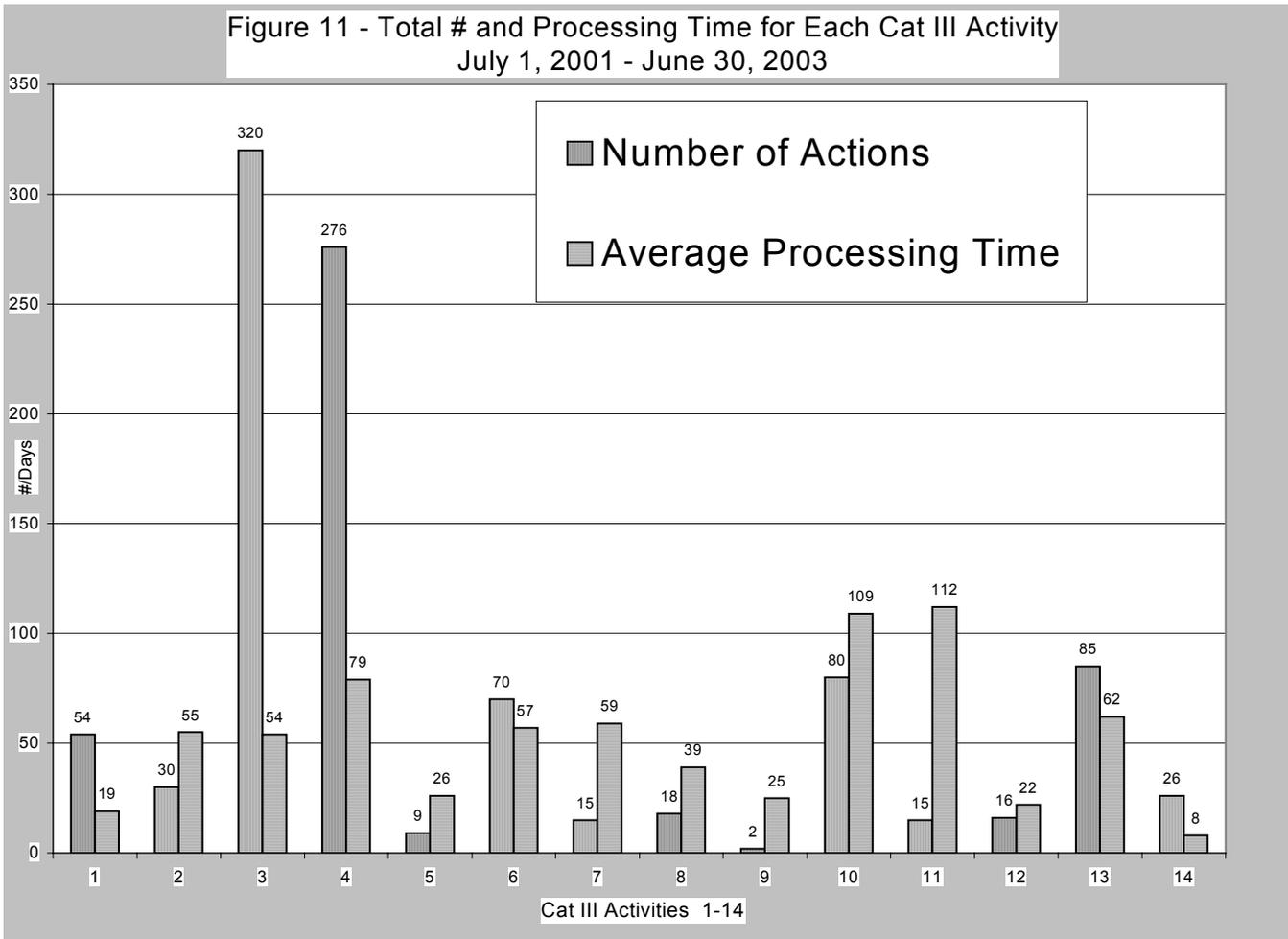
During the review period (7/1/01-6/30/03) permit processing timeframes for all PASPGP-2 were as follows:

Category I Activities - All PASPGP-2s were issued in less than 30 days by the PADEP Regional Offices and/or the delegated County Conservation Districts (CCDs).

Category II Activities - All applications that were determined to be complete, were issued in less than 120 days by PADEP. These projects were listed in the Pennsylvania Bulletin for public review and comment.

Category III Activities - Number of permits issued and the average Corps processing times are provided in Figure 11 below by Corps District. The total average processing time for all Category III permit actions processed by all three Corps Districts was 63 days.

Figure 11. Total number and processing time for each Category III activity.



VII. PADEP Chapter 105 Permitting and Mitigation Data: July 1, 2001 – June 30, 2003

1. Chapter 105 Wetland Encroachment Permits

From July 2001 through June 2003 PADEP issued 303 Individual Chapter 105 Permits authorizing 158.7 acres of wetland impact. These actions required 225.94 acres of wetlands to be replaced. Of these, 47.79 acres of impact were for projects impacting one acre or less of wetlands (projects eligible for PASPGP-2) for which 57.68 acres of mitigation was required. Detailed operational data concerning the issuance of PADEP's Chapter 105 "E" and "D" permits, including PADEP Region, basin (watershed), permanent and temporary wetland impacts, wetland type, wetlands mitigation and type, use of the Fund, treatment wetlands and stream impacts is available in the appendix (see appendix enclosure 2).

2. Chapter 105 Stream Encroachment Permits

Within the period July 1, 2001 through June 30, 2003, the PADEP issued actions categorized as follows:

- 7 permits issued for 8,819 linear feet of flood protection projects
- 13 permits issued to place fill in 21,506 linear feet of stream
- 49 actions that permitted 7,447 linear feet of channel work
- 45 permits for 97,382 linear feet of stream restoration
- 102 actions that permitted 61,359 linear feet of stream enclosures
- 145 actions that permitted 60,162 linear feet of stream bank protection

These projects correspond to a combination of Category II and Category III projects under the PASPGP-2. Stream projects impacting greater than 250 linear feet were forwarded to the Corps as Cat III.

Detailed operational data concerning stream impact projects by PADEP Region, basin and subbasin, permit #, length of impact and type of authorization can be found in the appendix (see appendix enclosure 2).

3. Chapter 105 General Permits

The Delegated County Conservation Districts processed a total of 4,556 General Permits (GP) from July 2001 through June 2003, broken up as follows:

- 64 permits for GP-1, Fish Habitat Enhancement Structures,
- 159 permits for GP-2, Small Docks and Boat Launching Ramps,
- 565 permits for GP-3, Bank Rehabilitation, Bank Protection and Gravel Bar Removal
- 642 permits for GP-4, Intake and Outfall Structures,
- 1082 permits for GP-5, Utility Line Stream Crossing,
- 340 permits for GP-6, Agricultural Crossings and Ramps,
- 959 permits for GP-7, Minor Road Crossings,
- 630 permits for GP-8, Temporary Road Crossings, and
- 115 permits for GP-9, Agricultural Activities.
- 0 permits for GP-10, Abandoned Mine Reclamation
- 0 permits for GP-15, Private Residential Construction in Wetlands.

GP's correspond primarily to Category I activities under PASPGP-2 except for a small number that are forwarded to the Corps as Category III. Detailed operational data concerning all GPs registered during the review period by PADEP Regional Office and CCDs can be found in the appendix (see appendix enclosure 2).

4. The Pennsylvania Wetland Replacement Project (Fund)

Fund Background

In February 1996, PADEP implemented the Fund. Designed as an alternative to the traditional wetland mitigation requirements, the Fund allows certain qualifying permit applicants to contribute to a mitigation fund for impacts to less than 0.5 acre of wetland instead of creating small, costly and often unsuccessful wetlands. In turn, PADEP, in cooperation with other Federal, State and local agencies and private landowners, creates or restores former wetlands to productive and beneficial ecosystems. The Fund works with these private landowners by providing funding and technical assistance to successfully construct wetlands on their properties

PADEP and the National Fish and Wildlife Foundation jointly manage the Fund. Since its inception in 1996, almost one million dollars has been contributed to compensate for 93 acres of wetland impacts. Approximately 109.5 wetland acres on 45 sites in 28 counties statewide have been created.

The Fund Operation During PASPGP-2 – July 1, 2001 – June 30, 2003

From July 1, 2001 – June 30, 2003, the Fund received contributions for 95 actions that impacted a total of 14.52 acres of wetlands. Of these actions, 55 were Water Obstruction and Encroachment Permits, 39 GPs and 1 Enforcement Action. The total contributions were \$169,500 for all 95 actions. During this same time period, the Fund has constructed 19 sites with a total of 58.82 acres of wetlands replaced. Detailed operational data for the Fund by PADEP Region, including basin and type of authorization, wetland impact, wetland type, contribution to the Fund, date and permit numbers can be found in the appendix (see appendix enclosure 3).

Additionally, the “2003 Pennsylvania Wetland Replacement Project Report,” the fourth in a series of annual reports informing the public about the success of the program, is available on the PADEP website at www.state.pa.us (keyword: “DEP wetlands”). This report, as well as those before it, provides numerous pictures of each site as well as descriptions of the history and progress of each site.

VIII. Additional Mitigation under the PASPGP-2

Earlier as presented in Figure 6, various mitigation conditions were frequently incorporated into Category III projects, however, given the structure of the Corps database, it would be difficult to further quantify mitigation required for Category III projects, not otherwise required by the PADEP authorization.

Open water impacts, as presented in Figure 5a for a set of selected Category III activities, of approximately 16.22 acres were primarily temporary and mitigation was generally not required. Additionally, although mitigation was generally not required for gravel bar removals in streams

authorized by GP-3, a number of these authorizations were either modified or otherwise conditioned. Various forms of stream mitigation were required to offset impacts for Waiver 2 and their associated Corps issued PASPGP-2 authorizations.

The Pittsburgh District identified the majority of the Waiver 2 projects. Specifically, during the review period, Pittsburgh District issued the PASPGP-2 for 22,300 linear feet of stream impacts authorized by Waiver 2 including, 2,572 linear feet of ephemeral channel, 14,512 linear feet of intermittent channel and 5,216 linear feet of perennial channel. These Corps authorizations required stream mitigation as follows: 2,970 feet of in-stream improvement and/or relocations; 3,340 feet of riparian enhancement; and 21,525 feet of conservation easements. The Corps and PADEP continue to discuss stream projects and approaches to stream mitigation.

IX. ENDANGERED SPECIES ACT (ESA) COMPLIANCE

The PASPGP-2 and its associated SOP were developed in close coordination with the USFWS and PFBC. Coordination has been maintained with these agencies both programmatically and in terms of project specific assessments. Refinements to the ESA coordination process have been implemented and documented through regular modifications to the SOP and the Corps Public Notice process. There are no outstanding programmatic issues at this time as documented through the Panel Meetings.

1. Bog Turtle Reviews

Under the PASPGP-2 a new screening process was initiated in coordination with USFWS to ensure compliance with Section 7 of the Endangered Species Act. This process was initiated for GPs where wetland impacts were proposed. More specifically, in the 15 counties where bog turtle populations are known to occur, in addition to the PNDI reviews, project areas are field reviewed by trained staff, for potential habitat, prior to GP registration and issuance of the PASPGP-2. GPs field reviewed for bog turtle habitat are: GP-5 (Utility Line Stream Crossings), GP-6 (Agricultural Crossings and Ramps), GP-7 (Minor Road Crossings), GP-8 (Temporary Road Crossings), and GP-9 (Agricultural Activities). The Corps, USFWS, PADEP and the CCDs share the workload associated with this effort. Close coordination in accordance with the requirements of the USFWS and PFBC has been maintained throughout the process.

In addition to this new review process, bog turtle reviews are conducted in these counties where bog turtle populations are known to occur, prior to issuance of Water Obstruction and Encroachment ("E" permits) and Dam Permits ("D" permits). The Corps, USFWS and PADEP share the workload associated with this effort.

As discussed above (see Figure 7) a total of 477 Phase 1 bog turtle habitat assessments were performed by the Corps from July 1, 2001 through June 30, 2003 as follows:

Total Reviews Baltimore District: 89
Total Reviews Philadelphia District: 388

Number of the above with potential bog turtle habitat:

Baltimore District: 21
Philadelphia District: 100

These bog turtle habitat assessments were conducted for GPs 5-9, primarily for investigating selected General Permit sites in the 15 bog turtle counties. The habitat assessments were conducted to ensure compliance with Section 7 of the ESA. Some of these reviews reflect additional site inspections for other than the GPs, i.e. – for E-Permits, Dams or as part of JDs performed. Approximately 22.5% of the sites reviewed contained potential bog turtle habitat.

In addition, information was requested from the USFWS for the period July 1, 2001 through June 30, 2003. As a result of database tracking differences, information was not provided for this precise period but did include the monitoring period. The following information was provided:

In information provided on April 28, 2004, the USFWS indicated that as a result of the increased efforts resulting from the PASPGP-2 requirements to conduct Phase 1 Bog Turtle Habitat Assessments in the fifteen listed counties, when potential bog turtle habitat is found, one of the following usually results: 1) the project is dropped; 2) a Phase 2 Survey is completed; 3) the applicant assumes bog turtles are present, and modifies the project to avoid potential direct and indirect adverse effects to the species; or 4) the applicant modifies the project to avoid direct effects to wetlands.

Additionally, the USFWS indicated that: “the additional focus on bog turtle surveys has resulted in the discovery of several previously undocumented sites, indicating that where habitat is found, bog turtles may be discovered.” They further indicated: “Over the past 3 years, approximately 12 new occurrences have been found annually. While some of these new records represent turtles found crossing roads, others have been a result of Phase 2 surveys conducted prior to land development. The bog turtle screening requirements of the PASPGP-2 have made many developers aware of the need to screen their properties (as well as properties that they are interested in buying) for bog turtles and their habitat.”

The following questions were specifically asked of the USFWS as well:

1. Number of desktop reviews conducted by USFWS for completed Phase I Bog Turtle Habitat Assessments? Of those, how many resulted in requiring Phase 2 Surveys? The USFWS indicated they do not track the Phase 1 Bog Turtle Habitat Assessments that they receive for review and approval from consultants. The USFWS was however able to provide data on the number of Phase 1 Surveys completed by Corps personnel that they were copied on. Data was not available indicating how many of these resulted in Phase 2s. Of the Phase 1s that USFWS received from the Corps, USFWS data indicates that approximately 9.7 % identified potential bog turtle habitat. The Corps data shown above indicates approximately 22.5% of the total number of sites reviewed by the Corps contained potential bog turtle habitat. The basis for this discrepancy is not clear. A partial explanation may be that not all of the sites reviewed by the Corps were in the USFWS database. Data provided by USFWS indicated that they reviewed 383 of the approximately 477 Phase 1 Surveys conducted by the Corps. This could reflect the fact that either all the Phase 1s were not sent to USFWS, or were sent but not entered in their database, or they were done in combination with other actions such as jurisdictional determinations and therefore were not logged in by USFWS as Phase 1s. The Corps and USFWS will be meeting in order to better coordinate data recording.

2. *Number of field reviews conducted by USFWS personnel for Phase 1 Bog Turtle Habitat Assessments? Of those, how many resulted in requiring Phase 2 surveys?* USFWS indicated that approximately 74 Phase 1 surveys were conducted by USFWS personnel. However, the data regarding these Phase 1s was not entered into their database and it is unknown how many resulted in Phase 2s.

3. *Number of Phase 2s conducted by consultants that were reviewed for approval by USFWS? Of those, number of sites with confirmed populations?* The USFWS was not able to provide accurate data on the number of PASPGP-2 related Phase 2 Surveys that were submitted to their office for review and approval. The USFWS receives Phase 2 Survey results for projects with and without wetland impacts requiring Federal and State approval, and these are not separated in their database. Therefore, it would be difficult to correlate how many of the Phase 2s were associated with projects requiring approval under the PASPGP-2. Many times when the Phase 2s are completed, the project has not yet been designed and sometimes the project will be dropped as a result of the findings of the Phase 1 or Phase 2 Survey. Better tracking by USFWS is needed in this area.

2. Other Federal Endangered Species

Screening was also expanded for Federally listed, threatened or endangered mussel species as follows:

“ Activities or projects proposed in streams occupied by Federally listed, proposed, or candidate mussels... as indicated below, or in waters of the U.S. within 300 feet of these streams shall be sent to the US Fish and Wildlife Service (FWS) for review and comment. This includes, but is not limited to, activities proposed to be authorized under Individual Permits; Dam Permits; Environmental Assessments, General Permit Nos. 1, 2, 3, 4, 5, and 8; and bridge and culvert maintenance activities.”

Under this process, Pittsburgh District reviewed 13 Category III (Activity 4) actions, of which nine were PADEP Individual Permits and four were GPs. Twelve of the permits had the potential to impact either the northern riffle shell mussel, *Epioblasma torulose rangiana*, or the club shell mussel, *Pleurobema clava*, and one was due to the eastern massasauga rattlesnake, *Sistrurus catenatus*. Any activity on the Allegheny River from Kinzua Dam to Lock and Dam 8, French Creek, Conneauttee Creek, Conneaut Outlet, LeBoeuf Creek, or Muddy Creek is reviewed in the Pittsburgh District as a Category III action due to these two mussel species. One of the actions involving mussels required formal consultation which resulted in an incidental take authorization with special conditions, and three of the permits reviewed due to potential impacts to mussels had special conditions added.

X. COMPLIANCE AND ENFORCEMENT

Background

The discharge of dredged and/or fill material in waters of the United States, including jurisdictional wetlands, without the necessary Department of the Army permit, is a violation of Section 301 of the Clean Water Act. The EPA and the Corps of Engineers have lead enforcement authority for Section 301 Clean Water Act violations in Pennsylvania. The Corps and EPA have established lead agency roles through a National Memorandum of Agreement.

Work performed in noncompliance of a Department of the Army permit, including Special Conditions, is a violation of Section 404 of the Clean Water Act. The Corps is the lead Federal agency for the investigation and resolution of these violations, including the issuance of Administrative Penalties.

The Corps is also the lead Federal agency for enforcement of Section 10 of the Rivers and Harbor Act of 1899. Work performed in, over, or under, a navigable water of the United States, in the absence of a Department of the Army Section 10 permit, is a violation of Section 10 of the Rivers and Harbors Act of 1899.

Within Pennsylvania, the Baltimore, Philadelphia, and Pittsburgh Corps Districts and EPA, Region III, have further defined agency roles for the investigation and resolution of potential violations, through establishment of Field Level Agreements. EPA has also entered into agreements with the FWS to assist in support of enforcement efforts.

PADEP is the lead state agency for investigating and resolving violations of Chapter 105 of the Dam Safety and Encroachment Act. This includes work performed without the necessary Chapter 105 authorization and work performed in noncompliance of an issued permit.

The PASPGP-2 does not delegate any enforcement authority from one Federal/State agency to another Federal/State agency. Enforcement and compliance operating procedures were developed and included as part of the PASPGP-2, SOP. The SOP formalized procedures that existed prior to the PASPGP-2 and developed additional requirements to ensure coordination of enforcement and compliance efforts by the Federal and State enforcement agencies. One of the goals of the SOP is to identify a lead agency for investigation of complaints and resolution of violations. The establishment of a lead agency reduces the need for separate investigations by other Federal or State agencies.

The Enforcement and Compliance Section of the SOP, identifies those types of violations that need to be coordinated between the Federal and State agencies and those in which the lead agencies do not need to formally coordinate. For example, resolution of violations through voluntary removal of the unauthorized/noncompliance work and restoration of the impacted area do not need to be coordinated. However, if the lead enforcement agency feels that the violation should be resolved through issuance of an “after-the-fact” authorization, the lead Federal/State agency is required to coordinate with the corresponding Federal/State agency. The SOP allows for joint investigations, as necessary, however, such investigations are coordinated.

Federal and State enforcement agencies frequently meet to discuss and coordinate enforcement and compliance efforts. PASPGP-2 Monitoring meetings, Statewide Enforcement Conferences and regional meetings all serve as a venue to coordinate and discuss enforcement cases and issues related to PASPGP-2. Federal and State agency field staffs also discuss enforcement/noncompliance cases during informal meetings. To further facilitate enforcement efforts and promote an understanding of the programs, joint training is offered to Federal and State agency personnel.

In developing this Report, it became evident that the Federal and State agencies track their enforcement and compliance efforts differently. These differences are attributed in part, to different databases and data reporting methods of the Federal and State agencies. The Federal and State agencies are investigating development of measures to better track data for the final five year Monitoring Report. Furthermore, the Corps is currently in the process of implementing a new data base to help standardize the tracking and reporting of data.

Operational data for enforcement and compliance activities for the review period July 1, 2001 to June 30, 2003 are provided below. The numbers are based on known data, but should be interpreted as an approximation, with the understanding that additional efforts were conducted but are not reflected in the data. Corps compliance data reflects inspections of PASPGP-2 authorizations, as well as inspections of other types of Federal authorization such as Nationwide Permits, or Individual Permits. Compliance inspections are typically performed during the construction phase of a project, or upon completion of the construction phase. Since the review period is only two years, the opportunity to perform compliance inspections of work authorized by PASPGP-2 is somewhat limited. Many projects receiving PASPGP-2 authorization late in the PASPGP-2 review period would not be under construction and thus not inspected prior to the end date set for the review period.

1. Compliance

During the review period, July 1, 2001 to June 30, 2003, the Federal and State agencies performed 1,028 compliance inspections of authorized work, including required wetland compensation areas. As a result of these inspections, the agencies resolved 37 (does not include Pittsburgh District or PADEP data) cases of noncompliance work. Resolution of the noncompliance work occurred through voluntary restoration, permit modifications, and/or determinations that the work was minor in nature and required no enforcement action.

2. Self-certification

On December 13, 1996, Corps Headquarters added a General Condition to the Nationwide Permit (NWP) Program, which requires submission of a Compliance Certification by the permittee. The Corps determined that this condition was necessary to collect more accurate data on project impacts and mitigation and maximize permittee compliance. The certification helps the Corps ensure permit compliance as well as continuously evaluate mitigation success. To be consistent with the Corps NWP program, the PASPGP-2 also incorporated a new self-certification process. Under this process, the self-certification form is included with all Category I, II and III authorizations with a requirement that they be filled out and returned upon completion of all work:

“Every permittee who receives a written PASPGP-2 authorization shall submit a signed certification regarding the completed work and any required mitigation. The certification form shall be forwarded to the permittee with the PASPGP-2 authorization. The completed form shall be returned to the appropriate Corps District and include:

- a. a statement that the authorized work was or was not done in accordance with the PASPGP-2 authorization, including any general and/or specific conditions. If the work was not done in accordance with the PASPGP-2 authorization, the*

permittee shall describe the specifics of the deviation from the authorized activity.

b. a statement that any required mitigation was or was not done in accordance with the permit conditions. If the mitigation was not performed in accordance with the permit conditions, the permittee shall describe the specifics of the deviation from the permit conditions related to the required mitigation.

c. a written description of the photos, required to be submitted with the form, showing completed work and mitigation.”

The Corps believes that although not a replacement for other compliance efforts, this procedure helps insure a higher level of compliance with project construction and mitigation conditions.

Baltimore District had 257 self-certification forms returned, representing a return of 7.3% of the 3,513 PASPGP-2s issued during this timeframe. Pittsburgh District had 173 self-certification forms returned representing a return of 6.3% of the 2,760 PASPGP-2s issued during this time frame (self-certification data was not available from Philadelphia District).

The low number of returns could be attributed to a number of factors including: a) projects never constructed; b) projects, including required mitigation, were not completed during the review period; c) projects, including mitigation have been completed, but the mitigation site is still being monitored; e) deficient administrative tracking of form receipt; f) form not sent to permittee with authorization; or g) failure of permittee to submit the required form. The actual reason was not evaluated as part of this report. Failure to receive the form, however, does not indicate that the authorized work was not completed in accordance with the approved plans, including construction of mitigation areas.

3. Enforcement

In addition to the compliance effort, Federal and State agencies through investigation of complaints concerning unauthorized work, found 632 violations. Of these, 209 violations were resolved through voluntary resolution, while 71 (does not include PADEP numbers) were resolved through issuance of an “after-the-fact” authorization. Investigation of complaints and resolution of the violations resulted in approximately 999 (does not include Pittsburgh District data) inspections/meetings by agency personnel.

XI. CONCLUSIONS AND RECOMMENDATIONS

The PASPGP-2 process reflects a workload sharing partnership among the Corps, PADEP and other Federal, State, and local agencies, that is providing required levels of protection with greater levels of project specific interface than would be possible absent this process. This reflects the similarities in regulatory missions of both the Corps and PADEP and the pooling of resources to eliminate redundant reviews. The process has required a high degree of interface both in the development and maintenance phases to insure appropriate meshing of the two regulatory programs and to provide continual fine-tuning to accommodate programmatic changes. Despite the challenges imposed by varying agency perspectives, all regulatory and cooperating agencies have partnered through regular PASPGP-2 Panel meetings as summarized above, so that all operational issues and project specific concerns could be addressed. Similar

forums throughout the timeframe prior to PASPGP-2 have also helped insure that the blueprint for PASPGP-2 would be appropriately structured.

As the partnership process has moved forward, many of the 'startup' inefficiencies have been resolved, enabling the Corps and PADEP to look ahead towards formalizing and refining additional operational tasks such as the compliance processes for both issued permits and mitigation site success. More formal stream mitigation procedures are also being pursued.

Additionally, given the many technical and legal factors that impact upon the regulatory process and associated science, the Panel will continue to address emerging issues in order to maintain the integrity of this process. The Corps and PADEP are committed to continue to improve compliance efforts through project follow-up, documentation, and remediation efforts where needed. Some additional efforts under consideration are: a) improvements to the compliance self-certification process to increase response rates; b) commitment of additional resources and clarifying agency roles for managing compliance initiatives; and c) better data tracking to document compliance efforts. The PASPGP-2 SOP will be modified as necessary to reflect new formalized procedures relative to the above.

During the remainder of the PASPGP-2 timeframe, the Corps and PADEP will continue to refine operational procedures, not only as issues come to light, but also through continued training (i.e. internal technical and administrative, consultants training, contractor workshops etc). Data tracking will also be enhanced through 'lessons learned' (i.e. from the development of the 2 ½ Year Monitoring Report), so that Corps District data is more consistent and easier to retrieve. For example The Corps and PADEP are developing additional tracking criteria for selected Category III activities to determine if the review and coordination criteria currently in place are appropriate. This more detailed analysis will enable us to refine coordination procedures for some activity categories to insure appropriate levels of review for all activities, prior to possible reissuance of PASPGP in July 2006. Changes that may further streamline the permitting process will be considered through the interagency review process. Substantive changes, if any, will additionally be announced through the Public Notice process.

As required by the PASPGP-2 Part VII. D. 3., the data presented in this report, supports the Corps determinations that: (1) the PASPGP-2 has met its intended goal of reducing duplication; (2) authorizations/verifications comply with applicable laws and regulations; and (3) only projects with minimal adverse environmental effects were verified.

Additionally, as required by the SOP, the following was determined: PASPGP-2 permits were processed in a timely manner; the PASPGP-2, as implemented, is in compliance with the 404(b)(1) Guidelines; the PASPGP-2, as implemented, is in compliance with the Endangered Species Act (ESA); mitigation as appropriate was required, continues to be tracked, and will be further addressed in the 5 year report; and finally efforts continue within the Monitoring Panel forum to further streamline the permit procedures where appropriate.

Based upon the above, it is the determination of the Corps of Engineers that continuation of the PASPGP-2, in its current form* for the balance of the PASPGP-2 five year term is warranted.

***Minor modification of the PASPGP-2 as appropriate, is possible within the context of the current structure, in coordination with the Monitoring Panel and the Public Notice process.**

XII. APPENDICES: Please contact the Baltimore District Corps of Engineers at 410-962-5673 to receive a copy of any of the enclosures referenced in the Report.