MARYLAND-DISTRICT OF COLUMBIA UTILITIES ASSOCIATION ENVIRONMENTAL SECTION ANNUAL CONFERENCE

Kathy Anderson
Joseph DaVia
Maryland Section
U.S. Army Corps of Engineers
Baltimore District
October 5, 2017
Cambridge, Maryland

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WETLANDS AND WATERWAYS PERMITTING UPDATE

- Overview
- Regulatory Authorities
- Department of the Army (DA) Permits
- Issues/Developments
- Pre-Application Process
- Emergency Work
- Infrastructure Projects
- Summary
Also includes military bases in northern Virginia: Cameron Station, Ft. Belvoir (including BRAC), Ft. Myer and the Pentagon.
Perennial, intermittent, and ephemeral streams
Wetlands abutting and adjacent to jurisdictional waters
Tidal and non-tidal waters
CORPS REGULATORY AUTHORITIES

The authority of the Corps of Engineers to regulate construction activities or the discharge of dredged and/or fill material is contained in Section 10 of the Rivers and Harbors Act, Section 404 of the Clean Water Act, and regulations promulgated pursuant to these Acts.

Section 10 of the Rivers and Harbors Act of 1899
Corps authorization required for dredging, any obstruction or alteration, and the construction of any structure in, under, or over any “Navigable waters of the U.S.”

Section 404 Clean Water Act
Corps authorization required for discharge of dredged or fill material into all waters of the U.S., including jurisdictional wetlands.
PERMIT TYPES

- Standard Individual Permit
- Letter of Permission
- Nationwide Permit
- Regional General Permit
- State Programmatic General Permit
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, horizontal directional drilling, temporary construction matting, etc.

Corps level of involvement in project review is commensurate with the degree of impact
PERMIT PROCESSING

Individual Permit

The work is part of project where impacts are more than minimal and can include temporary use of marsh mats, wetland fill, and wetland conversion for access, staging areas, and site maintenance.

– Usually larger scale gas lines and electricity transmission projects, aerial or underground.

Letter of Permission

The submerged work in tidal waters as part of a project that would not include any fill impacts to waterways and wetlands.

– Usually small electric lines or communication cables and associated conduits.
INDIVIDUAL PERMIT

- Large, complex projects that exceed limits and terms of general permits
- Public notice to interested parties, general public, adjacent property owners’, and coordination with involved agencies
- Environmental Assessment
  - Public interest review | Section 404(b)(1) Guidelines

The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.

Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular application. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments.

Avoid | Minimize | Compensate
INDIVIDUAL PERMIT

○ The Corps’ evaluation of a Section 404 permit application is a **two part test**, which involves whether the project complies with EPA’s Clean Water Act Section 404(b)(1) Guidelines, and a public interest review.

○ A permit will be not be issued for an **alternative that is not the LEDPA**, nor will a permit be issued for an activity that is determined to be **contrary to the public interest**.

○ In considering both the LEDPA and the PIR the Corps **must consider compliance with other applicable substantive laws** such as the ESA and the NHPA as well as consult with other Federal Agencies. The Corps also must follow procedural laws such as NEPA, and other applicable laws described in 33 C.F.R. Section 320.3.
INDIVIDUAL PERMIT

- The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the public interest.

- Relative extent of the public and private need for the proposed structure or work.

- Practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed work where there are unresolved conflicts as to resource use.

- Extent and permanence of the beneficial and/or detrimental effects that the proposed work is likely to have on the public and private uses to which the area is suited.
LETTER OF PERMISSION

- The submerged work in tidal waters as part of a project that would not include any fill impacts to waterways and wetlands
- Coordination with resource agencies and adjacent property owners
- Decision document
  - Public interest review

Avoid obstruction to navigation
PERMIT PROCESSING

Nationwide Permit

Valid in Washington, DC
NWP #12, Utility Line Activities
Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Maryland State Programmatic General Permit-5

Valid in Maryland
This activity authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated mechanized land clearing, excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours.

Activities

- Utility Lines c (1)
- Utility Foundations c (2)
- Utility Access roads c (3)
NATIONWIDE PERMIT  EXPIRES MARCH 18, 2022

- Utility lines: 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 internet, radio, and television communication.

- Utility line substations: construction, maintenance, or expansion of substation facilities associated with a power line or utility line.

- Foundations for overhead utility line towers, poles, and anchors: construction or maintenance of foundations for overhead utility line towers, poles, and anchors if provided the foundations are the minimum size and separate footings for each tower leg.

- Access roads: construction of access roads for the construction and maintenance of utility lines.

All, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP may authorize utility lines in or affecting navigable waters.

Must follow all regional and general conditions
STATE PROGRAMMATIC PERMIT

- 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*
UTILITY LINE CATEGORIES

Category A - not to exceed 10,000 square feet and/or 200 linear feet wetlands/waters

- Generally *non-reporting* to the Corps
- Maryland Department of the Environment reviews project and issues Federal authorization on behalf of the Corps
- No tidal impacts

Category B - not to exceed 1/2 acre or 1 acre and/or 2,000 linear feet wetlands/waters

- *Reporting* to the Corps
- Maryland Department of the Environment forwards the application to the Corps for review
- Corps coordinates project review with Federal/State resource agencies
- Corps verifies authorization
UTILITY LINE ACTIVITIES

Utility Lines
This activity authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated mechanized land clearing, excavation, backfill, or bedding for the utility lines.

An acceptable utility line project must have independent utility, including a defined starting and ending point of the proposed project, and a defensible purpose.

Utility Foundations
This activity authorizes mechanized land clearing, the construction or maintenance of foundations for overhead utility line towers, poles, and anchors, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Utility Access Roads
This activity authorizes the mechanized land clearing and construction of access roads for the construction and maintenance of utility lines, including overhead power lines. Individual impacts for a utility project will be added cumulatively for review of the overall project.
ISSUES – PERMIT PROCESS

Complete Plans and Information

The application review process can be delayed if all information is not included in initial submittal

- Single and complete project
  - All proposed resource impacts
- Staging areas
- Method of work

- Project dimensions
  - Line depth below bottom substrate at points across the waterway
  - Total length and length across waterway (mean high water)
  - Line material – conduits
  - Substrate composition
ISSUES – PERMIT PROCESS

Contingency plans must be included in the permit application.

- Drilling operations, monitoring and detection
- Immediate mobilization
- Containment
- Control and recovery of drilling fluids
- Clean up/dilution
- Remediation
- Monitoring and reporting

Permit decision could include:

- Potential time-of-year restriction
  - Endangered species
  - Essential Fish Habitat
  - Species spawning/migration/life cycle activities
ISSUES – PERMIT PROCESS

Aquatic Resources

- Endangered species
- Essential Fish Habitat
- Navigation | future dredging
- Wetland habitats designated for special protection

Project

- Length of crossing | depth below substrate | substrate composition
- Method of work | technological capability | site conditions
- Potential loss of bore hole (identify potential second alignment during permit process to avoid delays associated with permit modification)
- Potential to change to higher impact crossing method
RECENT DEVELOPMENTS

- Coordination with National Marine Fisheries Service on endangered species
  - Atlantic and Shortnose sturgeon and sea turtles
- Coordination with Native American tribes
PRE-APPLICATION CONSULTATION

- Agencies meet with the applicant *in advance of a permit application*
  - Corps/MDE can provide guidance and preliminary feedback regarding the regulatory feasibility, and potential suggestions on alternatives that could make the project more feasible

- Agencies offer input at the *planning stages* of a project (field/office meeting)
  - Expedites the permit process; *cost and time savings* to applicants

- Discuss *documentation requirements* and alternatives (e.g., alignments; open trench vs. horizontal directional drilling) that should be evaluated
  - Before you invest time and resources, contact the Corps/MDE to schedule a pre-app meeting
Monthly Joint Evaluation (JE) Meetings

- Last Wednesday each month
- Federal and State agencies participate

- Environmental Protection Agency
- U.S. Fish and Wildlife Service
- National Marine Fisheries Service
- Maryland Department of the Environment
- Maryland Department of Natural Resources
- U.S. Coast Guard, as requested.
EMERGENCY WORK

- 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
MAINTENANCE UMBRELLA PERMITS

- Baltimore Gas & Electric
- Colonial Pipeline
- Transco
PROJECTS UNDER REVIEW

- Columbia Gas Eastern Panhandle Expansion Project, Hancock, Maryland
- Delmarva Power & Light Company
  - Bozman - Harris Creek
  - Fruitland
  - Tuckahoe Creek
- Washington Gas Light Company (WGL) Prince George’s County and District of Columbia Reliability and Reinforcement Project (PGCDCRRP).
GOALS

- Fair, reasonable, and consistent decision-making process
- Protect the aquatic environment
- Public service
REMINDERS

- Federal and State permits have different expiration dates.

- Permit modifications: require Corps and MDE approval.

- Excess fill from trenching must not be discharged/spread into wetlands/waters on-site without authorization.

- Construction mats are structures/fill and require authorization.

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

- Return the Corps compliance self-certification form.
QUESTIONS
U.S. Army Corps of Engineers
Baltimore District

Regulatory Branch Website


Kathy Anderson, Chief Maryland Section Southern
410.962.5690

Joseph DaVia, Chief Maryland Section Northern
410.962.5691