



pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BUREAU OF WATERSHED MANAGEMENT

December 15, 2009

Dear Colleagues:

The purpose of this letter is to identify and summarize the existing operations, processes, and policies that are in place for the continued implementation of one-stop permits and permit coordination between the Pennsylvania Department of Environmental Protection (PADEP) and the U.S. Army Corps of Engineers (Corps) relating to waterway and wetland obstructions and encroachments. Staff from the PADEP met with Corps Districts in September of this year and presented the Erosion and Sediment Control General Permit (ESCGP-1) approach, and outlined the process that requires the permit applicant to outline a development plan enabling a single and complete project analysis. The Corps agreed that this development plan would provide the appropriate information allowing for a single and complete project analysis under the Pennsylvania State Programmatic General Permit (PASPGP-3).

There are three types of authorizations used for the purpose of addressing erosion and sediment control and waterway and wetland obstructions and encroachments from earth disturbances, due to oil and gas exploration, production, processing, treatment operations, or transmission facilities.

The first authorization is the ESCGP-1 permit for earth disturbances due to oil and gas exploration, production, processing, treatment operations, or transmission facilities. One of the requirements for the ESCGP-1 is for oil and gas operations to describe their intended overall development plan for an area including anticipated stream crossings and wetland impacts. This approach is for all the earth disturbance activities proposed, including impacts to wetlands and waterways, that are substantially connected over the life of the project. Subsequent phases of construction can be approved as amendments to the original permit. The entire proposed permit area, for present and future development, would be examined for activities such as, but not limited to, the proposed location of access roads, gas lines, and water withdrawal points from streams. Special environmental problems on the site can be identified and either avoided or the impact can be minimized well in advance of the next phase of well project construction. This development plan is extremely important as it is not only used for obtaining ESCGP-1, but will provide valuable information for obtaining any necessary state and federal waterway and wetland obstructions and encroachments permits.

The second authorization is the Chapter 105 Water Obstruction and Encroachment Permit for activities changing the course, current, or cross-section of the waters of the Commonwealth, including wetlands. Many activities requiring Chapter 105 authorization qualify for a General Permit (GP). The activities identified in the development plan in the ESCGP-1 provide the basis for a single and complete project analysis used in the issuance of the state Chapter 105 Permit(s). For example, if a single well site or numerous well sites are serviced by an access road across

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streams (GP-7 Minor Road Crossing), gas lines across streams and/or wetlands (GP-5 Utility Lines Crossing), a water withdrawal point (GP-4 Intake Structures), and other associated support facilities, cumulatively they are considered a single project. The same single and complete development plan used for the ESCGP-1 can then be used to apply for the necessary Chapter 105 Permit(s), most likely a number of GPs.

The third type of authorization is the Pennsylvania State Programmatic General Permit (PASPGP-3) for discharge of dredge or fill material into the waters of the U.S. including wetlands. The PASPGP-3 is a federal permit delegated to the state allowing PADEP to issue permits normally authorized by the Corps, often with little or no input from the Corps. The PASPGP-3 was developed in order to allow PADEP to issue the federal authorization with little or no additional review by the Corps, therefore, eliminating the need for dual and often redundant state and federal reviews, processing, and permit issuance procedures. The activities identified in the development plan in the ESCGP-1 that provided the basis for a single and complete project analysis used for the state Chapter 105 permit(s), also allow for the single and complete project analysis required for PASPGP-3. Most activities requiring Chapter 105 permits (including GPs) qualify for PASPGP-3, which is attached to the permit without additional effort by the applicant. Even if an activity does not qualify for a GP, it most likely will still qualify for PASPGP-3. For example, a wetland crossing where the wetland impact for an individual minor road crossing is greater than 0.1 acre, and the cumulative wetland impacts for all minor road crossings for an individual project is greater than 0.25 acre, would not qualify for GP-7 Minor Road Crossings, but is still within the thresholds of PASPGP-3, so PASPGP-3 could be attached to the Chapter 105 permit. PASPGP-3 details and thresholds are explained below.

PADEP has recently received questions regarding the application of the PASPGP-3 related to state Chapter 105 permit authorizations for activities related to oil and gas development. The questions are as follows:

1. What activities are eligible for PASPGP-3?
 - PASPGP-3 applies to the discharge of dredged or fill materials and/or the placement of structures, that are components of a single and complete project, including all attendant features both temporary and permanent, which individually or cumulatively result in direct or indirect impacts to 1.0 acre or less of waters of the U.S. including jurisdictional wetlands.
 - Activities not eligible for PASPGP-3, include but are not limited to:
 - Activities that will have more than minimal individual or cumulative adverse environmental impacts as determined by the Corps of Engineers.
 - Activities that do not comply with all terms and conditions of the PASPGP-3, including the terms and conditions specific to each listed category of activities.
 - Activities that will result in a total of more than 1.0 acre of impacts to waters of the U.S., including wetlands. For linear projects, the

eligibility threshold will apply to each crossing of a separate water of the U.S. including wetlands, or to each crossing of a single waterbody or wetland, at separate and distant locations. For individual channels in a braided stream or river, or for individual arms of a large irregularly shaped wetland or lake, etc. that are not separate waterbodies, the threshold calculation will apply to the cumulative total.

- Activities located waterward of the ordinary high water lines on non-tidal waters and/or the mean high water line on tidal waters in the following waters of the U.S.:
 - Delaware River
 - Schuylkill River
 - Lehigh River
 - Ohio River
 - Beaver River
 - Little Beaver River
 - Mahoning River
 - Monongahela River
 - Youghiogheny River
 - Allegheny River
 - Kiskiminetas River
 - Tenmile River
 - Lake Erie
- Instances where the Environmental Protection Agency (EPA) Regional Administrator is exercising the authority to prohibit, deny, restrict, or withdraw the use of a defined area for specification as a disposal site for the discharge of dredged or fill material.
- Designated Special Case circumstance identified by the Regional Administrator of EPA concerning the determination and limits of geographic jurisdiction of the 404 program advertised by Corps Public Notice as ineligible for federal authorization under PASPGP-3.
- Activities that have been denied a PADEP Chapter 105 Permit, a CWA Section 401 Water Quality Certification, or a Coastal Zone Consistency Determination.
- 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.

2. What is a single and complete project and how is the concept applied?

To provide effective environmental protection and regulatory compliance assistance, proposed activities that involve the multiple discharges of dredge or fill material, excavation or encroachments into waterways, waterbodies, and wetlands will be reviewed as a single and complete project. This is where a

thoughtful and thorough plan submitted under the ESCPG-1 process will be of great benefit to DEP, the Corps, and the oil and gas industry. This single and complete project review process gives the PADEP the opportunity to assist applicants during project development to minimize and avoid impacts to water resources to the maximum extent possible. A single and complete project review provides enhanced environmental protection, timely permit actions, and improved program efficiency. The single and complete project review process also benefits applicants because both Federal 404 and State 105 permits can be issued through the “one stop” PASPGP-3 permitting process. To facilitate single and complete project reviews, the project plan must show all the proposed impacts to waters and wetlands associated, proposed, or accomplished by one owner/developer or a partnership or association of owners/developers.

- A single and complete project is the total project proposed or accomplished by an owner/developer, partnership, or other association of owners/developers. The project must have independent utility and be constructed absent of the construction of other projects within the project area.
- A project shall be considered “single and complete” if, upon authorization, it can be constructed independent of any reliance on subsequent authorization for additional regulated activities.
- Portions of a multiphase project that depend upon other phases of the project do not have independent utility, and therefore are not single and complete projects. Phases of a project that would be constructed even if other phases are not built can be considered as separate single and complete projects with independent utility.

3. When must the PADEP refer projects requiring federal authorization to the Corps?

The Corps has jurisdiction over any activity related to the discharge of dredge or fill materials into the waters of the U.S. including wetlands. In Pennsylvania the Corps has recognized the Chapter 105 regulations as being equally as protective as Section 404 of the Clean Water Act. Therefore, the Corps and PADEP negotiated PASPGP-3 providing PADEP authority to authorize the federal permit during the same review as the state permit. This approach allows one-stop-shopping for permit applicants. The PASPGP-3 divides regulated activities into three categories, which include varying degrees of Corps involvement, based on the size of the impact and compliance with state and federal permit review standards.

- Category I Activities:
 - Category I activities are single and complete projects that cumulatively result in direct and indirect impacts to 1.0 acre or less of waters of the

- U.S. including jurisdictional wetlands, or 250 linear feet or less of streams, rivers, or other jurisdictional watercourses.
- Each individual Category I activity will not result in the permanent loss or more than 0.25 acre of waters of the U.S. including jurisdictional wetlands.
 - Category I activities must qualify as a PADEP General Permit (GP) or Permit Waiver, including GP #s 1-9, and 11, and 105.12(a) Waivers #1, 6-10, 12, and 14.
 - *These GPs and Waivers are typically authorized by PASPGP-3 without advanced notification to the Corps*
- Category II Activities:
 - Category II activities are single and complete projects that cumulatively or individually result in direct and indirect impacts to 1.0 acre or less of waters of the U.S. including jurisdictional wetlands, or 250 linear feet or less of streams, rivers, or other jurisdictional watercourses and do not qualify as a Category I or Category III activity.
 - Example: an access road crossing that does not qualify for GP-7.
 - Category II activities require submittal of a PADEP Joint Permit Application, Dam Permit, or Environmental Assessment (with request for 401 Water Quality Certification); or qualify for Waiver #s 11 or 16; or typically Waiver #2 if authorized as part of a single and complete project.
 - *These projects may be authorized by PASPGP-3 after the Corps and the other federal and state resource agencies and general public has had the opportunity to review and comment on the project. Notification for the proposed project will be through publication in the Pennsylvania Bulletin.*
 - Category III Activities, include but are not limited to:
 - Category III activities are single and complete projects that cumulatively or individually result in direct and indirect impacts to 1.0 acre or less of waters of the U.S. including jurisdictional wetlands.
 - *Category III activities can be authorized by PASPGP-3 only after case by case project coordination with any and all federal and state resource agencies, and require coordination with the Corps (or the U.S. Fish & Wildlife Service in cases involving federally endangered or threatened species) for separate permit review.*
 - Category III activities are activities that do not qualify under Category I or II and include, but are not limited to, the following activities most pertinent to oil and gas development activities.

- Any application that a resource agency may request for separate review by the Corps.
 - ⇒ Example: United States Fish and Wildlife Service (USFWS) may have a concern about a species of concern.
- Single and complete projects, including all attendant features both temporary and permanent, impacting greater than 250 linear feet of stream.
- Activities which may affect federally threatened or endangered species or their critical habitat.
- Waiver #2 activities (a water obstruction in a stream or floodway with a drainage area of 100 acres or less, but not wetlands located in the floodway) if the project is proposed by itself and is not being evaluated by PADEP.
- Any activity which may adversely affect cultural resources listed or eligible for listing in the National Register of Historic Places.
- Activities potentially impacting a national wild and scenic river.
- Activity where other federal permits (i.e. Nationwide Permits, Individual Permit, PASPGP) have already been issued for the project.
- Linear projects where the permanent individual or cumulative impacts to more than 0.25 acre of wetlands and the project is being authorized using GPs or where the cumulative impact of all the crossings exceeds the 250-foot threshold or the one-acre of impact to waters of the U.S. including jurisdictional wetlands.

The information included in this letter is only intended as a summary of the existing operations, processes, and policies in place and is not intended to define all possible scenarios and details related to oil and gas development activities. If you have any further questions or PADEP can be of further assistance, please feel free to contact me at grider@state.pa.us or by phone at 717.787.5267 or Sid Freyermuth at sfreyermuth@state.pa.us or by phone at 717.772.5977.

Sincerely,



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