



Public Notice

U.S. Army Corps
of Engineers

In Reply Refer To CENAB-OPR
Public Information Announcement Tropical
Storm/Cyclone 16/Ophelia Storm Damage Repair

Baltimore District
Special Public Notice 23-40

Philadelphia District

Pittsburgh District

Date: September 25, 2023

The purpose of this notice is to inform the public that repairs of damage to public and private property caused by Tropical Cyclone 16/Tropical Storm Ophelia and associated flooding and weather conditions, may be authorized, subject to the procedures described below in Maryland, the District of Columbia, certain military installations in Northern Virginia, and Pennsylvania.

Winds, storm surge, and flooding from Tropical Cyclone 16/Tropical Storm Ophelia are currently projected in Maryland, the District of Columbia, and Pennsylvania and threaten to result in severe flooding and other storm related damage. It is anticipated that owners of damaged property caused by Ophelia will want to conduct repair activities in the near future. This advisory is intended to inform property owners of the U.S. Army Corps of Engineers (Corps) permit requirements for storm damage repairs proposed in the State of Maryland, the Commonwealth of Pennsylvania within the Baltimore, Philadelphia, and Pittsburgh District's regulatory geographic boundaries, the District of Columbia, and certain military installations of northern Virginia (i.e., Cameron Station, Fort Belvoir, Fort Myer, and the Pentagon).

The Corps has federal jurisdiction over activities that include dredging or construction in, over, under, or affecting navigable waters of the United States, certain excavation activities, and the placement of dredged or fill material into waters of the United States (including wetlands). Such activities may require a Department of the Army permit, in accordance with Title 33 of the Code of Federal Regulations, Parts 320-332. Please note that waters of the United States include all navigable waters, rivers, perennial and intermittent streams, tributaries, drainage courses, lakes, ponds, impoundments, and wetlands, which meet applicable federal criteria, regardless of their size.

It is expected that most proposed activities to remediate storm damage would be authorized under an existing general permit. A general permit is an authorization for construction in waters of the United States, including navigable waters, that substantially reduces the time needed by the Corps to process applications for a category of activities that cause only minimal individual and cumulative environmental impact, when those activities are substantially similar in nature. General permits are issued on a nationwide or regional basis and include Nationwide Permits and Regional General Permits that apply to a specific geographic area. These activities would be accomplished under the authorities of Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the Clean Water Act.

For projects proposed within the State of Maryland, the Department of the Army Maryland State Programmatic General Permit-6 (MDSPGP-6) authorizes repair and maintenance activities. Specifically, MDSPGP-6 authorizes the in-kind repair, rehabilitation, or replacement of any previously authorized, currently serviceable structures or fills destroyed by storms, floods, fire, or other discrete events. The MDSPGP-6 may be used to authorize one-acre and/or 1,000 linear feet of streams, rivers, and other open waters or less of impact to jurisdictional waters of the United States, provided all terms and conditions are met and the required permit processing procedures are followed. Repair and maintenance work that qualifies under MDSPGP-6 Category A, Activity b(1) General Maintenance does not require an application for Corps review and authorization except for replacement of previously authorized, currently serviceable structures located along a federally authorized navigation channel or Corps civil works project, that are destroyed by an act of nature or other sudden event or for modification of previously authorized currently serviceable structures located along federally authorized navigation channels or civil works project. In this case, an application is required to be submitted to the Corps for review under Category B or alternate Corps permit review procedures, as appropriate. Repair and maintenance activities that are not eligible for Category A and must be reviewed under Category B of the MDSPGP-6 require an application for Corps review and authorization. The repair, rehabilitation, or replacement activity is limited to the original dimensions or configurations, except for minor deviations due to changes in materials, construction techniques, or current construction codes or safety standards. Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills destroyed or damaged by storms, floods, fire, or other discrete events must be started or under contract to start within two years of the date that they were damaged or destroyed.

For projects proposed within the Commonwealth of Pennsylvania, the Department of the Army Pennsylvania State Programmatic General Permit 6 (PASPGP-6) authorizes repair and maintenance activities. Specifically, the PASPGP-6 authorizes maintenance and repair work that is authorized by the Pennsylvania Department of Environmental Protection through their Chapter 105 program. Repair and maintenance work that qualifies as a Non-Reporting Activity under PASPGP-6 does not require further coordination or notification to the Corps. This includes those Emergency Permits issued by the Pennsylvania Department of Environmental Protection which do not require a Corps review under the PASPGP-6 (Non-Reporting Activities). The PASPGP-6 may be used to authorize 0.5 acre or less of permanent loss of waters of the United States, including jurisdictional wetlands and/or 1,000 linear feet of jurisdictional stream, provided all terms and conditions are met and the required permit processing procedures, including in some cases a review by the Corps (Reporting Activities), are followed. The restoration of tidal and non-tidal wetlands and riparian areas; the restoration of non-tidal streams and other non-tidal open waters; and the rehabilitation of

tidal streams, tidal wetlands, and tidal open waters, do not have any acreage or linear footage limits, provided those activities result in net increases in aquatic resource functions and services. The maintenance of artificial ponds/impoundments through removal of accumulated sediments does not have any acreage or linear footage limits.

Repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill, destroyed or damaged by storms, floods, fire, or other discrete events that do not fall under the scope of the MDSPGP-6 or the PASPGP-6 may be eligible for authorization under nationwide permit (NWP) 3, provided the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification and the conditions are complied with. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. Currently serviceable means that prior to damage that occurs as a result of Isaias, the structure or fill was useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project or within the boundaries of the structure or fill. NWP #3 does not authorize channelization or the restoration or re-establishment of a stream channel. The repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, must be commenced, or under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

Copies of the MDSPGP-6, PASPGP-6, and NWPs are available via the internet at: <https://www.nab.usace.army.mil/Missions/Regulatory/Permit-Types-and-Process/>

Please thoroughly review the terms and conditions of the MDSPGP-6, PASPGP-6, and the NWP #3 and the 2021 NWP regional conditions and note that some activities require written authorization prior to commencement of work. It is imperative that the conditions and the management practices be followed explicitly. If you are uncertain that the activity you propose qualifies for a MDSPGP-6, PASPGP-6, or NWP #3, you are advised to contact the appropriate Corps District office prior to the commencement of work.

The regional and nationwide general permits apply only to Department of the Army regulatory programs. It should be noted that authorization by a Corps regional or nationwide general permit does not obviate the need for state or local permits, or other federal permits required by law or the responsibility for obtaining all necessary property rights. It is recommended that you contact the Maryland Department of the Environment at (410) 537-3000, the Pennsylvania Department of Environmental Protection telephone numbers listed by region at (<https://www.dep.pa.gov/About/Contact/Pages>), or the District of Columbia, Department of the Environment at (202) 535-2255, for information concerning their regulations and potential need for authorization.

Section 404 of the Clean Water Act provides for certain exemptions for discharges of fill material associated with maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. This maintenance exemption does not include any modification that changes the character, scope, or size of the original fill design. In addition, Corps authorization may be required if the work would take place in a navigable water of the United States. Emergency reconstruction must occur within a reasonable period of time after damage has occurred in order to qualify for this exemption. You are advised to contact the appropriate Corps District office to determine if your proposed activity falls under this exemption.

In certain cases where the proposed work does not qualify for a general permit or the exemption, and the situation would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen and significant economic hardship if corrective action is not undertaken within a time period less than the normal time needed to process a permit application under standard procedures, Division Engineers are authorized to approve special procedures in emergency situations. Even in an emergency situation, reasonable efforts will be made to receive comments from interested federal, state, and local agencies and the affected public [33 CFR 325.2(e)(4)]. You are required to notify the appropriate Corps District office noted in this advisory if you believe your activity qualifies for emergency procedures. Notification will require identification of the project proponent, a point of contact, work description, photographs of the site, and the location of the work to be performed.

It is recommended that you retain for your records a copy of permits, photographs, drawings, surveys, etc. for the structures or fill being repaired, replaced, or rehabilitated and/or any other documentation that the structure or fill was serviceable immediately prior to the storm damage that occurred, or at the time the work was done.

The removal of debris, including floatable debris material, does not require Department of the Army authorization. This includes the cutting and removal of woody debris that has fallen into a waterway and the removal of tires, appliances and other debris which has been deposited by a storm event, provided that the work does not result in a regulated discharge of dredged and/or fill material and all material is placed in an upland location. Any inquiries regarding authorization or the referenced unregulated activities are to be directed to the applicable Permit Section at the Corps, District, as indicated below.

The Corps recognizes there are rare situations where imminent and dire threats to life and property may occur necessitating action before a Corps permit can be secured. In such circumstances, application for the applicable Corps authorization must be made as soon as feasible.

Maryland:

Baltimore District Maryland Section Northern (410) 962-5691 (Allegany, Anne Arundel, Baltimore, Carroll, Cecil, Howard, Frederick, Garrett, Harford, Washington Counties and Baltimore City and all Maryland State Highway Administration projects).

Baltimore District Maryland Section Southern (407) 955-0010 (Calvert, Caroline, Charles, Dorchester, Kent, Montgomery, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties, District of Columbia, and certain military bases in northern Virginia).

Pennsylvania:

Baltimore District Pennsylvania Section, (717) 249-8730 (Susquehanna and Potomac River Watersheds).

Philadelphia District Regulator of the Day, (215) 656-6728 (Delaware River Watershed).

Pittsburgh District Division Chief, (412) 395-7155 (Ohio and Genesee River Watersheds, and Lake Erie Watershed).

This public notice is issued by the Chief, Regulatory Branch, Baltimore District, for and on behalf of the Pittsburgh, Philadelphia, and Baltimore Districts.