



Public Notice

U.S. Army Corps
of Engineers

Date: 10 May 2013

Special Public Notice # SPN 13-28

Baltimore District

Philadelphia District

Pittsburgh District

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

Subject: The purpose of this Special Public Notice is to inform the public of the requirement for Corps Review of the Pennsylvania State Programmatic General Permit-4 (PASPGP-4) applications when use of the Pennsylvania Wetland Replacement Program (PWRP) is Proposed.

The Pennsylvania Department of Environmental Protection (PADEP) established an in-lieu fee program (ILF) in 1996 to compensate for unavoidable impacts to waters of the United States, including wetlands, as part of the Corps of Engineers' regulatory responsibilities under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. In Pennsylvania, the ILF is referred to as the Pennsylvania Wetland Replacement Program.

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

PADEP is actively working to bring the PWRP into compliance with the 2008 Mitigation Rule. The Corps will resume using the PWRP once all authorizations and approvals are obtained. A special public notice will be released to notify the public once the PWRP complies with the Mitigation Rule.

In accordance with 33 CFR 325.5(c), the Baltimore, Philadelphia, and Pittsburgh Districts of the Corps of Engineers issued the PASPGP-4 to authorize certain activities that require Department of the Army permits under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and/or Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). Under PASPGP-4, only a portion of submitted applications require a Corps review to confirm whether or not the proposed activities qualify for PASGP-4 authorization. These activities are called Category III activities. The majority of applications are reviewed by PADEP as Category I or II activities under PASPGP-4.

PASPGP-4, Part IV, C, 1, allows for the Corps or other state/federal resource agencies to specifically request a Category III review of applications to determine the applicability of PASPGP-4. Further, Part VI, B, 6, of PASPGP-4, requires that all compensatory mitigation be accomplished in accordance with the Mitigation Rule. Therefore, in order to ensure compliance with PASPGP-4 and the Mitigation Rule, the Baltimore, Philadelphia, and Pittsburgh Corps Districts have requested PADEP to forward, as a Category III application under PASPGP-4, any permit application received on or after June 9, 2013 which proposes to use the existing PWRP as compensatory mitigation. In addition, PADEP (or any agency acting on behalf of PADEP) will not issue any PASPGP-4 verifications using the PWRP after June 9, 2013. Such verifications will be sent to the applicable Corps District for review as a Category III activity until the PWRP is brought into compliance with the Mitigation Rule. The Corps will make a case-by-case determination as to whether or not mitigation is required to compensate for impacts to the aquatic environment and such mitigation requirements, if applicable, will need to meet the requirements of the Mitigation Rule prior to issuance of a PASPGP-4 verification.

No additional review time is expected while the PWRP is brought into compliance with the Mitigation Rule under PASPGP-4. From 2011-2012 the PWRP was used as mitigation for 38 projects in Pennsylvania.

Please communicate the foregoing information to any persons who did not receive this notice and may have an interest in this issue. Questions and comments may be directed to Mrs. Patricia Strong, U.S. Army Corps of Engineers, Baltimore District, Pennsylvania Section, P.O. Box 1715, Baltimore, Maryland 21203.



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