



# Public Notice

U.S. Army Corps  
of Engineers

Special Public Notice # SPN 10-65

Date: November 1, 2010

Baltimore District

Philadelphia District

Pittsburgh District

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Subject: Proposal to issue Pennsylvania State Programmatic General Permit - 4, for a five year period.

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

On July 1, 2006 the District Engineers for Baltimore, Philadelphia, and Pittsburgh Districts, issued the Pennsylvania State Programmatic General Permit (PASPGP-3) for a five year period. The PASPGP-3 will expire on June 30, 2011, unless a decision is made to suspend, or revoke it before that date.

The Corps has completed a review and evaluation of PASPGP-3 and has released its findings and recommendations in the PASPGP-3 Monitoring Report dated August 2010. The report is available upon written request to the Baltimore District at the address listed below, or a copy may be attained through the Baltimore Corps web site at [www.nab.usace.army.mil/Regulatory/Pubs/paspgp.pdf](http://www.nab.usace.army.mil/Regulatory/Pubs/paspgp.pdf)

**The purpose of this 30-day Public Notice is to request comments on whether to issue, for a 5-year period, the Pennsylvania State Programmatic General Permit - 4 (PASPGP-4). Comments are requested by November 30, 2010.**

The following list provides some of the proposed modifications to PASPGP-3 that are proposed to be incorporated into PASPGP-4. The proposed PASPGP-4 can be viewed on our web page at [www.nab.usace.army.mil/Regulatory/Public\\_notices.htm](http://www.nab.usace.army.mil/Regulatory/Public_notices.htm) A copy of the current version of the PASPGP-3 dated July 1, 2006, and last revised October 2008, can be viewed on our web page at <http://www.nab.usace.army.mil/Regulatory/Permit/PASPGP-3.pdf> A hard copy of the proposed PASPGP-4 or the current version of PASPGP-3 may be obtained by contacting: Ms. Mary Lou Martin, U.S. Army Corps of Engineers, Baltimore District, State College Field Office, 1631 South Atherton Street, State College, Pennsylvania 16801, or telephone (814) 235-0570.

## **Proposed Modifications**

### **1. Activities Added to Category 1:**

- a. Activities eligible for Pennsylvania Department of Environmental Protection (PADEP) General Permit 15 (GP-15) - Private Residential Construction in Wetlands. This activity is limited to the placement of dredged and /or fill material in, or the excavation of, non-

tidal wetlands for the construction or expansion of a single family home for the personal residence of the permittee, including reasonable and necessary features such as a driveway, storage shed and utilities on a residential lot purchased by the permittee prior to November 22, 1991, within established subdivisions approved by the local governing authority where such activities do not impact greater than 0.50 acre of non-tidal wetlands. **(Part IV, 11)**

- b. Activities Waived at 25 PA Code § 105.12(a)(2) - Waiver 2 - Water Obstructions in a Stream or Floodway With a Drainage Area of 100 Acres or Less. These activities are proposed to be changed from a Category III Activity, under PASPGP-3, to a Category I Activity, under PASPGP-4. Waiver 2 includes water obstructions in a stream or floodway with a drainage area of 100 acres or less, and does not apply to wetlands within the floodway. A Waiver 2 activity that impacts greater than 250 linear feet of stream channel would require a Category III Activity review. **(Part IV, A, 13)**
- c. Maintenance activities conducted under the terms and conditions of a previously issued PADEP authorization, which requires operation and maintenance in accordance with the terms and conditions of the PADEP authorization. This is being done to clarify procedures existing under PASPGP-3. **(Part IV, A, 28)**

## **2. Activities Added Under Category III:**

- a. Activities requiring an Environmental Impact Statement (EIS): Applications containing an EIS, references to an EIS by a Federal agency, or references to the Corps being a cooperating agency on an EIS. **(Part IV, C, 9)**
- b. Modified processing requirements for ESA compliance. Unless an application already has documented clearance from USFWS, or a No Effect Determination from the Corps, the application will be forwarded to the Corps as a Category III Activity. In addition, clarification was added to ensure that activities receiving a conflict with PNDI for a Federally listed species, or PNDI results with avoidance measures for a Federally listed species, are a Category III Activity. **(Part IV, C, 4a, 4b, and 4c)**
- c. All activities associated with previously constructed Flood Protection Projects. **(Part IV, C, 14)**
- d. Activities authorized by Chapter 105 permits in conjunction with coal and non-coal mining permits issued by the PADEP District Mining Offices (Bureau of Mining and Reclamation), including PADEP Waiver 4 [25 Pa. Code §105.12] and Bureau of Mining General Permit 101 and 102. Previously, these types of projects were ineligible for authorization under PASPGP-3. **(Part IV, C, 12)**
- e. The Delaware River (upstream of the railroad bridge crossing from Morrisville, PA to Trenton, NJ), is proposed to be included as an eligible waterway for PASPGP-4. All activities waterward of the OHWM of the Delaware River are proposed to be reviewed as a Category III Activity. **(Part IV, C, 10)**

- f. Regulated work associated with the construction of Mitigation Bank and In-Lieu-Fee sites. **(Part IV, C, 13)**

### **3. Previously ineligible waterways added as eligible waters:**

- a. The Delaware River, upstream of the Morrisville-Trenton Railroad Bridge in Morrisville, Pennsylvania; the Lehigh River; and the Schuylkill River, upstream of Fairmount Dam, in Philadelphia, Pennsylvania are proposed to be eligible waters for PASPGP-4 authorization. **(Part III, B, 4)**

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, compensatory mitigation. The evaluative criteria within the Commonwealth's program are similar to Federal criteria under Section 404(b)(1) of the Federal Clean Water Act.

The decision whether to issue the proposed PASPGP-4, with or without modifications, will be based on an evaluation of the probable impacts including cumulative impacts of the proposed PASPGP-4 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 resources, fish and wildlife resources, flood hazards, floodplain functions, 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.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Federally recognized Native American Nations; and other interested parties in order to consider and evaluate the impacts of this proposed PASPGP-4. Any comments received will be considered by the Corps of Engineers to determine whether to issue with modifications, issue without modifications, or not issue PASPGP-4. 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, for any activity that would be authorized by PASPGP-4 and involve the discharge of dredged and/or fill material into federally regulated waters of the United States, including wetlands. The PADEP will be issuing a separate notice in the Pennsylvania Bulletin regarding issuance of 401 Water Quality Certification for activities authorized PASPGP-4, if issued.

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-4 indicates that processing procedures and conditions are sufficient such that authorized work will be not likely to adversely affect listed species or their critical habitat pursuant to Section 7 of the Endangered Species Act as amended. As the evaluation of the PASPGP-4 continues, additional information may become available which could modify this preliminary determination.

The PASPGP-4 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.

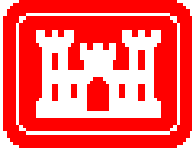
Section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278 et seq.) provides that no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. A preliminary review of the PASPGP-4 indicates that processing procedures and conditions are sufficient such that authorized work is not likely to have a direct and adverse effect on any designated Wild and Scenic River pursuant to the Wild and Scenic Rivers Act as amended. As the evaluation of the PASPGP-4 continues, additional information may become available which could modify this preliminary determination.

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act 1996 (Public Law 104-267), requires all Federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH). A preliminary review of the PASPGP-4 indicates that processing procedures and conditions are sufficient such that authorized work will likely result in no more than minimal adverse effects on EFH pursuant to the Magnuson-Stevens Fishery Conservation and Management Act as amended. As the evaluation of the PASPGP-4 continues, additional information may become available which could modify this preliminary determination.

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. Comments are requested by November 30, 2010.

Wade B. Chandler  
Chief, Pennsylvania Section  
Baltimore District



U.S. Army Corps of Engineers

# DRAFT

**PENNSYLVANIA STATE PROGRAMMATIC GENERAL PERMIT-4  
(PASPGP-4)  
November 1, 2010**

**TO WHOM IT MAY CONCERN:**

**Part I – Authorities:**

**A. Federal Authorities:**

1. Section 404(e) of the Clean Water Act (CWA) (33 United States Code [U.S.C.] Section [§] 1344) allows for the issuance of general permits on a statewide basis, which operate in conjunction with a State regulatory program that protects the aquatic environment in a manner equivalent to the Department of the Army regulatory program, provided that the activities permitted under each category of such general permits are similar in nature and result in no more than minimal individual or cumulative adverse effects on the aquatic environment. This Pennsylvania State Programmatic General Permit # 4 (PASPGP-4) is issued pursuant to Section 404(e) and is based on and consistent with the requirements of the CWA 404(b)(1) Guidelines.
2. Upon the recommendation of the Chief of Engineers, and under the provisions of Section 404 of the CWA, as amended, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403), the Secretary of the Army hereby authorizes the discharge of dredged or fill materials and/or the placement of structures, for single and complete projects, 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 including jurisdictional wetlands. **For the purposes of calculating the one acre eligibility threshold including stream impacts, see the definitions and sketches in the definition Section.** These discharges and placement of structures must comply with all the terms, conditions, and processing procedures identified in this PASPGP-4.
3. Section 404(q) of the CWA states that agreements are to be entered into in order to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits. Memorandums of Agreements (MOAs) have been developed between U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries

Service (NMFS), and Environmental Protection Agency (EPA) to outline the means for establishing these goals. The coordination, communication process, professional partnerships, and cooperative working relationships established by these MOAs will be maintained, where applicable, in this PASPGP-4.

4. Section 404(c) of the CWA authorizes the Administrator of EPA to prohibit the specification of any defined area as a disposal site, and to deny or restrict the use of any defined area for specification as a disposal site, whenever the Administrator determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

#### **B. State Authorities:**

1. The Dams Safety and Encroachments Act, Title 32, Pennsylvania Statutes, Sections 693.1 – 693.27
2. The Clean Streams Law, 35 P.S. §§ 691.1 – 693.1001
3. Dam Safety and Waterway Management Rules and Regulations, Title 25, Pennsylvania Code, Chapter 105 [hereinafter cited as 25 Pa. Code, Chapter 105; specific sections will be referred to by abbreviation §’].
4. All other applicable regulations.

#### **Part II – Definitions:**

**Baseline Maintenance Plan** – Consists of as-built project plans provided by PADEP or the Corps along with 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 and cross section) of the intended maintenance work; and current photographs of the work area.

**Dredged Material** – The term “Dredged Material” is defined at 33 CFR §323.2(c) as:

“The term dredged material means material that is excavated or dredged from waters of the United States.”

**Discharge of Dredged Material** – The term “Discharge of Dredged Material” is defined at 33 CFR §323.2(d). The definition is defined, in part, as:

“(1) Except as provided below in paragraph (d)(2), the term discharge of dredged material means any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States. The term includes, but is not limited to, the following:

- (i) The addition of dredged material to a specified discharge site located in waters of the United States;
  - (ii) The runoff or overflow from a contained land or water disposal area; and
  - (iii) Any addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized land clearing, ditching, channelization, or other excavation.
- (2) The term discharge of dredged material does not include the following:
- (i) Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill). These discharges are subject to section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps or applicable State section 404 program;
  - (ii) Activities that involve only the cutting or removing of vegetation above the ground (e.g., mowing, rotary cutting, and chain sawing) where the activity neither substantially disturbs the root system nor involves mechanized pushing, dragging, or other similar activities that redeposit excavated soil material; and
  - (iii) Incidental fallback.”

**Fill Material** – The term “Fill Material” is defined at 33 CFR §323.2 (e) as:

“(1) Except as specified in paragraph (3) of this definition, the term fill material means material placed in waters of the United States where the material has the effect of:

- (i) Replacing any portion of a water of the United States with dry land; or
- (ii) Changing the bottom elevation of any portion of a water of the United States.

(2) Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structures or infrastructure in the waters of the United States.

(3) The term fill material does not include trash or garbage.”

As clarified in Regulatory Guidance Letter 90-08, "projects involving pilings meet the definition of ‘fill’ when they have the physical effect or functional use and effect of fill;



that is, pilings may be regulated when they constitute the equivalent ‘of replacing an aquatic area with dry land or changing the bottom elevation of a waterbody.’ As was explained in RGL 88-14, pilings may have this function or effect when they are placed so as to facilitate sedimentation, or are placed so densely that they in effect displace a substantial percentage of the water in the project area."

**Discharge of Fill Material** – The term “Discharge of Fill Material” is defined at 33 CFR §323.2 (f) as:

“The addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States; the building of any structure, infrastructure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills; placement of overburden, slurry, or tailings or similar mining-related materials; and artificial reefs. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products.”

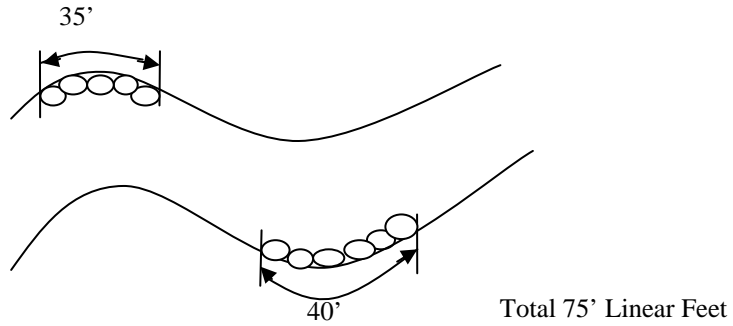
**Eligibility Threshold** – The maximum acreage of temporary and/or permanent impacts, both direct and indirect, to waters of the United States and Navigable Waters as a result of the regulated activity, used to determine PASPGP-4 eligibility.

- a. Direct Impacts – For purposes of this permit, direct impacts to waters of the United States and Navigable Waters includes the impact area from the direct footprint of the regulated activity (i.e. fill area).
- b. Indirect Impacts - For purposes of determining eligibility thresholds for this permit, indirect impacts to waters of the United States and Navigable Waters include the areas indirectly affected by flooding, draining or excavation as a result of the regulated activity.

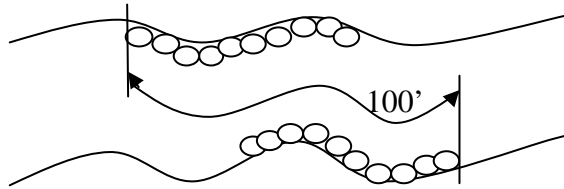
**Linear Footage of Stream Impact** – For categorical determinations (250 linear feet or 500 linear feet) involving stream impacts, the linear footage of stream impact should be measured as follows (this is not used for calculating impacts in impoundments which are based on square feet):

- a. For impacts on one stream bank, the linear footage of a stream impact should be measured along the bank being impacted. When both streams banks are being

impacted at separate locations, the linear footage of stream impact is also measured along the banks being impacted.



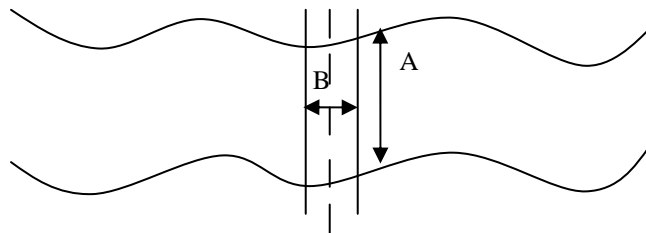
- b. For impacts proposed along both stream banks, and at least a portion of the work on the opposing stream bank is overlapping, the linear footage of stream impact should be measured along the center line of the stream.



- c. For transverse impacts (perpendicular to the stream bank), the linear footage of stream impact should be measured from the top of bank to the top of the opposite bank and from the upstream to downstream limits of work. The linear footage of stream impact, for categorical determination, is the greater of these two measurements.

A (width) or B (length) whichever is greater.

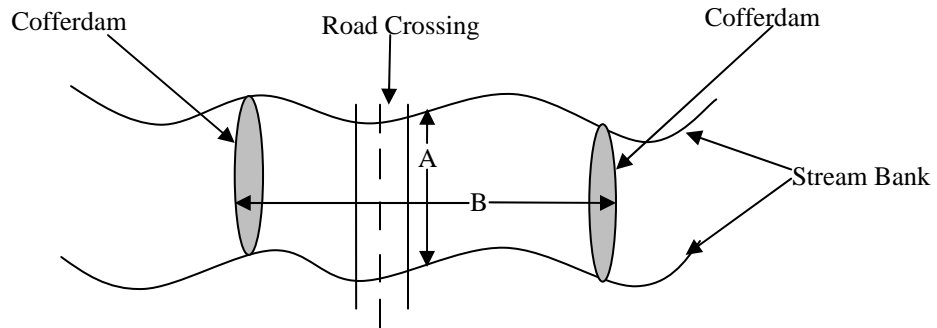
Road Crossing



- d. Dewatering – if work involves dewatering of a stream channel, measure the center line of the stream channel that is impacted through filling, dewatering, and/or flooding, and measure from top of stream bank to top of stream bank. The linear

footage of stream impact, for categorical determination, is the greater of these two measurements.

A (width) or B (length) whichever is greater.



**Linear Projects** – Activities required for the construction, expansion, modification, or improvement of projects that have multiple crossings of jurisdictional waters (i.e. highways, gas pipelines, fiber optic lines, railways, waste water pipelines, and utility lines). For linear projects, the one acre eligibility threshold will apply to each single and complete project.

**Ordinary High Water Mark (OHWM)** – The term “Ordinary High Water Mark” is defined at 33 CFR §328.3(e) as:

“The line, on non-tidal rivers, above the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.”

**Mean High Water Line (MHWL)** - The term “Mean High Water Line” is used in tidally influenced waters and is described at 33 CFR § 329.12(a)(2) as:

“Shoreward limit of jurisdiction. Regulatory jurisdiction in coastal areas extends to the line on the shore reached by the plane of the mean (average) high water. Where precise determination of the actual location of the line becomes necessary, it must be established by survey with reference to the available tidal datum, preferably averaged over a period of 18.6 years. Less precise methods, such as observation of the “apparent shoreline” which is determined by reference to physical markings, lines of vegetation, or changes in type of vegetation, may be used only where an estimate is needed of the line reached by the mean high water.”

**Pennsylvania Department of Environmental Protection (PADEP)** – Use of PADEP throughout this document refers to any delegated PADEP Program or agency that has the authority to implement Chapter 105.

**Restoration Activities** – Activities associated with the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource.

**Single and Complete Project** – The term “Single and Complete Project” is defined at 33 CFR §330.2(i) as:

“Single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. For example, if construction of a residential development affects several different areas of a headwater or isolated water, or several different headwaters or isolated waters, the cumulative total of all filled areas should be the basis of deciding whether or not the project will be covered by an NWP [Nationwide Permit]. For linear projects, the ‘single and complete project’ (i.e., a single and complete crossing) will apply to each crossing of a separate water of the United States (i.e., a single waterbody) at that location; except that for linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. 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.”

In addition, for PASPGP-4, crossings of more than one water and/or wetland, where the waters and/or wetlands are not distant from each other, and the water and/or wetland crossing locations are dictated due to the close proximity of the aquatic resources, may be considered one single and complete project.

**Structure** – The term “Structure” is defined at 33 CFR §322.2(b) as:

“The term structure shall include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling aid to navigation, or any other obstacle or obstruction.”

**Utility Line** – The term “Utility Line” is defined in Nationwide Permit 12, Utility Line Activities, as published in the March 12, 2007 Federal Register, Vol. 72, No. 47, as:

“Any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term ‘utility line’ does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.”

**Waters of the United States and Navigable Waters of the United States** – The terms Waters of the United States and Navigable Waters of the United States are defined by Federal Regulations at 33 CFR Part §328.3 and §329.4.

### **Part III - Scope of Activities:**

The PASPGP-4 applies to the discharge of dredged or fill materials and/or the placement of structures, for single and complete projects, including all attendant features both temporary and/or permanent, which individually or cumulatively result in direct or indirect impacts to 1.0 acre or less of waters of the United States, including jurisdictional wetlands. The PASPGP-4 applies only to activities within the Commonwealth of Pennsylvania. Discharges of dredged or fill materials and/or the placement of structures that comply with all terms, conditions, and processing procedures contained in the PASPGP-4, and have only minimal individual or cumulative environmental impacts, are authorized.

The PASPGP-4 does not obviate the need to obtain other Federal, State, or local authorizations required by law. Likewise, the PASPGP-4 does not grant any property rights or exclusive privileges, injury to the property or rights of others, and/or the interference with any existing or proposed Federal project.

In issuing PASPGP-4 the Federal government does not assume any liability for damages to the permitted project, or uses thereof, as a result of other permitted or unpermitted activities, or from natural causes, or from damages that are the result of current or future activities undertaken by, or on behalf of, the United States in the public interest. Additionally, the Federal government does not assume any liability of damages to persons, property, or to other permitted, or unpermitted activities, or structures caused by the activity authorized by this permit. Lastly, the Federal government does not assume any liability for damages caused by design or construction deficiencies associated with the permitted work and/or claims associated with any future modification, suspension, or revocation of this permit.

In order to reduce potential risk of injury to workers and damage to construction equipment from sudden increases in waterway flow velocities caused by upstream Corps dam water releases, it is recommended that the permittee contact the appropriate Corps of Engineer, Area Engineer Office, for the area the work is occurring in, to obtain a schedule of water release dates. It is recommended that no in-water work be performed during periods of high water flow velocities. Any work performed at the project site is at the permittee's own risk.

#### **A. Activities Eligible for PASPGP-4:**

1. All activities listed in Categories I, II and III, which the Corps determines will have no more than minimal adverse environmental effects. All authorized activities must be in compliance with all the terms and conditions of the PASPGP-4, including the terms and conditions specific to each listed category of activities. The Corps will consider the

comments and concerns of the other regulatory resource agencies and the public, as appropriate, for activities in Categories II and III, prior to making a decision.

2. All activities issued under PASPGP-3 that did not expire prior to June 30, 2011, are reauthorized by the PASPGP-4 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-4; all special conditions attached to the original PASPGP-3 authorization; and all applicable PADEP Chapter 105 authorizations. The duration of these reauthorizations will be for: the term of the PASPGP-4 (June 30, 2016) for Category I or II activities, or the applicable PADEP Chapter 105 authorization, or five years from issuance of the PASPGP-3 Category III activities, whichever is less.

**B. Activities NOT eligible for PASPGP-4. To receive Federal authorization for these activities, a permit application must be submitted to the appropriate Corps District Office:**

1. Projects that will have more than minimal individual or cumulative adverse environmental impacts as determined by the Corps of Engineers.
2. Projects that do not comply with all terms and conditions of the PASPGP-4, including the terms and conditions specific to each listed category of activities.
3. Single and complete projects that will result in a total of more than 1.0 acre of direct and/or indirect impacts to waters of the United States, including jurisdictional wetlands, as defined above in Part II.
4. Activities located waterward of the ordinary high water mark (OHWM) on non-tidal waters and/or the mean high water line (MHWL) on tidal waters on the following Pennsylvania waterbodies:
  - a. The Delaware River, downstream of the Morrisville-Trenton Railroad Bridge in Morrisville, Pennsylvania;
  - b. The Schuylkill River downstream of the Fairmount Dam in Philadelphia, Pennsylvania;
  - c. All of the Ohio River;
  - d. All of the Beaver River;
  - e. All of the Little Beaver Creek;
  - f. All of the Mahoning River;
  - g. All of the Monongahela River;

- h. The Youghiogheny River from its mouth at McKeesport, Pennsylvania to river mile 31.2 at West Newton, Pennsylvania;
  - i. The Allegheny River, from its mouth in Pittsburgh, Pennsylvania to river mile 197.4 at Kinzua Dam, north of Warren, Pennsylvania;
  - j. The Kiskiminetas River from its mouth near Freeport, Pennsylvania to river mile 26.8 at Saltsburg, Pennsylvania;
  - k. Tenmile Creek from its mouth at Millsboro, Pennsylvania to river mile 2.7; and
  - l. Lake Erie activities which require submittal of a Joint Permit Application or Environmental Assessment to the PADEP. For Lake Erie, the OHWM is located at elevation 573.4.
5. Instances where EPA's Regional Administrator has notified the District Engineer and applicant in writing that he is exercising his authority under 404 (c) of the CWA to prohibit, deny, restrict, or withdraw the use of any defined area for specification as a disposal site for the discharge of dredged or fill material.
6. Designated Special Case circumstances identified by the Regional Administrator of EPA, as defined in the MOA between the Department of the Army and the EPA concerning the determination and limits of geographic jurisdiction of the 404 program. Geographic areas established by the EPA would be advertised by Corps Public Notice as ineligible for Federal authorization under the PASPGP-4.
7. Activities that have been denied a PADEP Chapter 105 Permit, a CWA Section 401 Water Quality Certification, or a Coastal Zone Consistency Determination.
8. Any activities that would divert more than 10,000 gallons per day of surface water or groundwater into or out of the Great Lakes Basin (Lake Erie Watershed).

**Part IV- Categories of Activities Eligible for PASPGP-4 Authorization:**

**A. Category I Activities:**

The following activities are authorized by the PASPGP-4 without notification to the applicable Corps District, provided the proposed regulated activities comply with all terms, conditions, limits, best management practices, and processing procedures identified and required by the PASPGP-4, and all applicable PADEP Chapter 105 authorizations. See Part IV.C.4., for situations whereby a Category III review is required to ensure compliance with the Endangered Species Act (ESA). These activities correspond to specific PADEP Chapter 105 General Permits (GPs); Waivers; Individual Permits numbered E-999x; Emergency Permits; Letters of Authorization; and Waiver Letters of Maintenance.

Project specific activities as listed in activities 1 through 28 below are eligible for PASPGP-4 authorization provided:

- the single and complete project, including all attendant features both temporary and/or permanent, results in the temporary or permanent discharge of dredged or fill materials and/or the placement of structures, in 1.0 acre or less of waters of the United States, including jurisdictional wetlands, or
- the single and complete project, including all attendant features both temporary and/or permanent, results in the temporary or permanent discharge of dredged or fill materials and/or the placement of structures, in 250 linear feet or less of streams, rivers, other watercourses and open water areas (see exceptions below).

**Exceptions to 250 Linear Feet Threshold:**

- For those activities that are authorized under the PADEP GP-1 for Fish Habitat Enhancement Structures, the linear threshold is 500 linear feet or less, of stream channel including wetlands.
- For those activities that are authorized under PADEP GP-3 for Stream Bank Rehabilitation and Protection, the linear threshold is 500 linear feet or less, of stream channel.

**1. Fish Habitat Enhancement Structures:** This is limited to the construction, installation, operation, and maintenance of fish habitat enhancement structures for a maximum of 500 linear feet of stream channel, or one acre in a lake, reservoir or pond. Fish habitat enhancement structures authorized consist of: deflectors, low flow channel structures, channel blocks, muddills and boulders, felled shoreline trees, special tire structures, brush structures, rubble reefs, half-log structures, elevated boulder structures, and spawning /nursery structures placed in streams, lakes, ponds or reservoirs as developed in coordination with the PFBC. This activity must be authorized pursuant to PADEP GP-1.

**2. Small Docks and Boat Launching Ramps:** This is limited to the installation, operation, modification, and maintenance of small docks and boat launch ramps in and along waters of the United States. This activity must be authorized pursuant to PADEP GP-2.

**3. Bank Rehabilitation, Bank Protection, and Gravel Bar Removal:** This is limited to the installation, operation, modification, and maintenance of bank rehabilitation and protection for a maximum of 500 linear feet; and the removal of gravel bars for a maximum of 250 linear feet along waters of the United States. This activity must be authorized pursuant to PADEP GP-3.



**4. Intake and Outfall Structures:** This is limited to the construction, operation and maintenance of intake and outfall structures in, along, across, or projecting into waters of the United States. This activity must be authorized pursuant to PADEP GP-4.

**5. Utility Line Stream Crossings:** This is limited to the installation, operation, and maintenance of utility line stream crossings of waters of the United States. This activity must be authorized pursuant to PADEP GP-5.

**6. Agricultural Crossings and Ramps:** This is limited to the installation, operation, and maintenance of agricultural crossings and ramps in waters of the United States. This activity must be authorized pursuant to PADEP GP-6.

**7. Minor Road Crossings:** This is limited to (1) the construction, operation, and maintenance of a minor road crossing across wetlands which individually impacts less than 0.10 acre of wetlands, or cumulatively impacts less than 0.25 acre of wetlands; (2) the construction, operation, and maintenance of a minor road crossing across a stream where the watershed drainage is 1.0 square mile or less; and (3) the removal of an existing minor road crossing across a stream where the drainage area is 1.0 square mile or less. This activity must be authorized pursuant to PADEP GP-7 or PADEP Bureau of Mining and Reclamation (BMR)-GP-102.

**8. Temporary Road Crossings:** This is limited to the construction, operation, and maintenance of temporary road crossings of waters of the United States. This activity must be authorized pursuant to PADEP GP-8 or PADEP BMR-GP-101.

**9. Agricultural Activities:** This is limited to the installation, operation, modification, and maintenance of certain agricultural activities that encroach into streams and their floodways or bodies of water wholly or in part within or forming part of the boundary of the Commonwealth of Pennsylvania. These agricultural activities are grassed or lined waterways, terraces, diversions, waste storage facilities, spring development, and minor drainage that supports these activities and is necessary for contour strips when engaged in as part of an existing agricultural operation and shall only be implemented as part of a conservation plan consistent with the 25 Pa. Code, Chapter 102 (relating to erosion control) and approved by the appropriate Pennsylvania County Conservation District. This activity must be authorized pursuant to PADEP GP-9.

**10. Maintenance, Testing, Repair, Rehabilitation, or Replacement of Water Obstructions and Encroachments:** This is limited to any activity eligible for a PADEP GP-11 that permanently impacts less than 0.05 acres of wetlands or less than 250 linear feet of stream. Any work associated with a flood protection project shall be forwarded to the Corps as a Category III activity. This activity must be authorized pursuant to PADEP GP-11.

**11. Private Residential Construction in Wetlands:** This is limited to the placement of dredged and /or fill material in, or the excavation of, non-tidal wetlands for the construction or expansion of a single family home for the personal residence of the

permittee, including reasonable and necessary features such as a driveway, storage shed and utilities on a residential lot purchased by the permittee prior to November 22, 1991, within established subdivisions approved by the local governing authority where such activities do not impact greater than 0.50 acre of non-tidal wetlands. This activity must be authorized by PADEP GP-15.

**12. Activities Waived at 25 PA Code § 105.12(a)(1) - Waiver 1 - Small Dams Not Exceeding 3 Feet in Height in a Stream Not Exceeding 50 Feet in Width:** This is limited to the construction of small dams not exceeding 3 feet in height in a stream, not exceeding 50 feet in width, except wild trout streams designated by the PFBC in accordance with 58 PA Code § 57.11. This corresponds to activities authorized pursuant to PADEP Waiver 1.

**13. Activities Waived at 25 PA Code § 105.12(a)(2) - Waiver 2 - Water Obstructions in a Stream or Floodway With a Drainage Area of 100 Acres or Less:** Any activity authorized as a Waiver 2, which includes water obstructions in a stream or floodway with a drainage area of 100 acres or less, that impact 250 feet or less of waters of the United States. This waiver does not apply to wetlands within the floodway. This corresponds to activities authorized pursuant to PADEP Waiver 2.

**14. Activities Waived at 25 PA Code § 105.12(a)(6) - Waiver 6 - Stormwater Management and Erosion Control:** This is limited to a water obstruction or encroachment located in, along, across, or projecting into an existing stormwater management facility or an erosion and sedimentation pollution control facility which meets the requirements in 25 Pa. Code, Chapter 102 (relating to erosion and sediment control), if the facility was constructed and continues to be maintained for the designated purpose. This corresponds to activities authorized pursuant to PADEP Waiver 6.

**15. Activities Waived at 25 PA Code § 105.12(a)(7)(8) - Waiver 7 and 8 - Activities Related to Crop Production:** This is limited to maintenance of field drainage systems for crop production and for plowing, cultivating, seeding or harvesting for crop production. This corresponds to activities authorized pursuant to PADEP Waivers 7 and 8.

**16. Activities Waived at 25 PA Code § 105.12(a)(9) - Waiver 9 - Minor Stream Fords:** This is limited to construction and maintenance of ford crossings of streams for individual private personal use, which require only grading of banks for approach roads and the placement of not more than 12 inches of gravel for roadway stability. Fords may not be used for commercial purposes and shall cross the regulated waters of the United States in the most direct manner. This does not apply to activities in exceptional value streams, as listed under 25 Pa. Code, Chapter 93 (relating to water quality standards) or in wild trout streams, designated by the PA Fish and Boat Commission. This corresponds to activities authorized pursuant to PADEP Waiver 9.

**17. Activities Waived at 25 PA Code § 105.12(a)(10) - Waiver 10 - Navigational Aids:** This is limited to a navigational aid or marker, buoy, float, ramp, or other device

or structure for which a permit has been issued by the PFBC under Title 30, Pennsylvania Consolidated Statutes, Section 5123(a)(7) (relating to general boating regulations). This corresponds to activities authorized pursuant to PADEP Waiver 10.

**18. Activities Waived at 25 PA Code § 105.12(a)(12) - Waiver 12 - Activities Related to Use of Water Recording, Gauging, and Testing Devices:** This is limited to the construction, operation, or removal of staff gauges, water recording devices, water quality testing devices, including, but not limited to, sensors, intake tubes, weirs, and small buildings which contain required instruments and similar scientific structures. This corresponds to activities authorized pursuant to PADEP Waiver 12.

**19. Activities Waived at 25 PA Code § 105.12(a)(14) - Waiver 14 - Artificial Ponds and Reservoir Maintenance:** This corresponds to activities authorized pursuant to PADEP Waiver 14. PADEP Waiver 14 authorizes the maintenance of an artificial pond or reservoir to its original storage capacity where:

- a. The contributory drainage area is less than or equal to 100 acres;
- b. The greatest depth of water at maximum storage elevation is less than or equal to 15 feet; and
- c. The impounding capacity at maximum storage elevation is less than or equal to 50-acre feet.

**20. Activities Waived at 25 PA Code § 105.12(a)(16) - Waiver 16 - Restoration Activities:** Activities undertaken and conducted pursuant to a restoration plan, which has been approved, in writing, by PADEP. These activities may include the following:

- a. **PADEP, Bureau of Abandoned Mine Reclamation (BAMR) approved and/or sponsored restoration activities** –provided the activity impacts less than 0.05 acre of vegetated wetland (as defined by the Corps of Engineers 1987 Wetlands Delineation Manual, including all applicable guidance and regional supplements (87 Manual) or the body of water or associated discharge from a body of water has a pH < 5.0, or any of the following elevated metal levels:
  - i. Aluminum > 0.6 mg/l
  - ii. Iron > 7.0 mg/l
  - iii. Manganese > 4.0 mg/l
- b. **Other Restoration Activities** – provided that the project has been approved at an Environmental Review Committee (ERC) meeting. Note: the activity will be reviewed as Category III, if applicable.

**21. PADEP Individual Permits numbered E-999X:** This is limited to maintenance activities performed in or along waters of the United States, by the following certain Commonwealth of Pennsylvania agencies:

- a. the Pennsylvania Department of Transportation (District 1 - E61-9999; District 2 - E17-9999; District 3 - E41-9999; District 4 - E35-9999; District 5 - E39-9999; District 6 - E23-9999; District 8 - E22-9999; District 9 - E07-9999; District 10 - E32-9999; District 11 - E02-9999; and District 12 - E26-9999);
- b. the Pennsylvania Turnpike Commission (E22-9995);
- c. the Pennsylvania Department of Conservation and Natural Resources, Bureau of State Parks (Region 1 - E12-9998; Region 2 - E10-9998; Region 3 - E05-9998; Region 4 - E09-9998); and
- d. the Pennsylvania Game Commission (SE Region - E06-9996; SC Region - E31-9996; NE Region - E40-9996; NC Region - E41-9996; NW Region - E61-9996; SW Region - E65-9996).

This activity must be authorized pursuant to PADEP Individual Permits numbered E-999X. The maintenance work must be performed as described on a submitted work schedule, submitted to PADEP Regional Offices, with all work performed in accordance with PADEP standards for that particular agency's maintenance agreement.

**22. Emergency Activities:** These activities involve the immediate remedial action when necessary to alleviate an imminent threat to life, property, or the environment. Stream relocation or channelization is not authorized under this category of activities except when a stream has left its channel as a result of a distinct recent storm event and channel work is required to restore the stream flow to pre-storm conditions. These activities must be authorized pursuant to PADEP Emergency Permits.

**23. Normal Maintenance and Repair of an Existing Dam:** This is limited to the normal maintenance and repairs of an existing, jurisdictional dam and will not involve major modification to the dam. This activity must be authorized pursuant to PADEP Letter of Authorization.

**24. Existing Structures or Activities completed prior to July 1, 1979:** Activities authorized pursuant to 25 Pa. Code § 105.12(b)(1-7):

- a. a dam not exceeding 5-feet in height in a non-navigable stream operated and maintained for water supply purposes;
- b. a dam of Size Classification C and Hazard Potential Classification 3 and does not have a significant effect on coastal resources or an adverse impact on the environment;
- c. a fill not located on navigable lakes and navigable rivers;
- d. a streambank retaining device;

- e. a stream crossing other than a crossing located on submerged lands of this Common wealth and a crossing by pipelines for conveyance of petroleum products and gas;
- f. an outfall, headwall or water intake structure; and
- g. a culvert, bridge or stream enclosure with a drainage area  $\leq 5$  square mile.

**25. Operation, Maintenance and Monitoring of Structures and Activities listed in 24 a-g above completed prior to July 1, 1979:** Activities authorized pursuant to 25 Pa. Code § 105.12 (c).

**26. Miscellaneous Activities:** The following activities will not in most cases be regulated pursuant to Section 404 of the CWA, but may, in some instances, require either a Section 404 or Section 10 permit. These correspond to activities authorized by PADEP Waivers, General Permits, and Waiver Letters of Maintenance provided they are implemented as described in the applicable PADEP authorization:

- a. PADEP GP-10 - Abandoned Mine Reclamation;
- b. PADEP Waiver 15 - Abandoned Mines;
- c. PADEP Waiver 3 - Aerial Crossings;
- d. PADEP Waiver 5 - Acid Mine Drainage;
- e. PADEP Waiver 13 - Abandoned Railroad Bridges and Culverts; and
- f. Waiver Letters of Maintenance for:
  - i. 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 Culvert*; or
  - ii. 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.

**27. Activities Related to Residential, Commercial and Institutional Developments :** Any activity for the purpose of constructing new or expanding an existing 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 and the application includes a proposed deed restriction, conservation easement, or deed restricted open space area, that protects such

wetlands from activities such as filling, draining, mowing, placement of structures, cutting of vegetation, clearing or plowing of natural vegetation (also see Part VI.A.24). Applications that do not include a proposed conservation instrument/deed restriction may still qualify for a PASPGP-4; under a Category III review (see Part IV.C.8).

**28. Maintenance:** Activities conducted under the terms and conditions of a previously issued PADEP authorization which requires operation and maintenance in accordance with the terms and conditions of the PADEP authorization.

**29. Grandfather Clause:** All activities issued under PASPGP-3 that did not expire prior to June 30, 2011, are reauthorized by the PASPGP-4 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-4 and the applicable PADEP authorizations. In addition, all special conditions attached to the original PASPGP-3 authorization are special conditions of the PASPGP-4 authorization. Requests for modification of the authorized work and/or special conditions must be submitted in writing to the applicable Corps District. . The duration of these reauthorizations will be for: the term of the PASPGP-4 (June 30, 2016) for Category I or II activities, or the applicable PADEP Chapter 105 authorization, or five years from issuance of the PASPGP-3 Category III activities, whichever is less.

## **B. Category II Activities:**

This category includes activities that do not meet the terms and conditions of any activity listed in Category I, and requires notification through publication in the PA Bulletin as required by 25 PA Code Chapter 105.21(a) of the Dam Safety and Encroachments Act, 32P.S. §693.1, et seq. Only activities that result in the discharge of dredged or fill materials and the placement of structures, for a single and complete project, including all attendant features both temporary and or permanent, which individually or cumulatively result in direct or indirect impacts to 1.0 acre or less of waters of the United States, including jurisdictional wetlands, or 250 linear feet or less of streams, rivers, other watercourses and open water areas are authorized. These activities may be authorized by the PASPGP-4 after an opportunity for review and comment by the Corps, all other Federal and State resource agencies, and the general public, through publication in the PA Bulletin at least 30 days prior to the effective date of the PADEP authorization.

**1. Activities Requiring Pennsylvania State Permits or Approvals:** This is limited to activities authorized pursuant to a PADEP Individual Permit (including a Small Projects Permit), Dam Permit, or Environmental Assessment Approval and request for 401 Water Quality Certification.

**2. The Removal of Abandoned Dams, Water Obstructions, and Encroachments:** This is limited to activities authorized by PADEP for the removal of abandoned dams, water obstructions, or encroachments, where PADEP determines in writing, on the basis of data, information, or plans, submitted by the applicant, that the removal of the abandoned dam, water obstruction, or encroachment will not imperil life or property,

have significant effect on coastal resources, or have an adverse impact on the environment, and the plans provide for restoration and stabilization of the project area. This corresponds to activities authorized pursuant to PADEP Waiver 11.

**3. Restoration Activities:** This is limited to restoration activities undertaken and conducted pursuant to a restoration plan, which has been approved, in writing, by PADEP. This corresponds to activities authorized pursuant to PADEP Waiver 16. This does not include those activities identified in Part IV.A.20.

**4. Activities Related to Residential, Commercial and Institutional Developments:** Any activity for the purpose of constructing a new or expanding an existing 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; and the application includes a proposed deed restriction, conservation easement, or deed restricted open space area, that protects such wetlands from activities such as filling, draining, mowing, placement of structures, cutting of vegetation, clearing or plowing of natural vegetation (also see Part VI.A.24). Applications that do not include a proposed conservation instrument/deed restriction may still qualify for a PASPGP-4, under a Category III review (see Part IV.C.8.)

### **C. Category III Activities:**

Activities listed below as Category III will receive a project specific review by the Corps of Engineers to verify that no more than minimal adverse environmental impacts would occur. The Corps will coordinate with the appropriate Federal and State resource agencies in order to make its minimal impact determination. This category includes activities listed in or eligible for Category I or Category II that require additional case by case review due to issues of Federal concern as listed below. Category III projects may be verified by the PASPGP-4 only after case by case opportunity for review and comment by all appropriate Federal and State resource agencies and a determination by the Corps that the activity will have no more than minimal adverse environmental impacts.

These activities correspond to activities authorized pursuant to Section 7 of the Dam Safety and Encroachments Act, 32 P.S. § 693.1, et seq., and the rules and regulations promulgated there under in the Pennsylvania Bulletin (codified at 25 Pa. Code, Chapter 105). In order to qualify for PASPGP-4, these activities must receive the applicable PADEP Chapter 105 authorization and 401 Water Quality Certification, and in certain circumstances, Coastal Zone Management Consistency.

All Category III projects that require PADEP Individual Permits (except for Individual Permit numbered E-999x), Small Projects Permits, Dam Permits, or Environmental Assessment Approvals, will also be reviewed by the general public through publication in the PA Bulletin. Notification for these activities will be through publication in the PA Bulletin at least 30 days prior to the effective date of the permit, as required by 25 PA Code Chapter 105.21(a) of the Dam Safety and Encroachments Act, 32P.S. § 693.1, et

seq., and the rules and regulations promulgated there under in the Pennsylvania Bulletin (codified at 25 PA Code, Chapter 105). Coordination will be accomplished by forwarding copies of all project application files to the Corps of Engineers.

**1. Activities Normally Authorized Under Category I or Category II:**

Applications for activities whereby the Corps, or other Federal, and/or State resource agencies, have requested a Corps review of the application. The request for a Category III review must be made prior to verification of PASPGP-4 by PADEP.

**2. Activities Exceeding Thresholds:**

- a. Activities listed in Category I, and/or Category II that individually or cumulatively impact more than 1.0 acre of waters of the United States including jurisdictional wetlands, including all attendant features, both temporary and permanent, for a single and complete project; or that impact greater than 250 linear feet of streams, rivers, other watercourses and open water areas, except fish habitat enhancement structures authorized under PADEP GP-1 and bank rehabilitation and protection, authorized under PADEP GP-3 that affect 500 linear feet or less.
- b. For linear projects, the 250 linear foot threshold for stream impacts is applied to the total cumulative impacts of all crossings associated with the overall linear project, regardless of the type of PADEP authorization or combination of authorizations, used to approve the project.
- c. Linear projects, where cumulative permanent and temporary impacts to waters of the United States including jurisdictional wetlands exceed 1.0 acre, may still be eligible for PASPGP-4 authorization provided no single crossing exceeds the 1 acre threshold – see Part II. This determination of eligibility will be made by the Corps of Engineers.

**3. Projects with Previous Federal Authorization:**

- a. All applications that involve additional regulated activities, where the project previously received a Department of the Army Individual Permit, a Nationwide Permit, or a PASPGP processed by the Corps as a Category III Activity.
- b. All applications that involve additional regulated activities, whereby a PASPGP was previously verified by PADEP for the project and the combined total impacts (previously authorized and newly proposed impacts) now require a Category III review.

**4. Activities Which May Affect Threatened or Endangered Species or Their Critical Habitat:**

- a. Applications for activities or projects proposed in waterways occupied by Federally listed, proposed, or candidate mussels or fish as indicated below, or in



waters of the United States within 300 feet of these listed waterways, unless the application includes documented clearance from the USFWS, or a no effects determination from the Corps, for the project.

WATERWAYS	COUNTY	SPECIES PRESENT
Allegheny River (from Kinzua Dam to the Ohio River)	Armstrong, Clarion, Forest, Venango, Warren,	Northern riffleshell and clubshell mussel
Conewango Creek	Warren	Northern riffleshell
French Creek	Crawford, Erie, Mercer, Venango	Northern riffleshell and clubshell mussel
Conneaut Outlet	Crawford	Clubshell mussel
Conneauttee Creek	Crawford	Clubshell mussel
LeBoeuf Creek	Erie	Northern riffleshell and clubshell mussel
Muddy Creek	Crawford	Clubshell mussel and Northern riffleshell
Shenango River, Pymatuning Reservoir to Big Bend	Crawford and Mercer	Clubshell mussel
Delaware River	Monroe, Pike, Wayne	Dwarf wedge mussel

- b. Applications for activities or projects with proposed impacts to Federally regulated wetlands, in counties of documented bog turtle occurrence listed below, unless the application includes documented clearance from the USFWS, or a No Effect determination from the Corps, for the project.

Counties: Adams, Berks, Bucks, Carbon (only Aquashicola Creek Watershed), Chester, Cumberland, Delaware, Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton, Schuylkill (only Swatara Creek Watershed), and York.

- c. Applications for activities or projects, whereby a Pennsylvania Natural Diversity Inventory (PNDI) search identifies a potential conflict(s) for Federally listed species, unless the application includes documented clearance from the USFWS, or a No Effect determination from the Corps, for the project.

**5. Activities Authorized at 25 PA Code § 105.131(c) –Maintenance of Reservoirs of Jurisdictional Dams:** This work is associated with maintenance dredging of the reservoir’s design storage capacity including the removal of accumulated sediments. This corresponds to activities authorized pursuant to Section 7 of the Dam Safety and Encroachments Act, 32 P.S. § 693.1, et seq., and the rules and regulations promulgated there under in the Pennsylvania Bulletin (codified at 25 PA. Code, Chapter 105, § 105.131 (c)).

**6. Activities Potentially Affecting Historic or Cultural Resources:** Any activity which may adversely affect cultural resources, which are listed or eligible for listing in the National Register of Historic Places pursuant to the requirements of Section 106 of the National Historic Preservation Act (NHPA). This includes projects where the Pennsylvania Historic and Museum Commission (PHMC) in cooperation with the State Historic Preservation Officer (SHPO) have determined that archaeological or other cultural resources are believed to exist within the permit area.

**7. Activities Potentially Affecting Wild Or Scenic Rivers:** Any activity which occurs in a component of the National Wild and Scenic River System or in a river officially designated by Congress as a “Study River” for possible inclusion in the System are forwarded to the Corps as a Category III activity, unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect any Wild and Scenic River including study rivers. While the Wild and Scenic portion of the Allegheny River is ineligible for the PASPGP-4, regulated activities occurring landward of the OHWM of this river, is eligible for authorization under the PASPGP-4. Designated and study rivers approved and included in the National Wild and Scenic River System subsequent to the publication of this document are to be considered in this sub-category. The designated Wild and Scenic Rivers are:

- a. Allegheny River, from the Kinzua Dam Mile 197.2, downstream approximately seven miles to the US Route 6 Bridge, at mile 190.7, in Warren, then from the Buckaloons Recreation Area in Allegheny National Forest at Mile 181.7 downstream 47 miles to Alcorn Island just north of Oil City at river Mile 133.7, and then continuing from the Franklin Wastewater Treatment Plant at Mile 122.7, downstream 31 miles to the refinery at Emlenton Mile 90.7;
- b. Clarion River from Mile 91.1 in the Borough of Ridgeway, Elk County, Pennsylvania, at the National Forest and Gamelands Boundary to Mile 39.4 at the normal pool elevation of Piney Dam;
- c. Upper Delaware Scenic and Recreational River, including the ¼ mile buffer from each bank, beginning at Hancock, New York, and continuing 73.4 river miles to Mill Rift, Pennsylvania;
- d. Middle Delaware Scenic and Recreational River (from bank to bank) as it flows through the Delaware Water Gap National Recreation Area;
- e. Lower Delaware River beginning seven river miles north of Belvidere, New Jersey, continuing to Washington Crossing, Pennsylvania, including Paunacussing Creek within Solebury Township, all of the Tincum Creek including Rapp Creek and Beaver Creek Tributaries, and Tohickon Creek from the mouth to the Lake Nockamixon Dam, including a ¼ mile buffer from each bank; and
- f. White Clay Creek watershed including all of its tributaries.

**8. Activities Related to Residential, Commercial and Institutional Developments:** Any activity for the purpose of constructing a new, or expanding an existing 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; and the application does not include a proposed deed restriction, conservation easement, or deed restricted open space area, that protects such wetlands from activities such as filling, draining, mowing, placement of structures, cutting of vegetation, clearing or plowing of natural vegetation (also see Part VI.A.24).

**9. Activities Requiring an Environmental Impact Statement (EIS):** Applications containing an EIS, references to an EIS by a Federal agency, or references to the Corps being a cooperating agency on an EIS.

**10. Activities within Portions of the Delaware River:** Any activity located waterward of the OHWM in the Delaware River, upstream of the Morrisville-Trenton Railroad Bridge in Morrisville, Pennsylvania. For additional Category III activities within and adjacent to the Delaware River, see Part IV.C.4.a. and 7.c-e. Any activity located waterward of the OHWM in the Delaware River, downstream of the Morrisville-Trenton Railroad Bridge, is ineligible for PASPGP-4.

**11. Activities across State Boundaries:** Activities where the regulated site specific impact is not wholly located within the Commonwealth of Pennsylvania, i.e. the project extends across state boundaries.

**12. Coal and Non-Coal Mining:** Activities authorized pursuant to Chapter 105 permits in conjunction with coal and non-coal mining permits issued by the PADEP District Mining Offices (Bureau of Mining and Reclamation), including activities authorized pursuant to PADEP Waiver 4 [25 Pa. Code §105.12(a)(4)].

**13. Construction of Mitigation Banks and In Lieu Fee sites:** Regulated activities associated with the construction of Mitigation Banks and In Lieu Fee sites, developed to meet the requirements with the Corps and EPA April 10, 2008 Compensatory Mitigation for Losses of Aquatic Resources: Final Rule.

**14. Activities Affecting Flood Protection Projects:** All activities that may affect the integrity of an existing flood protection facility including all maintenance activities of an existing flood protection facility.

## **Part V– Procedures:**

### **A. Application Submittal:**

Applicants must submit the applicable permit application to the appropriate PADEP Office. The application must identify all impacts to waters and wetlands, including the direct and indirect impacts, both temporary and permanent, for the overall project, including all attendant features. The delineation of wetland boundaries shall be

accomplished in accordance with the 87 Manual, as amended or updated, and appropriate guidance issued by the Corps of Engineers.

## **B. PASPGP-4 Review Procedures:**

**1. Category I (Project specific Corps review not required):** Permit applications are reviewed by PADEP in accordance with their applicable review procedures. PADEP will include the PASPGP-4 verification with the State authorization.

**2. Category II Review:** All Category II activities will be published in the PA Bulletin, as a Public Notice. The Corps and resource agencies will review the PA Bulletin to determine the need for Federal review, on a case-by-case basis. One copy of the permit application will be maintained in the PADEP Regional Office for resource agency review. If the Corps or a resource agency requests a proposed project as a Category III activity, it must notify the appropriate PADEP Office, prior to the permit issuance. PADEP will forward the application to the appropriate agency. If the application is not forwarded as a Category III activity, PADEP will include the PASPGP-4 verification with the State authorization.

**3. Category III Review:** Applications for projects identified as Category III will be reviewed by the Corps and, when applicable, coordinated with any other Federal and State resource agency to determine eligibility for authorization under PASPGP-4. After completion of the Corps review, the Corps will:

- a. Notify PADEP that the activity is eligible for authorization under PASPGP-4, with or without special conditions, and they should attach PASPGP-4 verification to their authorization when issuing;
- b. Notify PADEP and the applicant that the project is not eligible for authorization under PASPGP-4 and the work requires another type of Federal authorization;
- c. Notify the applicant directly with regard to PASPGP-4 applicability, and copy PADEP with such notification, if PADEP has issued/verified their authorization/registration prior to the Corps completing its review; or
- d. Inform the applicant directly that a Section 10 and/or 404 authorization is not required for the proposed work. In such cases, the Corps will copy PADEP with such notification to the applicant.

## **C. Agency Objection:**

Any Federal or State resource agency may object to authorization of a specific project prior to verification of the PASPGP-4. The Corps will attempt to resolve the objection and may include project specific conditions to protect the public interest.

#### **D. Other Types of Corps Permit Review:**

If a project is ineligible under the terms and conditions of the PASPGP-4, the Corps will notify PADEP and the applicant that the project will require further evaluation under alternative permit procedures. All information submitted by the applicant for the PASPGP-4 review will be used to initiate the review by the Corps for the alternative permit review. Additional information may be requested to complete the review. During the alternative permit review, the Corps may determine that the impacts have been reduced such that the activity imposes only minimal adverse environmental effects and the proposed project meets the terms and conditions of the PASPGP-4. At that time, the Corps may verify PASPGP-4 eligibility for the project.

**E. Corps Discretionary Authority:** Notwithstanding compliance with the terms and conditions of the PASPGP-4, the Corps retains discretionary authority to require a Corps Individual Permit review for any project based on concerns for the aquatic environment or for any other factor of the public interest. This authority is invoked, on a case-by-case basis, whenever the Corps determines that the potential consequences of the proposal warrant individual review, based on the concerns stated above. This authority may be invoked for projects with cumulative environmental impacts that are more than minimal or if there is a special resource or concern associated with a particular project, which is not addressed with stipulations of the PASPGP-4, and warrants greater review.

#### **Part VI – General Conditions and Procedural Requirements:**

All activities authorized under PASPGP-4 must be in compliance with the following. Failure to comply with all conditions of the authorization, including special conditions, will constitute a permit violation and may be subject to criminal, civil, or administrative penalties, and /or restoration:

##### **A. General Conditions:**

**1. Permit Conditions:** The permittee shall comply with all terms and conditions set forth in the PADEP authorization for use of this permit, including all conditions of Section 401 Water Quality Certification, and any subsequent amendment or modification to such authorization. The permittee shall conduct all work and activities in strict compliance with all approved maps, plans, profiles, and specifications used by PADEP and/or the Corps as the basis for its authorization or subsequent modification of authorization.

**2. Aquatic Life Movements:** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be appropriately depressed to maintain aquatic life movement and low flow conditions.

**3. Threatened and Endangered Species:** If an activity is authorized under the PASPGP-4, and a Federally listed threatened or endangered species, or proposed species or critical habitat, is subsequently found to be present, all work must cease, and the Corps and USFWS (or NMFS) must be notified. The PASPGP-4 verification is suspended and will not be re-issued until consultation pursuant to Section 7 of the ESA is concluded and adverse effects to Federally listed threatened, endangered and proposed species and critical habitat are avoided.

Furthermore, persons have an independent responsibility under Section 9 of ESA to not engage in any activity that could result in the “take” of a Federally listed species.

**4. Spawning Areas:** The permittee shall comply with all time-of-year restrictions as set forth by the PFBC or other designated agency. Discharges or structures in spawning or nursery areas shall not occur during spawning seasons, unless written approval is obtained by the PFBC or other designated agency. In addition, work in areas used for other time sensitive life span activities of fish and wildlife (such as hibernation or migration) may necessitate the use of seasonal restrictions for avoidance of adverse impacts to vulnerable species. Impacts to these areas shall be avoided or minimized to the maximum extent practicable during all other times of the year.

**5. Waterfowl Breeding and Wintering Areas:** Activities including discharges of dredged or fill material or the placement of structures in breeding and wintering areas of migratory waterfowl must be avoided to the maximum extent practicable.

**6. Shellfish Production:** No discharge of dredged or fill material and/or the placement of structures may occur in areas of concentrated shellfish production, unless the discharge is directly related to an authorized shellfish harvesting activity.

**7. Adverse Effects From Impoundments:** If the activity, including the discharge of dredged or fill material or the placement of a structure, creates an impoundment of water, the adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow, including impacts to wetlands, shall be minimized to the maximum extent practicable.

**8. Obstruction of High Flows:** To the maximum extent practicable, the activity must be designed to maintain pre-construction downstream flow conditions (i.e., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters), and the structure or discharge of dredged or fill material must withstand expected high flows.

**9. Erosion and Sediment Controls:** During construction, appropriate erosion and siltation controls must be used and maintained in effective operating condition in accordance with State regulations. All exposed soil and other fill material must be permanently stabilized.

**10. Suitable Material:** No activity, including discharges of dredged and/or fill material or the placement of structures, may consist of unsuitable material (i.e., asphalt, trash, debris, car bodies, etc.). No material discharged shall contain toxic pollutants in amounts that would violate the effluent limitation standards of § 307 of the CWA.

**11. Temporary Fill:** Temporary fill in waters and wetlands authorized by the PASPGP-4 (i.e., access roads and cofferdams) shall be properly constructed and stabilized during use to prevent erosion and accretion. Temporary fill in wetlands shall be placed on geotextile fabric laid on existing wetland grade. Whenever possible, rubber or wooden mats should be used for equipment access through wetlands to the project area. Temporary fills shall be removed, in their entirety, to an approved upland site, and suitably contained to prevent erosion and transport to a waterway or wetland. Temporary fill areas shall be restored to their preconstruction contours, elevations, and hydrology and revegetated with non-invasive, native species.

**12. Equipment Working in Wetlands:** Measures must be taken to minimize soil disturbance when heavy equipment is used in wetland areas. These measures include, but are not limited to, avoiding the use of such equipment, use of timber mats or geotextile fabric, and the use of low pressure tire vehicles.

**13. Installation and Maintenance:** Any structure or fill authorized shall be properly installed and maintained to ensure public safety.

#### **14. PASPGP-4 Verification**

- a. The PASPGP-4 expires June 30, 2016, unless suspended, or revoked.
- b. Activities authorized under a project specific PASPGP-4 expire June 30, 2016, unless suspended, or revoked, or the PADEP authorization expires, whichever date occurs sooner. Activities authorized under the project specific PASPGP-4 that have commenced construction or are under contract to commence construction will remain authorized provided the activity is completed within 12 months of the date of the PASPGP-4's expiration, modification, or revocation; or until the expiration date of the project specific verification, whichever is sooner.

**15. One-Time Use:** A PASPGP-4 authorization is valid to construct the project, or perform the activity, one time only, except for PASPGP-4 authorizations specifically issued for reoccurring maintenance activities.

**16. Water Supply Intakes:** No activity, including discharges of dredged and/or fill material and/or the placement of structures, may occur in the proximity of a public water supply intake and adversely impact the public water supply.

**17. Cultural Resources:** For all activities verified under a PASPGP-4, upon the discovery of the presence of previously unknown Historic Properties (historic or archaeological), all work must cease and the permittee must notify the SHPO and the

Corps of Engineers. The PASPGP-4 authorization is not valid until it is determined, through the Section 106 consultation process, whether the activity will have an effect on the Historic Property. The PASPGP-4 may be reverified and special conditions added if necessary, after an effects determination on the Historic Property is made. The PASPGP-4 authorization may be suspended and/or revoked in accordance with 33 CFR 325.7 for the specific activity if an adverse affect on the Historic Property cannot be avoided or mitigated.

**18. Tribal Rights:** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**19. Corps Civil Works Projects:** The PASPGP-4 does not authorize any work which will interfere with a Corps Civil Works project (i.e., flood control projects, dams, reservoirs, and navigation projects). The permittee understands and agrees that, if future operations by the United States require removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal, relocation, or alteration.

**20. Navigation:** No activity authorized under PASPGP-4 may cause more than a minimal adverse affect on navigation. No attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized herein. In addition, activities that require temporary causeways that prohibit continued navigational use of a waterway (i.e., temporary causeways extending greater than  $\frac{3}{4}$  the width across the waterway) shall be removed in their entirety upon completion of their use. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**21. Inspections:** The permittee shall allow a District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary in order to ensure that the work is being performed in accordance with all the terms and conditions of the PASPGP-4. The District Engineer may also require post-construction engineering drawings (as-built plans) for completed work.



**22. PASPGP-4 Permit Compliance Self Certification Form:** A Self Certification Form, regarding the PASPGP-4 authorized work and required mitigation, will be forwarded to each permittee with the PASPGP-4 verification. Every permittee, who receives a written PASPGP-4 verification, shall submit the signed Self Certification Form upon completion of the authorized work and required mitigation. The completed form shall be returned to the appropriate Corps District.

**23. Permit Modifications:** Any proposed modification of the authorized project that results in a change in the authorized impact to, or use of waters of the United States, including jurisdictional wetlands, must be approved by PADEP. Corps approval is also required if the project had been previously reviewed by the Corps as a Category III activity, or the proposed modification causes the project impacts to exceed 1.0 acre of waters of the United States, including jurisdictional wetlands, or 250 linear feet of streams, rivers, other watercourses and open water areas. Project modifications that cause the single and complete project impacts to exceed 1.0 acre of waters of the United States, including wetlands, are not eligible for PASPGP-4 and will be forwarded to the Corps for review.

**24. Recorded Conservation Instruments:** As per Part IV.A.27 and Part IV.B.4 and Part IV.C.8 of this permit, proposed Draft Conservation Instruments may be submitted by the applicant as part of the permit application package for review and approval. When such proposed Conservation Instruments are submitted by the applicant, verification of the recorded deed restriction, conservation easement, or deed restricted open space area shall be forwarded to the appropriate Corps District and appropriate PADEP offices, prior to the initiation of any permitted work.

**25. Property Rights:** This PASPGP-4 does not convey any property rights, either in real estate or material, or any exclusive privileges; nor does it authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.

**26. Navigable Waters:** In addition to the conditions referenced above, the following conditions are applicable for navigable waters of the United States eligible for the PASPGP-4. The PASPGP-4 may be used to authorize work in the following navigable waters of the United States:

- Codorus Creek – from the confluence with the Susquehanna River 11.4 miles upstream to the Indian Rock Dam, in York, Pennsylvania;
- Main Stem Susquehanna River – from the confluence with the Chesapeake Bay upstream to Athens, Pennsylvania (approximately 4 miles south from the New York State line);
- West Branch of the Susquehanna River – from the confluence with the main stem Susquehanna River upstream to the dam at Lock Haven, Pennsylvania;
- Chester Creek – from the confluence with the Delaware River 2 miles upstream;
- Crum Creek – from the confluence with the Delaware River 1 mile upstream to the upstream side of the dam at Eddystone;

- Darby Creek – from the confluence with the Delaware River 5 miles upstream to the upstream side of 84th Street Bridge in Philadelphia;
- Delaware River – from the Morrisville-Trenton Railroad Bridge in Morrisville, Pennsylvania, including the West Branch of the Delaware River, upstream to the Pennsylvania/New York border at the 42<sup>nd</sup> parallel;
- Lehigh River – from the confluence with the Delaware River 72 miles upstream to the downstream side of PA Route 940 Bridge;
- Neshaminy Creek – from the confluence with the Delaware River, including the Neshaminy State Park Harbor Project at the mouth of Neshaminy creek, 4 miles upstream to the downstream side of the Newportville Bridge;
- Pennypack Creek – from the confluence with the Delaware River 2 miles upstream to the downstream side of Frankford Avenue Bridge in Philadelphia;
- Ridley Creek – from the confluence with the Delaware River 1 mile upstream to the upstream side of the Baltimore and Ohio Railroad Bridge in Chester, Pennsylvania;
- Schuylkill River – from the Fairmont Dam, 104 miles upstream to Port Carbon, Pennsylvania; and
- Schuylkill Navigation Channel (Manayunk Canal) – along the Schuylkill River for two miles from the Flat Rock Dam to Lock Street in the Manayunk Section of Philadelphia, Pennsylvania.

a. **For Aerial Transmission Lines Across Navigable Waters:**

- i. The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the United States Coast Guard for new fixed bridges, in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code:

NOMINAL SYSTEM VOLTAGE (kV)	Minimum additional clearance (ft.) above clearance required for bridges.
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750-765	45

- ii. Clearances for communication lines, stream gauging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.
  - iii. Corps of Engineer regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both this regulation and ER 1110-2-4401 apply, the greater minimum clearance is required.
- b. **Encasement:** The top of the cable, encasement, or pipeline shall be located a minimum of three feet below the existing bottom elevation of the streambed and shall be backfilled with suitable heavy material to the preconstruction bottom elevation. Where the cable, encasement, or pipeline is placed in rock, a minimum depth of one foot from the lowest point in the natural contour of the streambed shall be maintained. When crossing a maintained navigation channel, the requirements are a minimum of eight feet between the top of the cable, encasement, or pipeline and the authorized depth of the navigation channel. For maintained navigational channels, where the utility line is placed in rock, a minimum depth of two feet from the authorized depth of the navigation channel shall be maintained.
- c. **As-built drawings:** Within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline across a navigable water of the United States (i.e., Section 10 waters), the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, Maryland, 20910 with professional, certified as-built drawings, to scale, with control (i.e., latitude/longitude, state plane coordinates), depicting the

alignment and minimum clearance of the aerial wires above the mean high water line at the time of survey or depicting the elevations and alignment of the buried cable or pipeline across the navigable waterway.

**B. Procedural Requirements:**

**1. Waters of the United States Including Jurisdictional Wetlands:** Applicants are responsible for ensuring that all boundaries of waters and wetlands are accurately shown on the project plans. The delineation of waters and wetlands shall be completed in accordance with the 87 Manual and any applicable Regional Supplement.

**2. Single and Complete Projects:** The PASPGP-4 shall not be used for piecemeal work and shall be applied to single and complete projects. All components of a single project shall be evaluated together, for purposes of PASPGP-4 authorization.

**3. State Authorization:** The activity must receive State authorization. For the purpose of this requirement, any one of the following would be considered as State authorization:

- i. a PADEP Chapter 105 Water Obstruction and Encroachment Permit, including a PADEP approved Environmental Assessment pursuant to 25 Pa. Code 105.15; or
- ii. a PADEP GP issued pursuant to 25 Pa. Code 105.441 – 105.449, or
- iii. a PADEP approved Environmental Assessment for activities not otherwise requiring a PADEP permit pursuant to 25 Pa. Code 105.15(a)(b)(c), or
- iv. a CWA Section 401 Water Quality Certification for activities which qualify for waiver of PADEP permit requirements per 25 Pa. Code 105.12, or
- v. a PADEP Dam Permit, including the maintenance or repairs of existing authorized dams, including maintenance dredging , or,
- vi. a PADEP Emergency Permit issued pursuant to 25 Pa. Code 105.64, or
- vii. a PADEP permit for the construction of a bridge or culvert (including bridges and culverts authorized by PADEP prior to the implementation of the PASPGP-1 in March 1995), which allows for maintenance activities of bridges and culverts, or
- viii. a PADEP Chapter 105 Dam Safety and Encroachment Enforcement Action, or
- ix. a CWA Section 401 Water Quality Certification where no other State authorization as listed above, is required.

**4. Other Authorizations:** Additional Federal, State and/or local authorizations or approvals are required, where applicable, and must be secured by the applicant, prior to initiating any discharge of dredged or fill material, and/or the placement of structures into waters of the United States, including jurisdictional wetlands. These approvals include, but are not limited to:

- a. a 401 Water Quality Certification issued by PADEP pursuant to Section 401 of the CWA;
- b. a Consistency Determination issued by PADEP pursuant to Section 307 of the Federal Coastal Zone Management Act for activities located within designated Coastal Zone Management Areas; and
- c. fills within 100-Year floodplains. The activity must comply with applicable FEMA approved state or local floodplain management requirements.

**5. Corps Special Conditions:** The Corps may impose other special conditions on a project authorized pursuant to the PASPGP-4, where it is determined necessary to minimize adverse environmental effects or based on any other factor of the public interest.

**6. Avoidance, Minimization and Compensatory Mitigation:** Discharges of dredged or fill material and/or the placement of structures into waters of the United States, including jurisdictional wetlands must be avoided and minimized to the maximum extent practicable. Applicants must avoid and minimize impacts to the aquatic environment, in accordance with the PADEP requirements under Chapter 105.1 *Mitigation*, 105.13(d)(1)(viii), 105.14(b)(7), 105.16(a), 105.18a(a)(3), and 105.18a(b)(3). Once avoidance and the minimization of unavoidable adverse impacts has been demonstrated to the satisfaction of the reviewing office (Corps or PADEP) compensatory mitigation may be used to offset unavoidable adverse impacts. All mitigation must be accomplished in accordance with the Corps and EPA April 10, 2008 Compensatory Mitigation for Losses of Aquatic Resources: Final Rule.

**7. Activities Potentially Obstructing Fish Passage:** Any activity which could potentially obstruct the passage of diadromous fish, including but not limited to, the placement of dams, weirs, 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; the Susquehanna River main stem, to the New York State line; the West Branch Susquehanna River to Lock Haven; the Delaware River; the Schuylkill River; or the Lehigh River, must be coordinated with the USFWS and/or NMFS, and the PFBC to ensure minimization of impacts upon passage and migration of diadromous fish.

**8. Threatened and Endangered Species:** No activity is authorized under the PASPGP-4 which is likely to, adversely affect a Federally listed threatened or endangered species or a species proposed for such designation, as identified under the

ESA, or which will destroy or adversely modify the critical habitat of such species. If a proposed activity may affect a Federally listed threatened, endangered, or proposed species, or its critical habitat, the Corps must initiate consultation with USFWS and/or NMFS in accordance with the ESA prior to verification of the activity under the PASPGP-4. If through the informal consultation process (50 CFR part 402.13), it is determined that adverse effects to Federally listed threatened or endangered species and its critical habitat will be avoided, the activity is eligible for Federal authorization under the PASPGP-4. If, however, adverse effects cannot be avoided, the activity is not eligible for Federal authorization under the PASPGP-4. A PNDI review is required for all applications reviewed and authorized under the PASPGP-4.

**9. Cultural Resources:** Any activity authorized by the PASPGP-4 shall comply with Section 106 of the National Historic Preservation Act (NHPA). No activity, which may affect Historic Properties, listed, or eligible for listing, in the National Register of Historic Places is authorized under PASPGP-4, until the Corps has complied with the provisions of 33 CFR Part 325, Appendix C. Historic properties include historic and archaeological sites. The applicant must provide evidence that the Pennsylvania State Historic Preservation Officer (SHPO) at the Pennsylvania Historic and Museum Commission (PHMC) has been notified, using the PADEP Cultural Resources Notification Form for all PADEP Individual Permits. Proof of notification may be in the form of a copy of the response letter from PHMC or a copy of the certified mail receipt resulting from sending the Cultural Resources Notification Form. The Corps may require applicants to perform a survey of historic and archaeological resources in the permit area.

**10. Temporary Fill:** Temporary fill in waters of the United States, including jurisdictional wetlands, is considered a discharge of fill material and must be included in the quantification of impact area authorized by the PASPGP-4.

**11. Federal Liability:** In issuing this permit, the Federal government does not assume any liability for the following:

- a. damages to the permitted project or uses, thereof, as a result of other permitted or unpermitted activities or from natural causes;
- b. damages to the permitted project or uses, thereof, as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
- c. damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
- d. design or construction deficiencies associated with the permitted work; and
- e. damage claims associated with any future modification, suspension, or revocation of the PASPGP-4.

**12. False and Incomplete Information:** If any of the information and/or plans is found to be in error, falsified, and/or incomplete, the PASPGP-4 verification may be subject to modification, suspension, or revocation in accordance with 33 CFR 325.7.

**13. Permit Transfer:** Any modification that only involves a transfer of ownership for any PASPGP-4 will be forwarded to the appropriate Corps District, using the PADEP Application “For Transfer Of Permit and Submerged Lands License Agreement” (form No. 3930-PM-WM0016).

**14. Commencement of Regulated Work:** The applicant may not begin work until:

- a. PADEP or the Corps provides written verification to the applicant that the activity is authorized by PASPGP-4;
- b. The Corps issues another form of Section 10 and/or 404 authorization for the work; or
- c. The applicant is advised by the Corps that authorization under Section 10 and/or 404 is not required for the proposed work.

## **Part VII – Enforcement and Compliance**

Any activity performed in any Federally regulated waters of the United States, including jurisdictional wetlands, that is not in full compliance with all the terms and conditions of the PASPGP-4 constitutes a violation of the terms and conditions of the permit and is subject to an enforcement action by the Corps and/or the EPA. Violations of a PADEP authorization, including permit conditions, are violations of the PASPGP-4. PASPGP-4 does not delegate Federal Section 10/404 enforcement authority. When a violation of the terms and conditions of the permit occurs in a Federally regulated wetland or other waters, it is subject to one or more of the following responses by the Corps and/or EPA:

- A.** A Cease and Desist Order and/or an administrative compliance order requiring remedial action.
- B.** Initiation and assessment of Class I administrative penalty orders pursuant to Section 309(g) of the CWA up to \$11, 000 per violation.
- C.** Initiation and assessment of a Class II administrative penalty for a continuing violation of \$11, 000 per day, up to a maximum of \$137,500.
- D.** Referral of the case to the U.S. Attorney, or Department of Justice with a recommendation for civil or criminal action.
- E.** If the Corps District determines that an after-the-fact permit application is appropriate, it will be evaluated following the appropriate permit processing procedures. The PASPGP-4 may not be issued or modified for authorization of after-the-fact work

nor does it apply to any existing or proposed activity in Corps jurisdiction associated with an on-going Corps enforcement action, until such time as the action is coordinated between the Corps and PADEP; and the enforcement action is resolved or the Corps determines that the activity may proceed.

**Part VIII – PASPGP-4 Duration, Program Changes, Monitoring, Reissuance, Modifications, Suspension, and Revocation:**

**A. Duration of Authorization:**

1. The PASPGP-4 is authorized for a period of 5 years. The PASPGP-4 expires and becomes null and void on June 30, 2016, unless suspended and/or revoked earlier by the Corps; or
2. Activities authorized under the PASPGP-4 that have commenced construction or are under contract to commence construction, will remain authorized provided the activity is completed within 12 months of the date of the PASPGP-4's expiration, suspension, or revocation; whichever is sooner.

**B. Changes to State Statutes, Regulations or PADEP Permits:**

Proposed changes to all pertinent State programs, regulations or State laws, affecting the implementation of the PASPGP-4, will be reviewed by the Corps of Engineers. In the event that the PADEP regulations are revised in such a manner as to substantively modify the current review mechanisms and/or coordination procedures as defined in this document, including the elimination of the current PADEP equivalent 404(b)(1) review, the PASPGP-4 will be reassessed to determine its legality. A determination will be made through a public interest review, including consultation with appropriate resource agencies, to determine whether or not to continue use of the PASPGP-4 in light of the modified State regulation, State law, or programmatic changes.

**C. Changes to the Federal Program:**

A Corps Public Notice will be issued to solicit comments before making any substantive changes to the PASPGP-4. A determination will be made through a public interest review, including consultation with appropriate resource agencies, to determine whether or not to continue use of the PASPGP-4 in light of the modified Federal regulation, guidance or programmatic changes.

**D. Reporting and Evaluation:**

1. The Baltimore District, in consultation with the other Corps Districts in Pennsylvania and the PASPGP-4 Interagency Monitoring Committee, shall review operational issues related to successful implementation of the PASPGP-4 and shall coordinate and provide modifications to the operational procedures, and/or the PASPGP-4 as appropriate.



2. PADEP will provide the following data on an annual basis to the Corps:
  - a. Individual Chapter 105 Water Obstruction and Encroachment Permits, Dam Safety Permits, Environmental Assessment Approvals for Waived Activities (11 and 16) and Water Quality Certifications (only those issued during the reporting period).
    - i. Total number of permits processed by authorization type;
    - ii. Average Processing Times by authorization type;
    - iii. Summary of Aquatic Resource Impacts and Compensation;
      - Permanent and temporary wetland impacts by type; and
      - Total length of stream directly affected by activity type.
  - b. Chapter 105 General Permits
    - iv. Total number of General Permit types processed by county
3. Prior to the expiration of the PASPGP-4 the Corps, with recommendations from the resource agencies will evaluate the PASPGP-4, including its terms and conditions, and will determine if:
  - a. the PASPGP-4 has met its intended goal of reducing duplication;
  - b. authorizations/verifications comply with applicable laws and regulations; and
  - c. only projects with minimal adverse environmental effects were verified.

Based on this review and evaluation, the Corps will further determine whether reissuance, modification, suspension, or revocation of the PASPGP is appropriate. These determinations will be in writing, will include the basis for each determination, and will be available to the public.

#### **E. Modification, Suspension, or Revocation:**

1. The Corps may decide to suspend, modify, or revoke the PASPGP-4 authorization in its entirety or for any specific geographic area, class of activities, or class of waters within the affected District, by notifying PADEP and issuing a public notice notifying the general public. The notice will state the concerns regarding the environment or other relevant factors of the public interest. Before the Corps modifies or revokes such PASPGP-4 authorizations, the Corps will provide, if appropriate, a grandfathering period for those who have commenced work or are under contract to commence work in reliance on the PASPGP-4 authorization. Affected parties will be notified of the modification,

suspension, or revocation, including the effective date. The Corps may also suspend, modify, or revoke a project specific activity's authorization under the PASPGP-4 at any time, if necessary. If the Corps determines, based upon complaint or investigation, that a project specific activity which is eligible for a PADEP Waiver (no project specific review) has a significant adverse impact on life, property or important aquatic resources, the Corps may require the owner to modify the activity to eliminate the adverse condition or to obtain an Individual Permit.

2. Substantive changes to the Pennsylvania Chapter 105 program may require immediate suspension and revocation of the PASPGP-4 in accordance with 33 CFR 325.7, or formal modification subject to public review and input.

### **U.S. Army Corps of Engineers District Regulatory Branch Contact Information**

#### **Pittsburgh District**

<http://www.lrp.usace.army.mil/or/or-f/permits.htm>

Federal Building  
1000 Liberty Avenue  
Regulatory Branch  
Pittsburgh, PA 15222-4186  
412-395-7155

#### **Baltimore District**

<http://www.nab.usace.army.mil/Regulatory/>

U.S. Army Corps of Engineers  
State College Field Office  
1631 South Atherton Street  
State College, PA 16801  
814-235-0570

#### **Philadelphia District**

<http://www.nap.usace.army.mil/cenap-op/regulatory/regulatory.htm>

Wanamaker Building  
100 Penn Square East  
Regulatory Branch  
Philadelphia, PA 19107-3390  
215-656-6728