

Availability of Modified Chapter 105 General Permit BWM-GP-11 and Reissuance of the 401 Water Quality Certification for the Maintenance, Testing, Repair, Rehabilitation or Replacement of Existing Water Obstructions and Encroachments

The Department of Environmental Protection (Department) announces the modification and finalization of Chapter 105 General Permit BWM-GP-11 and the reissuance of the 401 Water Quality Certification for the Maintenance, Testing, Repair, Rehabilitation, or Replacement of Existing Water Obstructions and Encroachments. The Department issues the modified General Permit, effective December 11, 2006, under the authority of section 7 of the Dam Safety and Encroachments Act (32 P.S. § 693.7) and 25 Pa. Code Chapter 105, Subchapter L (relating to general permits). The General Permit authorizes the maintenance, testing, repair, rehabilitation or replacement of any existing water obstruction or encroachment.

In accordance with 25 Pa. Code 105.446 (relating to procedure for issuance), the Department published notice of its intent to modify the General Permit in the *Pennsylvania Bulletin* on August 6, 2005, at 35 Pa.B. 4368. The Department proposed permit condition modifications including: allowing necessary appurtenant upstream and downstream works beyond the immediate 12-foot limitation for the actual bridge or culvert to restore, maintain and protect the stream and structure; limiting the use of bridges and culverts authorized under the general permit to their existing use; and clarifying language at standards Condition No. 16 Historical Resources.

During the 30-day public comment period on the proposed modifications, the Department received twenty-four comments from four persons/agencies. The Department has prepared a Comment and Response Document that summarizes the comments and the changes that were made, where applicable, to the General Permit.

Commentators suggested that the General Permit should not be used to put a structure to a different use. The General Permit has been clarified to indicate that structures cannot be put to a different use than for which they were originally constructed (for example, conversion and upgrade of a logging road for use as subdivision access). In addition, the General Permit condition regarding the widening of the structure to 12 feet on each side of the structure has been modified to allow for necessary appurtenant upstream and downstream works beyond the immediate 12-foot limitation for the actual bridge or culvert. Language has been added to the General Permit to ensure the appurtenant works are limited to the extent necessary to restore, maintain and protect the stream and structure as well as to ensure the protection of the public health, safety and the environment.

401 Water Quality Certification

The projects covered by General Permit BWM-GP-11 may also require a Federal license or permit. Section 401(a) of the Clean Water Act (33 U.S.C.A. § 1341 (a)) requires that an applicant for a Federal license or permit to conduct any activity which may result in any discharge into the waters of the United States provide the Federal licensing or permitting agency a certification from the state in which the discharge will originate that the discharge will comply with applicable provision of the Clean Water Act as well as applicable state law related to water quality protection.

The Department issued 401 Water Quality Certification with the finalization of BWM-GP-11, which was advertised in the *Pennsylvania Bulletin* on July 10, 2004, at 34 Pa.B. 3645. The Department believes the modifications to BWM-GP-11 comply with the Commonwealth's water quality standards and is therefore reissuing the 401 Water Quality Certification for BWM-GP-11.

Copies of the General Permit documents package, including the Comment and Response document, may be obtained by contacting Claudia Merwin, Bureau of Watershed Management, Division of Waterways, Wetlands and Stormwater Management, P.O. Box 8775, Harrisburg, PA 17105-8775, (717) 787-6827, or by e-mail to cmerwin@state.pa.us. Persons with a disability may obtain these documents by contacting the AT&T Relay Service at 1 (800) 654-5984 (TDD users) or 1 (800) 654-5988 (voice users). These documents are also available on the Department's website at www.depweb.state.pa.us (DEP Keywords: "Public Participation, Participate", then choose "Other Proposals").

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Secretary