



**US Army Corps
of Engineers**

Philadelphia District

Wanamaker Building

100 Penn Square East

Philadelphia, PA 19107-3390

ATTN: CENAP-OP-R

Public Notice

Special Public Notice

Date: 2 November 2012

Hurricane Sandy Storm Damage Repair

In Reply Refer to:

REGULATORY BRANCH

The purpose of this notice is to inform the public that repair of damage to public and private property caused by Hurricane Sandy occurring from October 28 thru October 30, and associated flooding and weather conditions, may be authorized, subject to the procedures described below in New Jersey, Delaware, and Pennsylvania.

On October 28-30, winds, storm surge, and flooding from Hurricane Sandy resulted in severe flooding and other storm related damages in New Jersey, Delaware, and Pennsylvania. As a result, State and Federal emergency or disaster declarations were made throughout the region. It is anticipated that owners of damaged property caused by Hurricane Sandy will want to conduct repair activities in the near future. This advisory is intended to inform property owners of the U.S. Army Corps of Engineers (Corps) permit requirements for storm damage repairs proposed in the States of New Jersey and Delaware, and the Commonwealth of Pennsylvania within the Philadelphia, New York, Baltimore, and Pittsburgh District's regulatory geographic boundaries.

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

It is expected that most proposed activities to remediate storm damage would be authorized under an existing Nationwide Permit (NWP), or State Program General Permit (SPGP). These permits authorize construction in waters of the United States, including navigable waters, that substantially reduces the time needed by the Corps to process applications for a category of activities that cause only minimal individual and cumulative environmental impact, when those activities are substantially similar in nature. These permits are issued on a nationwide or regional basis. These authorized activities would be accomplished under the authorities of Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

For projects proposed within the State of New Jersey, the New Jersey State Programmatic General Permit-17 and 19 (NJSPGP-17 and NJSPGP-19) may be applicable in order to authorize certain repair and maintenance activities. NJSPGP-17 specifically authorizes the construction of structures; performance of work and the discharge of dredged and fill material in substantially

developed artificial tidal lagoons and their access channel. The terms "structure" and "work" are defined in Federal regulations contained in 33 CFR 322.2[b] & [c]. The terms "discharge of dredged material", "fill material" and "discharge of fill material" are defined in Federal regulations contained in 33 CFR 323.2[d], [e] & [f]. "Substantially developed" artificial tidal lagoons are those where the surrounding lands are uplands and do not support wetlands other than a narrow band of fringe wetlands along the waterline. Lagoons are defined as artificially created linear waterways sometimes branched, ending in a dead end with no significant upland drainage. A natural waterway, which is altered by activities including, but not limited to, filling, channelizing, or bulkheading shall not be considered a lagoon. A bulkheaded boat slip shall not be considered a lagoon. NJSPGP-19 specifically authorizes the construction of proposed and maintenance of existing non-commercial piers, docks, gangway/ramps, stairs/ladders, mooring piles, boat lifts, breakwaters, the replacement of existing serviceable bulkheads and minor maintenance dredging of mooring slips. This general permit also authorizes the discharge of fill material between existing and proposed bulkheads as well as legalization of previously existing structures provided the structures meet all terms and conditions of this permit.

For projects proposed within the State of Delaware, the Delaware State Programmatic General Permit-18 and 20 (DESPGP-18 and DESPGP-20) may be applicable in order to authorize certain repair and maintenance activities. DESPGP-18 authorizes the construction of structures, performance of work, and the discharge of dredged and fill material in substantially developed artificial tidal lagoons, and their access channels. The terms "structure" and "work" are defined in Federal regulations contained in 33 CFR 322.2[b] & [c]. The terms "discharge of dredged material", "fill material" and "discharge of fill material" are defined in Federal regulations contained in 33 CFR 323.2[d], [e] & [f]. "Substantially developed" artificial tidal lagoons are those artificial tidal lagoons at which the surrounding lands are uplands and do not support wetlands other than a narrow band of fringe wetlands along the waterline. Lagoons are defined as artificially created linear waterways, sometimes branched, terminating in a dead end with no significant upland drainage. A natural waterway, which is altered by activities including, but not limited to filling, channelizing, or bulkheading shall not be considered a lagoon. A bulkheaded boat slip shall not be considered a lagoon. DESPGP-20 authorizes the maintenance or replacement of existing and the construction of new piers, decks, mooring piles, boat lifts, modular floating platforms for jet skis and larger vessels, structural breakwaters and replacement of existing serviceable bulkheads provided the structures meet all terms and conditions of this permit.

For projects proposed within the Commonwealth of Pennsylvania, the Pennsylvania State Programmatic General Permit-4 (PASPGP-4) authorizes repair and maintenance activities. Specifically, the PASPGP-4 authorizes maintenance and repair work that is authorized by the Pennsylvania Department of Environmental Protection through their Chapter 105 program. Repair and maintenance work that qualifies under Category I or II of the PASPGP-4 does not require further coordination with or notification to the Corps. This includes those Emergency Permits issued by the Pennsylvania Department of Environmental Protection which do not require a Category III review under the PASPGP-4. The PASPGP-4 may be used to authorize one-acre or less of impact to jurisdictional waters of the United States, provided all terms and conditions are met and the required permit processing procedures are followed.

Repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill, destroyed or damaged by storms, floods, fire, or other discrete events that do not

fall under the scope of the NJSPGP-17 and 19, the DESPGP-18 and 20, or the PASPGP-4 may be eligible for authorization under NWP #3, provided the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification and the conditions are complied with. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. Currently serviceable means that prior to damage that occurred on October 28-30, 2012 as a result of Hurricane Sandy, the structure or fill was useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project or within the boundaries of the structure or fill. NWP #3 does not authorize channelization or the restoration or re-establishment of a stream channel. The repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, must be commenced, or under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the Corps, provided the permittee can demonstrate funding, contract, or other similar delays.

For the repair of uplands damaged by Hurricane Sandy, NWP #45 authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of those upland areas. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The Corps retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the Corps. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period. This NWP does not authorize beach restoration or nourishment. Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the Corps (see Nationwide Permit General Condition 31) within 12-months of the date of the damage. The pre-construction notification should include documentation, such as a recent (pre-storm) topographic survey or photographs, to justify the extent of the proposed restoration.

Information regarding the NJSPGP-17 and 19, the DESPGP-18 and 20, the PASPGP-4, and the NWPs is available via the internet at:

<http://www.nap.usace.army.mil/Missions/Regulatory/Permits/SPGP.aspx>

<http://www.nap.usace.army.mil/Missions/Regulatory/Permits/NWP.aspx>

Please thoroughly review the terms and conditions of the NJSPGP-17 and 19, the DESPGP-18 and 20, the PASPGP-4, and NWP #3 and #45 and the applicable NWP regional conditions and

note that some activities require written authorization prior to commencement of work. It is imperative that the conditions and the management practices be followed explicitly. If you are uncertain that the activity you propose qualifies for the NJSPGP-17 and 19, the DESPGP-18 and 20, the PASPGP-4, or NWP #3 and #45 you are advised to contact the appropriate Corps District office prior to the commencement of work. Notification and application to the State is necessary in order to obtain authorization under an applicable SPGP in New Jersey, Delaware, or Pennsylvania.

The State Program General Permits and Nationwide Permits apply only to Department of the Army regulatory programs. It should be noted that authorization by a Corps SPGP or NWP does not obviate the need for state or local permits, or other federal permits required by law or the responsibility for obtaining all necessary property rights. It is recommended that you contact the New Jersey Department of Environmental Protection at (609) 633-6563 (Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Morris, Passaic, Somerset, Sussex, Union, Warren), (609) 633-2289 (Atlantic, Burlington, Cape May, Camden, Cumberland, Gloucester, Monmouth, Ocean, and Salem), (609) 984-6216 (TRANSPORTATION PROJECTS: NJDOT, County, road projects, Statewide), and the Pennsylvania Department of Environmental Protection/Central Office at (717) 787-5266, Southeast Regional Office at (484) 250-5970, and Northeast Regional Office at (570) 826-2511. Per a press release issued by the Delaware Department of Natural Resources and Environmental Control on October 31, 2012, you should contact DNREC's Wetlands and Subaqueous Lands Section and request a Repair Statewide Activity Approval (SAA) Authorization Form by phone at (302) 739-9943 or by email through gayle.calder@state.de.us.

In certain cases where the proposed work does not qualify for a NWP or SPGP, and the situation would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen and significant economic hardship if corrective action is not undertaken within a time period less than the normal time needed to process a permit application under standard procedures, Division Engineers are authorized to approve special procedures in emergency situations [33 CFR 325.2(e)(4)]. You should notify the appropriate Corps District office noted in this Public Notice if you believe your activity qualifies for emergency procedures. Notification will require identification of the project proponent, a point of contact, work description, photographs of the site, and the location of the work to be performed, and justification for implementation of the emergency procedures. Information on the Corps' emergency permit procedures is available via the internet at:

<http://www.nap.usace.army.mil/Portals/39/docs/regulatory/regs/33cfr325.pdf>

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

All inquiries regarding authorization of regulated activities should be directed to the applicable Permit Section at the U.S. Army Corps of Engineers, District, as indicated below.

New Jersey:

Philadelphia District (Delaware River Watershed; Atlantic Coast south of and including the Manasquan River), District Office Regulator of the Day, (215) 656-6728

New York District (Raritan Bay Watershed; Atlantic Coast north of Manasquan River), (917) 790-8511 (Eastern Permit Section) and (917) 790-8411 (Western Permit Section).

Delaware:

Philadelphia District, District Office Regulator of the Day (New Castle County), (215) 656-6728

Philadelphia District, Dover Field Office (Kent and Sussex Counties), (302) 736-9763

Pennsylvania:

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

Philadelphia District, Pocono Area Field Office (Pike, Wayne, Luzerne, Lackawanna, Schuylkill, Carbon, Monroe, Northampton, Lehigh Counties), (570) 842-1045

Baltimore District, Pennsylvania Section (Susquehanna and Potomac River Watersheds), (814) 235-0570

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

A handwritten signature in black ink, appearing to read 'Frank J. Cianfrani', with a long horizontal flourish extending to the right.

Frank J. Cianfrani
Chief, Regulatory Branch
Philadelphia District