



Public Notice

DATE: December 27, 2005

**US Army
Corps of
Engineers**
Baltimore District

**In Reply Refer to CENAB-OP-RPA
Special Public Notice # 05-54**

Subject: Proposal to reissue with modifications, the Pennsylvania State Programmatic General Permit (PASPGP-2), for a five year period as the PASPGP-3.

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

On July 1, 2001 the District Engineers for Baltimore, Philadelphia and Pittsburgh Districts, issued the Pennsylvania State Programmatic General Permit (PASPGP-2) for a five year period. The PASPGP-2 will expire on June 30, 2006, unless a decision is made to reissue it with modification, reissue without modification, suspend, or revoke it by or before that date, whichever occurs first.

The Corps has completed its review and evaluation of the PASPGP-2 and has released its findings and recommendations in the PASPGP-2 Monitoring Report dated December 2005. The Report is available upon written request to the Baltimore District at the address listed below, or a copy may be attained through the Corps web site at www.nab.usace.army.mil/Regulatory/Pubs/paspgp.pdf

The purpose of this 30-day Public Notice is to request comments on whether to reissue with modifications, or reissue without modifications for a five year period, or to not reissue the Pennsylvania State Programmatic General Permit (PASPGP-2). Comments are requested by January 26, 2006.

We are requesting comments on the following proposed modifications that would be incorporated into a new **Pennsylvania State Programmatic General Permit-3 (PASPGP-3)**, which can be viewed on our web page at www.nab.usace.army.mil/Regulatory/Permit/PASPGP-3.pdf A copy of the current version of the PASPGP-2 dated July 1, 2001 and revised March 11, 2003 can be viewed on our web page at <http://www.nab.usace.army.mil/Regulatory/Permit/PASPGP-2.pdf>

1. Activities Listed As Not Requiring Federal Authorization Under PASPGP-2 Moved to Category I Activities Under PASPGP-3: Part II.B. of the PASPGP-2 identified the following list of Pennsylvania Department of Environmental Protection (PADEP) authorizations as activities not regulated pursuant to Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act:

- a. PADEP General Permit #10, Abandoned Mine Reclamation
- b. PADEP Waiver #3, Aerial Crossings
- c. PADEP Waiver #5, Acid Mine Drainage
- d. PADEP Waiver #13, Abandoned Railroad Bridges and Culverts
- e. PADEP Waiver #15, Abandoned Mines
- f. Waiver Letters of Maintenance for:

1. Channel Cleaning at Bridges and Culverts – Stream channel maintenance within 50 feet upstream and downstream of an existing bridge or culvert, performed in accordance with the maintenance provision of a previously issued PADEP permit and the PADEP *Standards for Channel Cleaning at Bridges and Culverts*.

2. Bridge and Culvert Repair – Maintenance to an existing culvert, bridge, or stream enclosure constructed prior to July 1, 1979, on a watercourse where the drainage area is five square miles or less, performed in accordance with the PADEP *Standards for Bridge and Culvert Repair*.

It has been determined that the activities listed above could require a Section 10 permit if occurring in a Section 10 waterway. Since the PASPGP-2 was available for use in some Section 10 waterways, it is recommended that this list of authorizations be removed from the current section identifying them as activities not regulated by the Corps. In reviewing the work permitted by these PADEP authorizations, it is recommended that these activities be moved to Category I Activities under PASPGP-3.

2. Category III Activities In PASPGP-2, To Be Moved To Category I Activities Under PASPGP-3: Based on the data collected and analyzed during this monitoring effort, the Corps recommends deleting the following activities from the list of Category III Activities (although a subset of these activities - those with the potential for more than minimal impact - will still be Category III Activities), and moving them to Category I Activities under PASPGP-3. As mentioned, those projects with the potential for "more than minimal" impact will continue to be forwarded to the Corps for review. Specifically, projects in counties of documented bog turtle occurrence will be forwarded to the Corps and reviewed in accordance with the bog turtle screening procedures; projects proposed in streams occupied by Federally listed, proposed, or candidate mussels or fish, or in waters of the United States within 300 feet of listed streams, will be forwarded to the Corps and U.S. Fish and Wildlife Service (USFWS) for review; and all applications for work impacting greater than 250 linear feet of a stream channel will be forwarded to the Corps for review. The following Category III Activities currently listed in PASPGP-2 are recommended to be moved to Category I Activities under PASPGP-3:

a. **PADEP General Permit-3:** To eliminate reporting to the Corps of gravel bar removal activities registered under PADEP General Permit #3 (GP-3), when the activity is within 50 feet of a culvert or bridge, or when the length of stream affected is 250 linear feet or less. The Corps will continue to review activities registered under PADEP GP-3 that impact greater than 250 feet of stream, in accordance with Category III requirements. This recommendation is based on the findings in the PASPGP-2 Monitoring Report, comments made during PASPGP-2 Interagency Monitoring Committee Panel meetings, and Corps review of gravel bar removal projects under PASPGP-2.

b. **PADEP General Permit-11 (Maintenance, Testing, Repair, Rehabilitation, or Replacement of Water Obstructions and Encroachments):** It is recommended that all GP-11 projects with the potential for "more than minimal" impacts be forwarded to the Corps. Specifically, GP-11 projects in counties of documented bog turtle occurrence should be forwarded to the Corps and reviewed in accordance with the bog turtle screening procedures; GP-11 projects proposed in streams occupied by Federally listed, proposed, or candidate mussels or fish or in Waters of the United States within 300 feet of these listed streams should be considered a Category III Activity and sent to the USFWS for review

and comment; and all GP-11 projects that impact greater than 250 linear feet of stream should also be forwarded to the Corps as a Category III Activity for review.

It is also recommended that new conditions regarding GP-11 be added to PASPGP-3 to address additional concerns raised by the Corps or other agencies. These conditions relate to navigability, including public safety and minimization of impacts to the aquatic environment.

To address the concern of public safety on waterways, the Corps recommends that the following be added as a condition to PASPGP-3:

“Activities that require temporary causeways that prohibit continued navigational use of a waterway (i.e., temporary causeways that extend greater than $\frac{3}{4}$ the width across the waterway) shall be removed in their entirety as soon as is practicable and shall be clearly marked for purposes of public safety.”

To address minimization of impacts, comprehensive maintenance conditions were developed by a Corps and PADEP workgroup for maintenance of existing Federal or State constructed flood control facilities.

It is recommended that the following conditions be required for projects eligible for GP-11:

1. *“Dredging and channel cleaning are authorized only within the established limits of the project and only within previously constructed channels. Dredging and channel cleaning shall be limited solely to restoring channel width and depth to design configurations as clearly described in the baseline maintenance plan.”*

2. *“When working within the channel, dredging must be accomplished using bucket-type equipment. Siphon-type equipment may be used when a separate de-watering structure and clean return-water procedure is used. In no instance shall sediment be bulldozed or graded within the channel.”*

3. *“An approved baseline maintenance plan shall be available on-site or at the project sponsor’s office. The baseline maintenance plan consists of as-built project plans provided by PADEP or the Corps. The maintenance plan shall include the name and address of the project sponsor; the name and address of the contractor; a copy of the latest inspection report from PADEP or the Corps; a suitable work plan, detailing the length and width (in plan view or cross section) of the intended maintenance work; and current photographs of the work area.”*

It is expected that these conditions, as well as the above mentioned requirements/limitations, coupled with Category III review for a substantial percentage of GP-11 projects, will insure no more than minimal impact.

c. **PADEP Waiver 1:** (Small Dams Not Exceeding 3 Feet in Height in a Stream Not Exceeding 50 Feet in Width). During the review period, 13 Waiver 1 activities (out of 2,324 Category III projects reviewed) were forwarded as a Category III activity for Corps review. Through issuance of PASPGP-2, the Corps determined that each of these projects, as authorized by Waiver 1, resulted in minimal impacts to the aquatic environment and did not require Special Conditions or project redesign. Since Waiver 1 is

limited in use, and impacts associated with the proposed work have been found to be minimal in the past, it is recommended that Waiver 1 be included as a Category I activity under PASPGP-3. It is anticipated that project specific, as well as cumulative impacts to the aquatic environment will be no more than minimal.

d. **PADEP Waiver 14:** (Artificial Ponds and Reservoir Maintenance). Field staff from the Corps and other Regulatory and Resources Agencies have not observed adverse wetland impacts associated with Waiver 14. Therefore, the Corps has determined that there is no value added by having a Corps review of this activity. It is recommended that Waiver 14 activities be moved to Category I.

Review of activities similar to those authorized by Waiver 14, but for larger maintenance projects authorized at 25 PA Code § 105.131(c) – Maintenance of Reservoirs of Jurisdictional Dams will continue to be processed as Category III activities.

e. **PADEP Emergency Permits (EP):** Although PADEP Emergency Permits are listed as Category III activities, only those projects resulting in greater than 250 linear feet of impact to a stream channel are sent to the Corps as a Category III activity. With the exception of PADEP GP-1 (fish enhancement structures up to 500 linear feet) and GP-3 (streambank stabilization up to 500 linear feet), all projects exceeding the 250 linear feet threshold are Category III activities. Therefore, the Corps recommends listing PADEP EPs under Category I.

3. **Protection of Wetlands on Residential, Commercial, Industrial, and Institutional Developments:** It is recommended that PASPGP-3 include language that will add protection for aquatic resources subject to piecemealing impacts as part of these developments. Specifically, the Corps recommends the following be added as a Category III activity under PASPGP-3:

“Any activity proposed for the purpose of constructing or expanding a residential, commercial, or institutional subdivision or development, where greater than 0.25 acre of wetlands (in addition to those being directly impacted by the proposed project) are located within the property boundary, that are not protected from activities such as filling, draining, mowing, placement of structures, cutting of vegetation, or plowing of vegetation, through a deed restriction, conservation easement, or deed restricted open space area, that is duly recorded and runs in perpetuity with the land. Additional information concerning this requirement can be obtained by contacting the Corps or PADEP.”

Maintaining wetlands as protected open-space is environmentally preferable, although it is recognized that this will not always be feasible, particularly where developers may have already received local subdivision final approval, or the local municipality ordinances restrict the opportunity for open space. The Corps and PADEP project managers will continue to work closely with developers and their professional staff to insure timely permit issuance without costly delays or changes to the design of a project. With this more comprehensive approach, activities associated with commercial, residential, industrial, or institutional developments will result in “no more than minimal” impacts, including secondary impacts (regulated and unregulated activities), to the aquatic environment.

This approach is consistent with, and has been embodied within, the Corps' Nationwide Permit (NWP) program. Specifically, the Corps' Nationwide Permit Regional Conditions for Nationwide Permit #39, Residential, Commercial, and Institutional Developments, states in part that:

*“Under the terms of this NWP, wetlands, which are located within the platted lot lines of any residential, commercial, or institutional development, will be considered **adversely affected**, unless the wetlands are protected by conservation easement, deed conveyance or covenants, or any other real estate mechanism that can demonstrate to the District Engineer that these areas will be protected and preserved in perpetuity.”*

It is further recommended that the implementation date for this activity be July 1, 2007, one year from the inception date of PASPGP-3, due to the nature and scope of this recommendation; the need to educate developers, consultants, agency staff in all six PADEP Regions, and all three Corps Districts; and the need to develop consistent deed restriction language throughout the Commonwealth.

4. Expiration Date of PASPGP-2 Authorizations: The PASPGP-2 will expire on June 30, 2006, unless modified or reissued prior to that date. Part VII.A.3. of the PASPGP-2 identifies grandfathering provisions which allow authorized work to continue after this date, provided certain conditions are met. To further clarify these grandfathering provisions and insure that activities authorized late in the PASPGP-2 timeframe do not become unauthorized on July 1, 2006, the Corps recommends that the following language be added to PASPGP-3:

“All activities issued under PASPGP-2 on or after July 1, 2005 are reauthorized by the PASPGP-3 without further notice to the applicable Corps District, provided the proposed regulated activities comply with all terms, conditions, limits, and best management practices identified and required by the PASPGP-3, and all applicable PADEP Chapter 105 authorizations. The duration of these authorizations will be for the term of the applicable PADEP Chapter 105 authorization or for three years from the date of the PADEP authorization, whichever is less.”

5. Potential Obstruction of Fish Passage: Projects which potentially obstruct fish passage are listed as Category III Activities in the PASPGP-2. Under this requirement, two projects were sent to the Corps during the review period. The Corps determined that these projects had no more than minimal impacts to the aquatic environment, and no further restrictions or minimization of the work was practicable. Based on the data obtained as part of this Report, the Corps recommends removing this activity description from PASPGP-3 and adding a condition to PASPGP-3 that prohibits the unnecessary obstruction of a waterway. Through inclusion of this condition, the concerns with regard to obstruction of fish passage will be addressed. The Corps recommends that the condition state:

“Any activity which could potentially obstruct the passage of diadromous fish, including but not limited to the placement of dams, wiers, or permanent fill, stream channelization, stream relocation or the placement of pilings or structural supports which have the same effect of a discharge of fill material in the Juniata River main stem, including the Raystown Branch to Raystown Lake and Frankstown Branch to Hollidaysburg; or the Susquehanna River main stem, to the New York State line and the West Branch Susquehanna River to Lock Haven, must be coordinated with the USFWS, and the Pennsylvania

Fish and Boat Commission (PFBC), to insure minimization of impacts upon passage and migration of diadromous fish.”

In addition, the following clarifications have been incorporated into the proposed PASPGP-3:

1. Revise/update references to Federal regulations/guidance, where appropriate.
2. **Threshold Calculations:** Clarification on calculation of the 1.0 acre upper threshold limitation. The Corps recommends that the following standard language be used to clarify the eligibility threshold throughout the PASPGP-3 document:

“...The Secretary of the Army authorizes the discharge of dredged or fill materials and/or the placement of structures, that are components of a single and complete project, including all attendant features both temporary and/or permanent, which individually or cumulatively result in impacts to 1.0 acre or less of waters of the United States. The term ‘impacts to waters of the United States’ as used herein for the purpose of the PASPGP-3 eligibility threshold means the acreage of impacts to waters of the United States, including jurisdictional wetlands, which includes the direct impact (i.e., the fill area), plus the area of waters of the United States, including jurisdictional wetlands, which are indirectly affected by flooding, excavation, or drainage as a result of the regulated activity. For the purposes of this determination, the linear footage of stream impact shall be measured along the centerline of the watercourse when both streambanks of the watercourse are involved, or along a single streambank when one streambank is involved, or measured across the watercourse, from top of bank to top of bank, when the project extends transversely across the watercourse. Individual or cumulative impacts from single and complete projects to waters of the United States, including jurisdictional wetlands, streams, and open water areas totaling up to 43,560 square feet (1.0 acre) are eligible for authorization under PASPGP-3.

3. **Threshold Calculations for Linear Projects:** Clarification on calculation of the 1.0 acre threshold for linear projects (i.e., sewerline, waterline, roadway, and other utility line projects) is provided in the PASPGP-3. Specifically, we recommend that for linear projects, the PASPGP-3 explicitly states that the 1.0 acre eligibility threshold applies to *each* crossing of a separate water of the United States, including jurisdictional wetlands, or to each crossing of a single waterbody or wetland at separate and distinct locations. However, individual channels in a braided stream or river, or individual arms of a large irregularly shaped wetland or lake, etc., are not separate waterbodies, and the threshold calculation should apply to the cumulative total. This recommendation is consistent with the Corps’ Nationwide Permit program and guidance on threshold eligibility for linear projects.

4. **Organization of Conditions:** The Corps recommends that the Conditions of the PASPGP-3 be reviewed and reorganized to identify actual conditions of the authorization for which the permittee is responsible for compliance. Permit review requirements will be placed in the appropriate section of the PASPGP-3 document and associated Standard Operating Procedure (SOP).

5. In addition, the following are in the process of being revised and/or updated:

*Self Certification Form
*PASPGP-3 SOP
*Single and Complete Project Form

*Corps Cat III form
*Bog Turtle Habitat Assessment Form

The Commonwealth'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, compensation 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. If the PASPGP-2 is reissued as PASPGP-3, the Baltimore District Engineer, in consultation with the District Engineers of Pittsburgh and Philadelphia, will reevaluate the PASPGP-3 within five years to determine if activities have been authorized in accordance with the requirements of the PASPGP-3.

The decision whether to reissue the PASPGP-2 as PASPGP-3, with or without modifications, will be based on an evaluation of the probable impacts including cumulative impacts of the proposed PASPGP-3 on the public interest. That decision will reflect the national concern for the protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal will be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, 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.

Regulatory Flexibility Act (RFA) Certification: When an agency issues a rulemaking proposal, the RFA requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" which will "describe the impact of the proposed rule on small entities." (5 U.S.C. §. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The PASPGP-3, as proposed, pursuant to Sections 404(e)(1) and (2) of the Clean Water Act has the potential to affect all SBICs within the Commonwealth of Pennsylvania. Therefore, the Corps of Engineers, Baltimore District as Lead District for the Commonwealth of Pennsylvania, has determined that this proposed rule can potentially have an impact on a substantial number of small entities within the Commonwealth (State).

However, the Baltimore District has further determined that the impact on entities affected by the proposed rule will not be significant. The effect of the proposed rule will be to allow small businesses, small organizations and small governmental jurisdictions to apply for only one joint Federal-State permit, when proposing to impact waters of the United States with the discharge of dredged or fill material, as opposed to applying for separate permits from the Commonwealth (State permit) and the

Corps (Federal permit). Thus, the Baltimore District expects the impact of the proposed rule will be a reduction in the paperwork burden and in potential delays for small businesses, small organizations and small governmental jurisdictions. The Baltimore District asserts that the economic impact of the reduction in paperwork will be minimal and entirely beneficial to small businesses, small organizations and small governmental jurisdictions. Accordingly, the Baltimore District hereby concludes that the PASPGP-3, as proposed, will not have a significant economic impact on a substantial number of small entities. The Baltimore District invites comment from members of the public who believe there will be a significant impact either on small businesses, small organizations and small governmental jurisdictions, or on companies that receive funding from small businesses, small organizations and small governmental jurisdictions.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed PASPGP-3. Any comments received will be considered by the Corps of Engineers to determine whether to reissue with modifications, reissue without modifications, or not reissue the PASPGP. To make this decision, comments are used to assess impacts on endangered species, cultural resources, water quality, general environmental effects, and the other public interest factors listed above. Comments will be used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act (NEPA). Comments will also be used to determine the overall public interest of the proposed activity.

Water Quality Certification is required in accordance with Section 401 of the Clean Water Act prior to the issuance of the PASPGP-3. The PADEP will be issuing a separate notice in the Pennsylvania Bulletin regarding 401 Water Quality Certification.

Coastal Zone Certification is required in accordance with the Pennsylvania Coastal Zone Program. The PADEP will also be issuing a separate notice in the Pennsylvania Bulletin regarding Coastal Zone Certification.

A preliminary review of the PASPGP-3 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. As the evaluation of the PASPGP-3 continues, additional information may become available which could modify this preliminary determination.

The PASPGP-3 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 evaluation of the impact of the work described above on the public interest will include application of the guidelines promulgated by the Administrator, U.S. Environmental Protection Agency, under authority of Section 404 of the Clean Water Act. Any person who has an interest which may be adversely affected by the issuance of this permit may request a public hearing. The request, which must be in writing, must be received by the District Engineer, U.S. Army Corps of Engineers, Baltimore District, P.O. Box 1715, Baltimore, Maryland 21203-1715, within the comment period as specified

above, to receive consideration. Also, it must clearly state forth the interest which may be adversely affected by this activity and the manner in which the interest may be adversely affected.

It is requested that you communicate the foregoing information to any persons known by you to be interested and not being known to this office who did not receive a copy of this notice. Questions and comments may be directed to Mrs. Patricia Strong, U.S. Army Corps of Engineers, Baltimore District, Pennsylvania Section, P.O. Box 1715, Baltimore, Maryland 21203. A copy of the proposed PASPGP-3 is attached. Comments are requested by January 26, 2005.

For the District Engineer: