MD-DC Utilities Association
2013 Environmental Conference
Cambridge, Maryland

Wetlands and Waterways Permitting Update

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October 3, 2013
Presentation Overview

- Regulatory Authorities
- Types of Department of the Army (DA) permits
- Coordination & Actions to Streamline Permitting
Also includes military bases in northern Virginia: Cameron Station, Ft. Belvoir (including BRAC), Ft. Myer and the Pentagon.
Federal Authorities

- **Section 404 of the Clean Water Act** requires a permit for the discharge of dredged or fill material into Waters of the U.S.

  - Perennial, intermittent, and ephemeral streams
  - Wetlands adjacent to jurisdictional waters
  - Tidal and non-tidal waters

- **Section 10 of the Rivers and Harbors Act** requires a permit for work in navigable waters

  - Dredging
  - Structures
  - Tunnels, HDD & aerial crossings
**Corps of Engineers Regulatory Jurisdiction**

**Tidal Waters**
- High Tide Line
- Mean High Water
- Tidlands
- Coastal Wetlands
  - Vegetation associated with salt & brackish water

**Fresh Waters**
- Ordinary High Water
- Fresh Water Wetlands
  - Marshes, swamps, bogs, & similar areas

**Section 103**
Ocean Discharge of Dredged Material

- Typical examples of regulated activities
- Ocean discharges of dredged material

**Section 404**
Disposal of Dredged or Fill Material (all waters of the U.S.)

- All filling activities, utility lines, outfall structures, road crossings, beach nourishment, riprap, jetties, some excavation activities, etc.

**Section 10**
All Structures and Work (navigable waters)

- Dredging, marinas, piers, wharves, floats, intake / outtake pipes, piling's, bulkheads, ramps, fills, overhead transmission lines, etc.
Regulatory Review

- **Permit required** from the Corps to discharge dredged or fill material into waters of the US; dredging and structures in, over, or under navigable waters

- **Alternatives analysis** is the *centerpiece* of the process. We can only authorize the least environmentally damaging practicable alternative (LEDPA).

- Measures to *avoid/minimize impacts*: alternative alignments, HDD, temporary construction matting, etc.

- Corps level of involvement in project review is commensurate with the *degree of impact*
Newspaper Headline

“Park pipeline stirs furor”

The Baltimore Sun
September 26, 2013
Types of DA Permits For Utility Line Activities

- Department of the Army State Programmatic General Permit
  - Maryland (MDSPGP-4)
  - Pennsylvania (PASPGP-4)

- Nationwide Permit (NWP) 12

- Individual Permits
MDSPGP-4

- Must have *minimal* individual and/or cumulative adverse environmental effects

- Overall Impact Threshold: one acre of impact, both permanent and temporary, to waters of the U.S., including jurisdictional wetlands, and/or 2,000 linear feet of streams, rivers, and other open waters

- Adverse impacts must be avoided/minimized to the maximum extent practicable *on-site*

- MDSPGP-4 expires on September 30, 2016
MDSPGP-4

- **Category A**
  - Generally *non-reporting* to the Corps
  - MDE reviews project and issues Federal authorization on behalf of the Corps

- **Category B**
  - *Reporting* to the Corps
  - MDE *forwards permit application* to the Corps for review.
  - Corps coordinates project review with Federal/State agencies
  - Corps issues permit decision
MDSPGP-4
Utility Line Activities

- Underground and Overhead Utility Line Activities
  - Utility Lines
  - Foundations for Overhead Utility Line Towers, Poles, and Anchors
  - Utility Access Roads
MDSPGP-4
Utility Line Activities

• Utility Lines – **Category A**
  
  ✓ 10,000 sf and/or 200 lf streams/rivers (non-tidal only)
  ✓ 30 feet maximum LOD in non-tidal waters
  ✓ stream crossings perpendicular
  ✓ In wetlands, the top 6 to 12 inches of trench must be backfilled with topsoil from trench (Category A/B)
  ✓ no tidal impacts

• Utility Lines – **Category B**
  
  ✓ one acre and/or 2,000 lf streams/rivers (tidal & non-tidal)
MDSPGP-4
Utility Line Activities

• Foundations for Overhead Utility Line Towers, Poles, Anchors – **Category A**
  - ✔ 10,000 sf and/or 200 lf streams/rivers (non-tidal only)
  - ✔ no towers, poles, anchors in streams
  - ✔ no tidal impacts

• Foundations for Overhead Utility Line Towers, Poles, Anchors – **Category B**
  - ✔ ½ acre and/or 2,000 lf streams/rivers (tidal & non-tidal)
MDSPGP-4
Utility Line Activities

• Utility Access Roads – **Category A**
  - 5,000 sf and/or 200 lf streams/rivers (non-tidal only)
  - Temporary crossings limited to one year
  - no tidal impacts

• Utility Access Roads – **Category B**
  - ½ acre and/or 2,000 lf streams/rivers (tidal & non-tidal)
SECTION 10

Insert Photo of utility crossing at Wiley Ford, downstream of Cumberland
NWP 12 – Utility Line Activities
(Washington, DC)

- ½ acre of impacts to waters of the U.S.
- Includes construction, maintenance/repair, foundations, access roads (non-tidal only)
- Submittal of pre-construction notification (PCN) may be required (e.g., when a Section 10 permit is required)
- In wetlands, the top 6 to 12 inches of trench should normally be backfilled with topsoil from trench
- Must follow Baltimore District regional conditions

- NWPs expire March 18, 2017
Individual Permit

- Large, complex projects that exceed limits and terms of general permits

- Potential for more than minimal impacts

- Public notice to interested parties, general public, adjacent property owners’, & coordination with involved agencies

- Environmental Assessment
  - Public interest review
  - Section 404(b)(1) Guidelines
Coordination with MDE

- Joint Federal/State permit process
  - Coordinated project reviews
  - Office/field meetings
  - Public notice
  - Joint Evaluation Meetings in Annapolis
  - Public hearings
  - Consistent permit decisions and conditions
Actions for Efficient Permit Processing

- **Applicants:** Involve the agencies early in the planning process for your restoration project. Agencies are accessible for *pre-application consultation*

- **Outreach** – staff participation in interagency and stakeholder meetings and conferences

- Joint Federal/State permit application *revisions*
Pre-Application Consultation

- Agencies meet with the applicant *in advance of a permit application*

- Agencies offer input at the *planning stages* of a project (field/office meeting)

- Discuss *documentation requirements* and alternatives (e.g., alignments; open trench vs. horizontal directional drilling) that should be evaluated
Pre-Application Consultation

- Corps/MDE can provide guidance and preliminary feedback regarding the *regulatory feasibility*, and potential suggestions on *alternatives* that could make the project more feasible.

- Expedites the permit process; *cost and time savings* to applicants.

- Before you invest time and resources, contact the Corps/MDE to schedule a pre-app meeting.
Pre-Application Consultation

- Monthly Interagency Joint Evaluation (JE) Meetings in Annapolis, Maryland – 4th Wednesday of the month

- JE Energy Meeting – 3rd Wednesday of month

- Federal/State agencies participate in JE
Important Issues/Reminders

(1) Federal and State permits have *different expiration dates*

(2) Permit modifications: require *Corps and MDE approval*

(3) Excess fill from trenching must not be *discharged/spread* into wetlands/waters on-site without authorization

(4) *Construction mats* are structures/fill and require authorization

(5) Wetland conversion (e.g., palustrine forested to emergent) generally requires *mitigation*

(6) Return the Corps compliance *self certification form*
Uh oh.....I have an **EMERGENCY**

- Minimum necessary to safeguard life/property against *imminent danger*

- **Notify** Corps and MDE prior to performing work.

- To the extent practicable/feasible, **submit** the following in writing to Corps/MDE: description/reason for work, location/waterway, site plans, stream diversion plans, quantify impacts, photographs, construction start/end dates

- You **should not** proceed until you have Corps/MDE **approval**

- **Submit** a joint Federal/State application to MDE within 3 days of completing the emergency work, unless granted an extension.
Goals

- Fair, reasonable, and consistent decisionmaking process
- Protect the aquatic environment
- Public service
Additional Information

U.S. Army Corps of Engineers
Baltimore District
Regulatory Branch Website
