

PENNSYLVANIA STATE PROGRAMMATIC GENERAL PERMIT - 3
(PASPGP-3)
July 1, 2006

TO WHOM IT MAY CONCERN:

Part I – Authorities:

A. Federal Authorities:

1. Section 404(e) of the Clean Water Act (CWA) (33 United States Code [U.S.C.] Section [§] 1344) allows for the issuance of general permits on a statewide basis, which operate in conjunction with a State regulatory program that protects the aquatic environment in a manner equivalent to the Department of the Army regulatory program, provided that the activities permitted under each category of such general permits are similar in nature and result in no more than minimal individual or cumulative adverse effects on the aquatic environment. This Pennsylvania State Programmatic General Permit # 3 (PASPGP-3) is issued pursuant to Section 404(e) and is based on and consistent with the requirements of the CWA 404(b)(1) Guidelines.
2. Upon the recommendation of the Chief of Engineers, and under the provisions of Section 404 of the CWA, as amended, and Section 10 of the River and Harbor Act of 1899 (33 U.S.C. § 403), the Secretary of the Army hereby authorizes 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/or permanent, which individually or cumulatively result in impacts to 1.0 acre or less of waters of the United States. For linear projects, the eligibility threshold will apply to each crossing of a separate water of the United States including wetlands, or to each crossing of a single waterbody or wetland, at separate and distant locations. However, individual channels in a braided stream or river, or individual arms of a large irregularly shaped wetland or lake, etc., are not separate waterbodies, and the threshold calculation will apply to the cumulative total. **The term "impacts to waters of the United States" as used herein for the purpose of the PASPGP-3 eligibility threshold means the acreage of impacts to waters of the United States, including jurisdictional wetlands, which includes the direct impact (i.e., the fill area), plus the area of waters of the United States, including jurisdictional wetlands, which are indirectly affected by flooding, excavation, or drainage as a result of the regulated activity. For the purposes of this determination, the linear footage of stream impact shall be measured along the centerline of the watercourse when both streambanks of the watercourse are involved or along a single streambank when one streambank is involved, or measured across the watercourse, from top of bank to top of bank, when the project extends transversely across the watercourse. Individual or cumulative impacts from single and complete projects to waters of the United States, including jurisdictional wetlands, streams, and open water areas totaling up to 43,560 square feet (1.0 acre) are eligible for authorization under PASPGP-3.** These discharges and placement of structures must comply with all the terms, conditions, and processing procedures identified in this PASPGP-3.
3. Section 404(q) of the CWA states that agreements are to be entered into in order to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits. Memorandum of Agreements (MOAs) have been developed between U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), and Environmental Protection Agency (EPA) to outline the means for establishing these goals. The coordination, communication process, professional partnerships, and cooperative working relationships established by these MOAs will be maintained, where applicable, in this PASPGP-3.
4. Section 404(c) of the CWA authorizes the Administrator of EPA to prohibit the specification of any defined area as a disposal site, and to deny or restrict the use of any defined area for specification as a disposal site, whenever the Administrator determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas.

B. State Authorities:

1. The Dams Safety and Encroachments Act, Title 32, Pennsylvania Statutes, Sections 693.1 – 693.27
2. The Clean Streams Law, 35 P.S. §§ 691.1 – 693.1001

3. Dam Safety and Waterway Management Rules and Regulations, Title 25, Pennsylvania Code, Chapter 105 [hereinafter cited as 25 Pa. Code, Chapter 105; specific sections will be referred to by abbreviation “§”]
4. All other applicable regulations.

Part II – Scope of Activities:

A. Applicability:

The 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/or permanent, which individually or cumulatively result in direct or indirect impacts to 1.0 acre or less of waters of the United States, including jurisdictional wetlands, for specific categories of activities as regulated by Section 404 of the CWA or Section 10 of the River and Harbor Act of 1899. Discharges of dredged or fill materials and/or the placement of structures that comply with all terms, conditions, and processing procedures contained in the PASPGP-3, and have only minimal individual or cumulative environmental impacts, are authorized.

The term “**waters of the United States**” is defined as all waters defined by Federal Regulations 33 CFR Part 328.3 and 329.4. The term “**discharge of dredged material**” as defined in the Federal Register 33 CFR 323.2(d) and (e), means any addition of dredged material, including redeposit of dredged material other than incidental fallback, within waters of the United States, that serves the primary purpose of replacing an aquatic area with dry land or changing the bottom elevation of a waterbody. The term “**discharge of fill material**” includes discharges within waters of the United States, including wetlands and navigable waters, associated with activities such as mechanized land clearing, ditching, channelization, or other excavation. The Corps and the EPA regard the use of mechanized earth moving equipment to conduct landclearing, ditching, channelization, or other earth-moving activities in waters of the United States as resulting in a discharge of dredged material unless project specific evidence shows that the activity results in only incidental fallback (see discharges associated with excavation activities as defined in the Federal Register 33 CFR Part 323.2.). The term “**structure,**” as defined in the Federal Register 33 CFR 322.2(b), shall include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle or obstruction.

B. The following regulated activities are not eligible for this PASPGP-3. To receive Federal authorization for these activities, a permit application must be submitted to the appropriate Corps District Office:

1. Activities that will have more than minimal individual or cumulative adverse environmental impacts as determined by the Corps of Engineers.
2. 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.
3. Activities that will result in a total of more than 1.0 acre of impacts to waters of the United States, including jurisdictional wetlands, as defined above in Part I.A.2. For linear projects, the eligibility threshold will apply to each crossing of a separate water of the United States including wetlands, or to each crossing of a single waterbody or wetland, at separate and distant locations. However, 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, and the threshold calculation will apply to the cumulative total.
4. Activities authorized by Pennsylvania Department of Environmental Protection (PADEP) General Permit No. 15 (GP-15), Private Residential Construction in Wetlands [25 Pa. Code §§ 105.441-105.449, GP-15].
5. Activities authorized by Chapter 105 permits in conjunction with coal and non-coal mining permits issued by the PADEP District Mining Offices (Bureau of Mining and Reclamation), including PADEP Waiver 4 [25 Pa. Code § 105.12].
6. Activities located waterward of the ordinary high water line (OHWL) on non-tidal waters and/or the mean high water line (MHWL) on tidal waters on the following Pennsylvania waterbodies:
 - a. All of the Delaware River,
 - b. The Schuylkill River downstream of the confluence with Mill Creek at Port Carbon, Pennsylvania,

- c. The Lehigh River downstream from the State Route 940 Bridge,
 - d. All of the Ohio River,
 - e. All of the Beaver River,
 - f. All of the Little Beaver River,
 - g. All of the Mahoning River,
 - h. All of the Monongahela River,
 - i. The Youghiogheny River from its mouth at McKeesport, Pennsylvania to river mile 31.2 at West Newton, Pennsylvania,
 - j. The Allegheny River, from its mouth in Pittsburgh, Pennsylvania to river mile 197.4 at Kinzua Dam, north of Warren, Pennsylvania,
 - k. The Kiskiminetas River from its mouth near Freeport, Pennsylvania to river mile 26.8 at Saltsburg, Pennsylvania,
 - l. Tenmile Creek from its mouth at Millsboro, Pennsylvania to river mile 2.7, and
 - m. Lake Erie activities which require submittal of a Joint Permit Application or Environmental Assessment to the PADEP.
7. Instances where EPA's Regional Administrator has notified the District Engineer and applicant in writing that he is exercising his authority under 404 (c) of the CWA to prohibit, deny, restrict, or withdraw the use of any defined area for specification as a disposal site for the discharge of dredged or fill material.
8. Designated Special Case circumstances identified by the Regional Administrator of EPA, as defined in the MOA between the Department of the Army and the EPA concerning the determination and limits of geographic jurisdiction of the 404 program. Geographic areas established by the EPA would be advertised by Corps Public Notice as ineligible for Federal authorization under the PASPGP-3.
9. Activities that have been denied a PADEP Chapter 105 Permit, a CWA Section 401 Water Quality Certification, or a Coastal Zone Consistency Determination.
10. 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.

C. Activities Eligible for PASPGP-3:

- 1. All activities listed in Categories I, II and III, which the Corps determines will have no more than minimal adverse environmental effects. All authorized activities must be in compliance with all the terms and conditions of the PASPGP-3, including the terms and conditions specific to each listed category of activities. The Corps will consider the comments and concerns of the other regulatory resource agencies and the public, as appropriate, for activities in Categories II and III, prior to making a decision.
- 2. All activities issued under PASPGP-2 that did not expire prior to June 30, 2006, are reauthorized by the PASPGP-3 without further notice to the applicable Corps District provided the proposed regulated activities comply with all terms, conditions, limits, and best management practices identified and required by the PASPGP-3; all special conditions attached to the original PASPGP-2 authorization; and all applicable PADEP Chapter 105 authorizations. The duration of these reauthorizations will be for the term of the applicable PADEP Chapter 105 authorization or for 3 years from the date of the original PASPGP authorization, whichever is less.
- 3. Linear project activities where no individual crossing exceeds the 1.0 acre threshold (see Part II.B.3. above).

Part III- Categories of Activities Eligible for PASPGP-3 Authorization:

A. Category I Activities:

The following activities are authorized by the PASPGP-3 without notification to the applicable Corps District, provided the proposed regulated activities comply with all terms, conditions, limits, best management practices, and processing procedures identified and required by the PASPGP-3, and all applicable PADEP Chapter 105 authorizations. These activities correspond to specific PADEP Chapter 105 Waivers, General Permits (GPs), Letters of Authorizations, Emergency Permits, and PADEP Individual Permits Numbered E-999x.

If the Corps determines, based upon complaint or investigation, that a project specific activity which is eligible for a PADEP Waiver has a significant adverse impact on life, property or important aquatic resources, the Corps may require the owner to modify the activity to eliminate the adverse condition or to require an Individual Permit.

In some instances, these activities may be exempt from Federal permit requirements in accordance with the Clean Water Act Section 404(f)(1) exemptions, applicable to some farming, agricultural, silvicultural, and maintenance activities. These exemptions will apply unless the project is subject to "recapture" under Section 404(f)(2). Project specific activities as listed in activities 1 through 22 below are eligible for PASPGP-3 authorization provided:

1. That individual components of a single and complete project, resulting in the discharge of dredged or fill materials and/or the placement of structures, will result in the permanent loss of no more than 0.25 acres of waters of the United States, including jurisdictional wetlands or not more than 250 linear feet of impacts to streams, rivers, jurisdictional watercourses, and open water areas (see exceptions below);

Exceptions to 250 Linear Feet Threshold:

Those activities that are authorized under the PA GP-1 for Fish Habitat Enhancement Structures affecting 500 linear feet or less, of waters of the United States, including jurisdictional wetlands.

Those activities that are authorized under PA GP-3 for Stream Bank Rehabilitation and Protection affecting 500 linear feet or less.

2. That all combined components of a single and complete project, including all attendant features both temporary and/or permanent, resulting in the discharge of dredged or fill materials and/or the placement of structures, will result in impacts to 1.0 acre or less of waters of the United States, including jurisdictional wetlands, or 250 linear feet or less of streams, rivers or jurisdictional watercourses and open water areas. These activities correspond to activities authorized pursuant to Section 7 of the Dam Safety and Encroachments Act, 32 P.S. § 693.1, seq., and the rules and regulations promulgated thereunder in the Pennsylvania Bulletin (codified at 25 Pa. Code, Chapter 105, §§ 105.441-105.449, and in order to qualify, these activities must: a) be registered as PADEP GPs; or b) qualify as PADEP Waivers (1), (3) through (10), (12) and (14); or c) receive a Waiver Letter of Maintenance or d) be registered as PADEP Individual Permits Numbered E-999x, or e) receive a PADEP Emergency Permit, pursuant to the above referenced Act;

Category I Ineligible Activities - Related to the Endangered Species Act:

All Category I activities that may directly or indirectly affect streams supporting Federally listed mussels or fish, shall be coordinated as Category III activities in accordance with Part III.C.3.a.

Those activities (PADEP GPs 5, 6, 7, 8, 9, 11 and PADEP Individual Permits Numbered E-999X) proposed to occur in counties of bog turtle occurrence, with impacts to Federally regulated wetlands, shall be coordinated as Category III activities in accordance with Part III.C.3.b. (Category III Activities). *Exceptions to this requirement are projects that already have a clearance letter from the U.S. Fish and Wildlife Service or a no effects determination from the Corps.*

Activities:

1. Fish Habitat Enhancement Structures: This is limited to the construction, installation, operation, and maintenance of fish habitat enhancement structures for a maximum of 500 linear feet, in the regulated waters of the Commonwealth. Fish habitat enhancement structures authorized consist of: deflectors, low flow channel structures, channel blocks, muddills and boulders, felled shoreline trees, special tire structures, brush structures, rubble reefs, half-log structures, elevated boulder structures, and spawning /nursery structures placed in streams, lakes, ponds or reservoirs as developed in coordination with the PFBC. This corresponds to those activities authorized pursuant to PADEP GP-1.

2. Small Docks and Boat Launching Ramps: This is limited to the installation, operation, modification, and maintenance of small docks and boat launch ramps in and along the regulated waters of the Commonwealth of Pennsylvania. This corresponds to those activities authorized pursuant to PADEP GP-2.

3. Bank Rehabilitation, Bank Protection, and Gravel Bar Removal: This is limited to the installation, operation, modification, and maintenance of bank rehabilitation and protection for a maximum of 500 linear feet; and the removal of gravel bars for a maximum of 250 linear feet along the regulated waters of the Commonwealth of Pennsylvania. This corresponds to those activities authorized pursuant to PADEP GP-3.

- 4. Intake and Outfall Structures:** This is limited to the construction, operation and maintenance of intake and outfall structures in, along, across, or projecting into the regulated waters of the Commonwealth of Pennsylvania. This corresponds to activities authorized pursuant to PADEP GP-4.
- 5. Utility Line Stream Crossings:** This is limited to the installation, operation, and maintenance of utility line stream crossings of the regulated waters of the Commonwealth of Pennsylvania. This corresponds to activities authorized pursuant to PADEP GP-5.
- 6. Agricultural Crossings and Ramps:** This is limited to the installation, operation, and maintenance of agricultural crossings and ramps in the regulated waters of the Commonwealth of Pennsylvania. This corresponds to activities authorized pursuant to PADEP GP-6.
- 7. Minor Road Crossings:** This is limited to (1) the construction, operation, and maintenance of a minor road crossing across wetlands which individually impacts less than 0.10 acre of wetlands, or cumulatively impacts less than 0.25 acre of wetlands; (2) the construction, operation, and maintenance of a minor road crossing across a stream where the watershed drainage is 1.0 square mile or less; and (3) the removal of an existing minor road crossing across a stream where the drainage area is 1.0 square mile or less. This corresponds to activities authorized pursuant to PADEP GP-7.
- 8. Temporary Road Crossings:** This is limited to the construction, operation, and maintenance of temporary road crossings of the regulated waters of the Commonwealth of Pennsylvania. This corresponds to activities authorized pursuant to PADEP GP-8.
- 9. Agricultural Activities:** This is limited to the installation, operation, modification, and maintenance of certain agricultural activities that encroach into streams and their floodways or bodies of water wholly or in part within or forming part of the boundary of the Commonwealth of Pennsylvania. These agricultural activities are grassed or lined waterways, terraces, diversions, waste storage facilities, spring development, and minor drainage that supports these activities and is necessary for contour strips when engaged in as part of an existing agricultural operation and shall only be implemented as part of a conservation plan consistent with the 25 Pa. Code, Chapter 102 (relating to erosion control) and approved by the appropriate Pennsylvania County Conservation District. This corresponds to activities authorized pursuant to PADEP GP-9. Agricultural activities are also subject to the conditions identified in the GP-9, in order to insure no more than minimal impacts to the aquatic environment.
- 10. Maintenance, Testing, Repair, Rehabilitation, or Replacement of Water Obstructions and Encroachments:** This is limited to any activity eligible for a PADEP GP-11 that permanently impacts less than 0.05 acres of wetlands or less than 250 linear feet of stream. This corresponds to those activities authorized pursuant to PADEP GP-11. Maintenance, testing, repair, and rehabilitation activities are also subject to the conditions identified in the GP-11, in order to insure no more than minimal impacts to the aquatic environment.
- 11. Small Dams Not Exceeding 3 Feet in Height in a Stream Not Exceeding 50 Feet in Width:** This is limited to the construction of small dams not exceeding 3 feet in height in a stream, not exceeding 50 feet in width, except wild trout streams designated by the PFBC in accordance with 58PaC. §57.11, and corresponds to activities authorized pursuant to Section 7 of the Dam Safety and Encroachments Act, 32 P.S. § 693.1, et seq., and the rules and regulations promulgated thereunder in the Pennsylvania Bulletin (codified at 25 Pa. Code, Chapter 105, § 105.12, Waiver 1).
- 12. Stormwater Management and Erosion Control:** This is limited to a water obstruction or encroachment located in, along, across, or projecting into an existing stormwater management facility or an erosion and sedimentation pollution control facility which meets the requirements in 25 Pa. Code, Chapter 102 (relating to erosion and sediment control), if the facility was constructed and continues to be maintained for the designation purpose. This corresponds to activities authorized pursuant to PADEP Waiver 6. Corps authorization is only required in instances where the original facility was constructed in waters of the United States including wetlands.
- 13. Activities Related to Crop Production:** This is limited to maintenance of field drainage systems for crop production and for plowing, cultivating, seeding or harvesting for crop production. This corresponds to activities authorized pursuant to PADEP Waivers 7 and 8.

14. Minor Stream Fords: This is limited to construction and maintenance of ford crossings of streams for individual private personal use, which require only grading of banks for approach roads and the placement of not more than 12 inches of gravel for roadway stability. Fords may not be used for commercial purposes and shall cross the regulated waters of the United States located in the Commonwealth of Pennsylvania in the most direct manner. This does not apply to activities in exceptional value streams as listed under 25 Pa. Code, Chapter 93 (relating to water quality standards) or in wild trout streams. This corresponds to activities authorized pursuant to PADEP Waiver 9.

15. Navigational Aids: This is limited to a navigational aid or marker, buoy, float, ramp, or other device or structure for which a permit has been issued by the PFBC under Title 30, Pennsylvania Consolidated Statutes, Section 5123(a)(7) (relating to general boating regulations). This corresponds to activities authorized pursuant to PADEP Waiver 10.

16. Activities Related to Use of Water Recording, Gauging, and Testing Devices: This is limited to the construction, operation, or removal of staff gauges, water recording devices, water quality testing devices, including, but not limited to, sensors, intake tubes, weirs, and small buildings which contain required instruments and similar scientific structures. This corresponds to activities authorized pursuant to PADEP Waiver 12.

17. Activities Waived at 25 PA Code § 105.12(a)(14) Waiver 14 - Artificial Ponds and Reservoir Maintenance: Any activity authorized as Waiver 14 includes maintenance of an artificial pond or reservoir to its original storage capacity where:

- The contributory drainage area is less than or equal to 100 acres.
- The greatest depth of water at maximum storage elevation is less than or equal to 15 feet.
- The impounding capacity at maximum storage elevation is less than or equal to 50-acre feet.

This corresponds to activities authorized pursuant to Section 7 of the Dam Safety and Encroachments Act, 32 P.S. § 693.1, et seq., and the rules and regulations promulgated thereunder in the Pennsylvania Bulletin (codified at 25 Pa. Code, Chapter 105, § 105.12, Waiver 14).

18. PADEP Individual Permits Numbered E-999X: This is limited to maintenance activities performed in or along various streams within the Commonwealth, by certain Commonwealth agencies including:

- a. The Pennsylvania Department of Transportation (District 1 - E61-9999; District 2 - E17-9999; District 3 - E41-9999; District 4 - E35-9999; District 5 - E39-9999; District 6 - E23-9999; District 8 - E22-9999; District 9 - E07-9999; District 10 - E32-9999; District 11 - E02-9999; and District 12 - E26-9999)
- b. The Pennsylvania Turnpike Commission (E22-9995)
- c. The Pennsylvania Department of Conservation and Natural Resources, Bureau of State Parks (Region 1 - E12-9998; Region 2 - E10-9998; Region 3 - E05-9998; Region 4 - E09-9998)
- d. The Pennsylvania Department of Conservation and Natural Resources, Bureau of Forestry (District 1 - E29-9997 and District 2 - E18-9997)
- e. The Pennsylvania Game Commission (SE Region - E06-9996; SC Region - E31-9996; NE Region - E40-9996; NC Region - E41-9996; NW Region - E61-9996; SW Region - E65-9996)

This corresponds to activities authorized pursuant to PADEP Regional General Permits (E-999X). The maintenance work must be performed as described on a submitted work schedule, submitted to PADEP Regional Offices, with all work performed in accordance with PADEP standards for that particular agency's maintenance agreement.

19. Emergency Activities: This corresponds to activities authorized pursuant to PADEP Emergency Permits.

20. Normal Maintenance and Repair of an Existing Dam: This is limited to normal maintenance and repair of an existing, jurisdictional dam and will not involve major modification to the dam. This corresponds to activities also authorized pursuant to PADEP Letter of Authorization.

21. Miscellaneous Activities: The following activities will not in most cases be regulated pursuant to Section 404 of the Clean Water Act, but may, in a few instances, require either a Section 404 or Section 10 of the Rivers and Harbors Act permit. These correspond to activities authorized by PADEP Waivers, General Permits, and Waiver Letters of Maintenance provided they are implemented as described in the applicable PADEP authorization:

- a. PADEP GP-10, Abandoned Mine Reclamation

- b. PADEP Waiver 15, Abandoned Mines
- c. PADEP Waiver 3, Aerial Crossings
- d. PADEP Waiver 5, Acid Mine Drainage
- e. PADEP Waiver 13, Abandoned Railroad Bridges and Culverts
- f. Waiver Letters of Maintenance for:
 1. Channel Cleaning at Bridges and Culverts - Stream channel maintenance within 50 feet upstream and downstream of an existing bridge or culvert, performed in accordance with the maintenance provision of a previously issued PADEP permit and the PADEP *Standards for Channel Cleaning at Bridges and Culverts*.
 2. Bridge and Culvert Repair - Maintenance to an existing culvert, bridge, or stream enclosure constructed prior to July 1, 1979, on a watercourse where the drainage area is five square miles or less.

22. Activities Related to Residential, Commercial and Institutional Developments (This activity will become effective on July 1, 2007): Any activity for the purpose of constructing or expanding a residential, commercial, or institutional subdivision or development where greater than 0.25 acre of wetlands (in addition to those being directly impacted by the proposed project) are located within the property boundary and the application includes a proposed deed restriction, conservation easement, or deed restricted open space area, that protects such wetlands from activities such as filling, draining, mowing, placement of structures, cutting of vegetation, clearing or plowing of natural vegetation. (Also see **Part V. - General Condition #25**). This activity does not apply to linear transportation projects. (Applications that do not include a proposed conservation instrument/deed restriction may still qualify for a PASPGP-3, under a Category III review. See Part III, C, 8.)

B. Category II Activities:

This category includes activities that do not meet the terms and conditions of any activity listed in Category I, and requires notification through publication in the PA Bulletin as required by 25 PA Code Chapter 105.21(a) of the Dam Safety and Encroachments Act, 32P.S. § 693.1, et seq., and the rules and regulations promulgated thereunder in the Pennsylvania Bulletin (codified at 25 PA Code, Chapter 105, § 105.446(a)(2)(d)). Activities that result in the discharge of dredged or fill materials and the placement of structures, that are components of a single and complete project, including all attendant features both temporary and or permanent, which individually or cumulatively result in direct or indirect impacts to 1.0 acre or less of waters of the United States, including jurisdictional wetlands, or 250 linear feet or less of streams, rivers, or other jurisdictional watercourses, may be authorized by the PASPGP-3 after an opportunity for review and comment by the Corps, all other Federal and State Resource Agencies, and the general public, provided the proposed regulated activities comply with all the terms, conditions, best management practices and processing procedures identified and required by the PASPGP-3, and all applicable PADEP Chapter 105 authorizations. An alternatives analysis consistent with the 404 (b)(1) guidelines will be conducted by PADEP as required by the Chapter 105 regulations for all Category II activities. Notification of the proposed activity will be through publication in the PA Bulletin at least 30 days prior to the effective date of the permit, Item No.1, below, is published in the PA Bulletin as an *Encroachment* while items No. 2 and 3 are published in the PA Bulletin as *Environmental Assessments*.

1. Activities Requiring Pennsylvania State Permits or Approvals: This is limited to activities which correspond to a PADEP Individual Permit (including a Small Projects Permit), Dam Permit, or Environmental Assessment Approval and request for 401 Water Quality Certification, and which result in the discharge of dredged or fill materials and the placement of structures, that are components of a single and complete project, including all attendant features both temporary and/or permanent, which impact 1.0 acre or less of waters of the United States, including jurisdictional wetlands, or 250 linear feet or less of streams, rivers, or jurisdictional watercourses.

2. The Removal of Abandoned Dams, Water Obstructions, and Encroachments: This is limited to the removal of abandoned dams, water obstructions, or encroachments, where PADEP determines in writing, on the basis of data, information, or plans, submitted by the applicant, that the removal of the abandoned dam, water obstruction, or encroachment will not imperil life or property, have significant effect on coastal resources, or have an adverse impact on the environment, and the plans provide for restoration and stabilization of the project area. This corresponds to activities authorized pursuant PADEP Waiver 11.

3. Restoration Activities: This is limited to restoration activities undertaken and conducted pursuant to a restoration plan, which has been approved, in writing, by PADEP. This corresponds to activities authorized pursuant to PADEP Waiver 16.

4. Activities Related to Residential, Commercial and Institutional Developments (This activity will become effective on July 1, 2007): Any activity for the purpose of constructing or expanding a residential, commercial, or institutional subdivision or development where greater than 0.25 acre of wetlands (in addition to those being directly impacted by the proposed project) are located within the property boundary; and the application includes a proposed deed restriction, conservation easement, or deed restricted open space area, that protects such wetlands from activities such as filling, draining, mowing, placement of structures, cutting of vegetation, clearing or plowing of natural vegetation. (Also see **Part V. - General Condition #25**). This activity does not apply to linear transportation projects. (Applications that do not include a proposed conservation instrument/deed restriction may still qualify for a PASPGP-3, under a Category III review. See Part III, C, 8.)

C. Category III Activities:

Activities listed below as Category III will receive a project specific review by the Corps of Engineers to determine that no more than minimal adverse environmental impacts would occur. The Corps will coordinate with the appropriate Federal and State Resource agencies in order to make its minimal impact determination. This category includes activities listed in or eligible for Category I or Category II that require additional case by case review due to issues of Federal concern as listed below. Category III projects may be authorized by the PASPGP-3 only after case by case opportunity for review and comment by all appropriate Federal and State resource agencies.

These activities correspond to activities authorized pursuant to Section 7 of the Dam Safety and Encroachments Act, 32 P.S. § 693.1, seq., and the rules and regulations promulgated thereunder in the Pennsylvania Bulletin (codified at 25 Pa. Code, Chapter 105, §§ 105.441-105.449) and in order to qualify, these activities must: receive a PADEP Individual Permit (including a Small Projects Permit); Dam Permit; Environmental Assessment Approval; be registered as PADEP GPs ; qualify as a PADEP Waivers; receive a Waiver Letter of Maintenance; be registered as a GP(E-999x); or receive a PADEP Emergency Permit.

All Category III projects that require PADEP Individual Permits (including a Small Projects Permit), Dam Permits, or Environmental Assessment Approvals, will also be reviewed by the general public through publication in the PA Bulletin. Notification for these activities will be through publication in the PA Bulletin at least 30 days prior to the effective date of the permit, as required by 25 PA Code Chapter 105.21(a) of the Dam Safety and Encroachments Act, 32P.S. § 693.1, et seq., and the rules and regulations promulgated thereunder in the Pennsylvania Bulletin (codified at 25 PA Code, Chapter 105). Coordination will be accomplished by forwarding copies of all project application files to the Corps of Engineers. Additionally, in order to be authorized under this Category, the proposed regulated activity must comply with all the terms, conditions, best management practices, and processing procedures identified and required by the PASPGP-3, and all applicable PADEP Chapter 105 authorizations.

1. Activities Normally Authorized Under Category I or Category II: Activities that have been requested by the Corps, Federal, and/or State resource agencies, for a project specific review, prior to issuance by PADEP or the delegated County Conservation District; or in appropriate instances, that have been requested by the Corps, Federal, and/or State Resource Agencies for a project specific review within 30 days of publication in the PA Bulletin.

2. Activities Potentially Exceeding Thresholds:

a. Activities Exceeding Category I and/or Category II Thresholds: Activities listed in Category I that individually result in the permanent loss of 0.25 acres or more of wetlands; or activities listed in Category I or Category II that impact greater than 250 linear feet of a stream, river, or jurisdictional watercourse. This includes projects which individually or cumulatively impact more than 250 linear feet (up to 43,560 square feet or 1 acre) of streams, rivers, or other jurisdictional watercourse (except fish habitat enhancement structures authorized under GP-1 and bank rehabilitation and restoration activities, authorized under GP-3, that affect 500 linear feet or less), including all attendant features, both temporary and permanent, that are components of a single and complete project. This stream threshold is applied to the total impact of all components of a single and complete project, regardless of the type of PADEP authorization or combination of authorizations, used to approve the project

b. Linear Projects: Linear projects that have cumulative impacts (including both permanent and temporary) to wetlands exceeding 1.0 acre (these linear projects may still be eligible for PASPGP-3 authorization provided no single crossing exceeds the 1 acre threshold – see Part I.A.2.); or

c. Projects with Previous Federal Authorizations: Newly proposed components of single and complete projects that have previous federal authorizations pursuant to Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act.

3. Activities Which May Affect Threatened or Endangered Species or Their Critical Habitat:

a. All activities or projects proposed in waterways occupied by Federally listed, proposed, or candidate mussels or fish as indicated below, or in waters of the United States within 300 feet of these listed waterways shall be sent to the USFWS for review and comment. This list is subject to change as additional waterways of occurrence are documented.

| WATERWAYS | COUNTY | SPECIES PRESENT |
|---|--|---|
| Allegheny River (from Kinzua Dam to the Ohio River) | Armstrong, Clarion, Forest, Venango, Warren, | Northern riffleshell and clubshell mussel |
| Conewango Creek | Warren | Northern riffleshell |
| French Creek | Crawford, Erie, Mercer, Venango | Northern riffleshell and clubshell mussel |
| Conneaut Outlet | Crawford | Clubshell mussel |
| Conneauttee Creek | Crawford | Clubshell mussel |
| LeBoeuf Creek | Erie | Northern riffleshell and clubshell mussel |
| Muddy Creek | Crawford | Clubshell mussel and Northern riffleshell |
| Shenango River, Pymatuning Reservoir to Big Bend | Crawford and Mercer | Clubshell mussel |
| Delaware River | Monroe, Pike, Wayne | Dwarf wedgemussel |

b. In counties of documented bog turtle occurrence listed below, unless the application already has a clearance letter from the USFWS or a no effects determination from the Corps, requests for PADEP Individual Permits, Dam Permits, Environmental Assessment approvals, PADEP GPs 5, 6, 7, 8, 9, 11, and PADEP Individual General Permits (E-999X), impacting Federally regulated wetlands, will be screened for Threatened and Endangered Species, prior to issuance or acknowledgement of the PASPGP-3 and/or the PADEP authorization. Counties: Adams, Berks, Bucks, Chester, Cumberland, Delaware, Franklin, Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton, Schuylkill (Swatara Creek Watershed), and York.

4. Activities Waived at 25 PA Code § 105.12(a)(2) Waiver 2 - Water Obstructions in a Stream or Floodway With a Drainage Area of 100 Acres or Less: Any activity authorized as Waiver 2, which include water obstructions in a stream or floodway with a drainage area of 100 acres or less. This waiver does not apply to wetlands within the floodway. This corresponds to activities authorized as PADEP Waiver 2.

5. Activities Authorized at 25 PA Code § 105.131(c) –Maintenance of Reservoirs of Jurisdictional Dams: This work associated with maintenance dredging of the reservoir’s design storage capacity including the removal of accumulated sediments. This corresponds to activities authorized pursuant to Section 7 of the Dam Safety and Encroachments Act, 32 P.S. § 693.1, et seq., and the rules and regulations promulgated thereunder in the Pennsylvania Bulletin (codified at 25 Pa. Code, Chapter 105, § 105.131 (c)).

6. Activities Potentially Affecting Historic or Cultural Resources: Any activity which may adversely affect cultural resources, which are listed or eligible for listing in the National Register of Historic Places pursuant to the requirements of Section 106 of the National Historic Preservation Act (NHPA). This includes projects where the Pennsylvania Historic and Museum Commission (PHMC) in cooperation with the State Historic Preservation Officer (SHPO) have determined and the Corps has concurred that archaeological or other cultural resources are believed to exist within the permit area.

7. Activities Potentially Affecting Wild Or Scenic Rivers: Any activity which occurs in a component of the National Wild and Scenic River System or in a river officially designated by Congress as a “Study River” for possible inclusion in the System are not authorized by this PASPGP-3, unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect any Wild and Scenic River including study rivers. As stated in Part II.C.3.c. above, activities located waterward of the ordinary high water line (OHWL) or mean high water line (MHWL) in the Delaware River and Allegheny River are ineligible for the PASPGP-3, while activities located in wetlands landward of the OHWL or MHWL lines of these rivers are eligible for authorization under the PASPGP-3. Designated and study rivers approved and included in the National Wild and Scenic River System subsequent to the publication of this document are to be considered in this sub-category. The designated Wild and Scenic Rivers are:

- a. Allegheny River, from the Kinzua Dam Mile 197.2, downstream approximately seven miles to the US Route 6 Bridge, at mile 190.7, in Warren, then from the Buckaloons Recreation Area in Allegheny National Forest at Mile 181.7 downstream 47 miles to Alcorn Island just north of Oil City at river Mile 133.7, and then continuing from the Franklin Wastewater Treatment Plant at Mile 122.7, downstream 31 miles to the refinery at Emlenton Mile 90.7.
- b. Clarion River from Mile 91.1 in the Borough of Ridgeway, Elk County, Pennsylvania, at the National Forest and Gamelands Boundary to Mile 39.4 at the normal pool elevation of Piney Dam.
- c. Upper Delaware Scenic and Recreational River, including the ¼ mile buffer from each bank, beginning at Hancock, New York, and continuing 73.4 river miles to Mill Rift, Pennsylvania.
- d. Middle Delaware Scenic and Recreational River (from bank to bank) as it flows through the Delaware Water Gap National Recreation Area.
- e. Lower Delaware River beginning seven river miles north of Belvidere, New Jersey, continuing to Washington Crossing, Pennsylvania, including Paunacussing Creek within Solebury Township, all of the Tincum Creek including Rapp Creek and Beaver Creek Tributaries, and Tohickon Creek to Pumping Station Road, including a ¼ mile buffer from each bank.
- f. White Clay Creek watershed including all of its tributaries.

8. Activities Related to Residential, Commercial and Institutional Developments (This activity will become effective on July 1, 2007): Any activity for the purpose of constructing or expanding a residential, commercial, or institutional subdivision or development where greater than 0.25 acre of wetlands (in addition to those being directly impacted by the proposed project) are located within the property boundary; and the application does not include a proposed deed restriction, conservation easement, or deed restricted open space area, that protects such wetlands from activities such as filling, draining, mowing, placement of structures, cutting of vegetation, clearing or plowing of natural vegetation. (Also see **Part V. - General Condition #25**). This activity does not apply to linear transportation projects.

Part IV– Procedures:

A. Application Submittal:

Applicants must identify all impacts to waters of the United States, including the direct and indirect impacts, both temporary and permanent, that are components of a single and complete project, including all attendant features. The delineation of wetland boundaries shall be accomplished in accordance with the current 1987 Corps of Engineers Wetland Delineation Manual (87 Manual) and appropriate guidance issued by the Corps of Engineers.

Applicants must apply for the necessary Commonwealth and Federal authorization by following one of the procedures indicated below:

1. For PASPGP-3 Eligible Activities:

Complete and submit 3 copies of the appropriate Pennsylvania/Corps Joint Permit application form* to the appropriate PADEP Regional Office and notify the PHMC-SHPO, using the “PADEP Cultural Resource Notification Form” or other PHMC accepted format, and provide written proof of the notification and/or response from PHMC, with the permit application; or

Register a PADEP Chapter 105 General Permit* at the appropriate PADEP Regional Office or, where applicable, the Delegated County Conservation District Office; or

Complete and submit to the appropriate PADEP Office, a PADEP Environmental Assessment form* for activities identified by 25 Pa. Code 105.15, and for those activities identified at 25 Pa. Code 105.12(a) (11 and 16); (**Note:** No permit application submittal to PADEP is necessary for other activities identified as waived in 25 Pa. Code 105.12 (a) (1) through (10) and (12) through (15); however, these may require a Corps permit application submittal as discussed below for activities authorized under Waiver 2).

Complete a Federal Section 10/404 Corps permit application** and submit it to the applicable Corps District Office for:

1. Activities identified in 25 Pa. Code 105.12(a)(2) Waiver 2
2. Federal projects not qualifying for a Category I activity

* A complete permit application package may be obtained by contacting the appropriate PADEP Regional Office as listed at the end of this permit.

** A Federal permit application may be obtained by contacting the appropriate Corps District Office as listed at the end of this permit.

2. For PASPGP-3 Ineligible Activities:

For activities in PASPGP-3 **ineligible waterways** (listed at Part II.C.3.c.), complete a Joint Permit application form, and submit it to the appropriate PADEP office who will forward a copy to the appropriate Corps office for Federal review and approval.

For activities which qualify for PADEP Chapter 105.12 (a) Waivers or PADEP Letters of Authorization, which involve 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 and indirect impacts to waters of the United States, including jurisdictional wetlands, which exceed 1.0 acre, complete a **Corps permit application, and submit it directly to the appropriate Corps District Office.**

Activities authorized by PADEP District Mining Offices (Bureau of Mining and Reclamation complete a **Corps permit application and submit it directly to the appropriate Corps District Office.**

For activities registered for PADEP General Permit No. 15 (**GP-15**) the applicant must forward a copy of their request to the appropriate PADEP and Corps offices for separate review and approval.

For all other activities which involve 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 and indirect impacts to waters of the United States including jurisdictional wetlands, which exceed 1.0 acre, complete a **Joint Permit application form, and submit it to the appropriate PADEP office who will forward a copy to the appropriate Corps office for Federal review and approval.**

B. PASPGP-3 Review Procedures:

1. Category I (Site specific Corps review not required): Proposed activities that are subject to Corps jurisdiction which involve the discharge of dredged or fill materials, and the placement of structures, and that are components of a single and complete project, including all attendant features both temporary and permanent, which result in no more than minimal individual or cumulative environmental impacts, may proceed without an application to the Corps, provided that all required State and local authorizations are obtained and the activities meet all terms and conditions of the PASPGP-3.

If the Corps or PADEP provide written notice to the applicant that alternative Corps review is required, the applicant cannot proceed to perform the work under Category I.

2. Category II Review: All Category II activities will be published in the PA Bulletin, as a Public Notice. The Corps and resource agencies will review the PA Bulletin to determine the need for Federal review, on a case-by-case basis. One copy of the permit application will be maintained in the PADEP Regional Office for resource agency review. If a resource agency requests to upgrade the review to a Category III review of the permit application, it must notify the appropriate PADEP Regional Office, prior to the expiration of the comment period in the PA Bulletin. PADEP will forward the application to the appropriate agency.

The Corps District may notify PADEP that the activity is eligible for authorization under PASPGP-3, with or without special conditions, or may notify PADEP that the project is not eligible for the PASPGP-3 and require another type of Federal authorization. The applicant may not begin work until PADEP or the Corps provides written verification to the applicant that the activity is eligible for authorization under the PASPGP-3.

3. Category III Review: Applications for projects identified as Category III, will be reviewed by the Corps and, when applicable, the EPA, USFWS, NMFS, PADEP, PFBC, Pennsylvania Game Commission (PGC), PHMC, and as requested by any other Federal and State resource agencies, to determine eligibility for authorization under the PASPGP-3. All Category III activities that involve a PADEP Individual Permit (including a Small Projects Permit), Dam Permit, or Environmental Assessment Approval, will also be reviewed by the general public through publication in the Pennsylvania Bulletin. The Corps District will notify PADEP that the activity is eligible for authorization under PASPGP-3, with or without special conditions, or will notify PADEP and the applicant that the project is not eligible for the PASPGP-3 and require another type of Federal authorization. The applicant may not begin work until PADEP or the Corps provides written verification to the applicant that the activity is eligible for authorization under the PASPGP-3.

For activities which qualify for the PASPGP-3, PADEP, the Corps, or the County Conservation District will process and issue Federal authorization through the PASPGP-3 and will provide the applicant a copy of the PASPGP-3 conditions and, if applicable, project-specific conditions, imposed by the Corps and/or PADEP.

When coordination with the Pennsylvania SHPO results in identification of a potential Section 106 of the NHPA affect within the permit area, or coordination with the USFWS results in identification of a Federally listed threatened or endangered species, or its critical habitat, the project will follow Category III procedures. Where Category III procedures are initiated due to Section 106 or endangered species concerns, the Corps will contact the applicable agency and allow up to 30 days for comment.

Resource agencies will be notified regarding gravel bar removal projects as necessary. Any gravel bar removal project which the Corps has determined to be unregulated will not require authorization under the PASPGP-3.

C. Agency Objection:

If, within the time constraints of the PA Bulletin comment period, or Corps notification period, any Federal or State resource agency objects to authorization of a specific project under PASPGP-3, and the Corps does not concur with the agency's objection, the agency has an additional 15 days from the close of the comment period, for its Division Director (EPA, USFWS, NMFS) or Executive Director (State resource agencies) to express a formal objection. The objection must be within the agency's area of expertise and/or authority, under the PASPGP-3. The Corps will attempt to resolve the objection, within 45 days of receipt of the formal request. If the Corps cannot resolve an objection by the agency within 45 days, that application will not qualify for authorization under PASPGP-3, and the Corps will evaluate the activity under Individual Permit procedures. However, should all objections be resolved, the applicability of PASPGP-3 may be reinstated and may include project specific conditions to protect the public interest.

D. Other Types of Corps Permit Review:

If a project is ineligible under the terms and conditions of the PASPGP-3, the Corps will notify PADEP and the applicant that the project will require further evaluation under alternative permit procedures, including a public interest review. All information submitted by the applicant for the PASPGP-3 review will also be used by the Corps for the alternative permit review. During the alternative permit review, the Corps may determine that the impacts have been reduced such that the activity imposes only minimal adverse environmental effects and the proposed project meets the terms and conditions of the PASPGP-3. At that time the Corps may verify PASPGP-3 eligibility for the project.

Discretionary Authority: Notwithstanding compliance with the terms and conditions of the PASPGP-3, the Corps retains discretionary authority to require a Corps Individual Permit review for any project based on concerns for the aquatic environment or for any other factor of the public interest. This authority is invoked, on a case-by-case basis, whenever the Corps determines that the potential consequences of the proposal warrant individual review, based on the concerns stated above. This authority may be invoked for projects with cumulative environmental impacts that are more than minimal or if there is a special resource or concern associated with a particular project, which is not addressed with stipulations of the PASPGP-3, and warrants greater review.

Part V – General Conditions and Procedural Requirements:

For an activity involving the placement of a structure and/or discharge of dredged or fill materials into waters of the United States, including jurisdictional wetlands, to qualify for authorization under this PASPGP-3, it must be in compliance with the following General Conditions and Procedural Requirements:

A. General Conditions:

All activities authorized under PASPGP-3 must be in compliance with the following. Failure to comply with all conditions of the authorization, including special conditions, will constitute a permit violation and may be subject to criminal, civil, or administrative penalties, and /or restoration:

1. PADEP Permit Conditions: The permittee shall comply with all terms and conditions set forth in the PADEP authorization for use of this permit, including all conditions of Section 401 Water Quality Certification, and any subsequent amendment or modification to such authorization. The permittee shall conduct all work and activities in strict compliance with all approved maps, plans, profiles, and specifications used by PADEP and/or the Corps as the basis for its authorization or subsequent modification of authorization.

2. Aquatic Life Movements: No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be appropriately depressed to maintain aquatic life movement and low flow conditions.

3. Threatened and Endangered Species: If an activity is authorized under the PASPGP-3, and a Federally listed threatened or endangered species, or proposed species or critical habitat, is subsequently found to be present, all work must cease, and the Corps and USFWS (or NMFS) must be notified. The PASPGP-3 authorization is suspended and will not be re-issued until consultation pursuant to Section 7 of the ESA is concluded and adverse effects to Federally listed threatened, endangered and proposed species and critical habitat are avoided.

Furthermore, persons have an independent responsibility under Section 9 of ESA to not engage in any activity that could result in the "take" of a Federally listed species.

4. Spawning Areas: The permittee shall comply with all time-of-year restrictions as set forth by the PFBC or other designated agency. Discharges or structures in spawning or nursery areas shall not occur during spawning seasons, unless written approval is obtained by the PFBC or other designated agency. In addition, work in areas used for other time sensitive life span activities of fish and wildlife (such as hibernation or migration) may necessitate the use of seasonal restrictions for avoidance of adverse impacts to vulnerable species. Impacts to these areas shall be avoided or minimized to the maximum extent practicable during all other times of the year.

5. Waterfowl Breeding and Wintering Areas: Activities including discharges of dredged or fill material or the placement of structures in breeding and wintering areas of migratory waterfowl must be avoided to the maximum extent practicable.

6. Shellfish Production: No discharge of dredged or fill material and/or the placement of structures may occur in areas of concentrated shellfish production, unless the discharge is directly related to an authorized shellfish harvesting activity.

7. Adverse Effects From Impoundments: If the activity, including the discharge of dredged or fill material or the placement of a structure, creates an impoundment of water, the adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow, including impacts to wetlands, shall be minimized to the maximum extent practicable.

8. Obstruction of High Flows: To the maximum extent practicable, the activity must be designed to maintain pre-construction downstream flow conditions (i.e., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters), and the structure or discharge of dredged or fill material must withstand expected high flows. The Activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to pre-construction conditions, and must not increase water flows from the project site, relocate water, or redirect water flow beyond pre-construction conditions. In addition, the activity must,

to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows.

9. Erosion and Siltation Controls: During construction, appropriate erosion and siltation controls must be used and maintained in effective operating condition in accordance with State regulations. All exposed soil and other fill material must be permanently stabilized.

10. Suitable Material: No activity, including discharges of dredged or fill material or the placement of structures, may consist of unsuitable material (i.e., asphalt, trash, debris, car bodies, etc.). No material discharged shall contain toxic pollutants in amounts that would violate the effluent limitation standards of § 307 of the CWA.

11. Temporary Fill: Temporary fill in waters and wetlands authorized by the PASPGP-3 (i.e., access roads and cofferdams) shall be properly constructed and stabilized during use to prevent erosion and accretion. Temporary fill in wetlands shall be placed on geotextile fabric laid on existing wetland grade. Whenever possible, rubber or wooden mats should be used for equipment access through wetlands to the project area. Temporary fills shall be removed, in their entirety, to an approved upland site, and suitably contained to prevent erosion and transport to a waterway or wetland. Temporary fill areas shall be restored to their preconstruction contours, elevations, and hydrology and revegetated with comparable native species.

12. Equipment Working in Wetlands: Measures must be taken to minimize soil disturbance when heavy equipment is used in and adjacent to wetland areas. These measures include, but are not limited to, avoiding the use of such equipment, use of timber mats or geotextile fabric, and the use of low pressure tire vehicles.

13. Installation and Maintenance: Any structure or fill authorized shall be properly installed and maintained to ensure public safety.

14. The Following Conditions Apply to Activities for the Maintenance of Existing Flood Control Projects that are authorized Pursuant to PADEP GP-11:

a. Dredging and channel cleaning are authorized only within the established limits of the project and only within previously constructed channels. Dredging and channel cleaning shall be limited solely to restoring channel width and depth to design configurations as clearly described in the baseline maintenance plan.

b. Dredging must be accomplished using bucket-type equipment when working within the channel, unless siphon-type equipment is necessary in conjunction with a separate de-watering structure and a clean return-water procedure is used. In no instance shall sediment be bulldozed or graded within the channel.

c. A baseline maintenance plan shall be available on-site or at the project sponsor's office. The baseline maintenance plan consists of as-built project plans provided by PADEP or the Corps. The maintenance plan shall include the name and address of the project sponsor; the name and address of the contractor; a copy of the latest inspection report from PADEP or the Corps; a suitable work plan detailing the length and width (in plan view and cross section) of the intended maintenance work; and current photographs of the work area.

15. Permit Expiration: The project-specific PASPGP-3 authorization is valid for the same period as the project-specific PADEP authorization, not to exceed 3 years from the date of authorization, unless modified or extended or until the PASPGP-3 expires, is suspended, or revoked, whichever date occurs sooner.

PASPGP-3 authorization for activities receiving PADEP General Permits shall not exceed 3 years or until the PASPGP-3 expires, is suspended, or revoked, whichever date occurs sooner.

Activities authorized under the PASPGP-3 that have commenced construction or are under contract to commence construction will remain authorized provided the activity is completed within 12 months of the date of the PASPGP-3's expiration, modification, or revocation; or until the expiration date of the project specific verification, whichever is sooner.

16. One-Time Use: A project-specific PASPGP-3 authorization is valid to construct the project, or perform the activity, one time only, except for maintenance activities associated with the authorized activity, if allowed as part of the authorized activity.

17. Water Supply Intakes: No activity, including discharges of dredged or fill material and/or the placement of structures, may occur in the proximity of a public water supply intake except where the activity or discharge is for repair of the public water supply intake structures or adjacent bank stabilization.

18. Cultural Resources: For all activities authorized under a PASPGP-3, upon the discovery of the presence of previously unknown Historic Properties (historic or archaeological), all work must cease and the permittee must notify the SHPO and the Corps of Engineers. The PASPGP-3 authorization is suspended until it is determined, through the Section 106 consultation process, whether the activity will have an affect on the Historic Property. The suspended authorization under PASPGP-3 may be reactivated or modified, through special conditions if necessary, after an affects determination on the Historic Property is made. The PASPGP-3 authorization may be revoked for the specific activity if an adverse affect on the Historic Property can not be avoided or mitigated.

19. Tribal Rights: No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

20. Corps Civil Works Projects: Navigation Projects. The PASPGP-3 does not authorize interference with any Corps navigation project. The permittee understands and agrees that, if future operations by the United States require removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal, relocation, or alteration.

Other Corps Civil Works Projects (i.e., Flood Control, Dams, and Reservoirs). The PASPGP-3 does not authorize interference with any proposed or existing Federal project.

21. Navigation: No activity authorized under PASPGP-3 may cause more than a minimal adverse affect on navigation. No attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized herein. In addition, activities that require temporary causeways that prohibit continued navigational use of a waterway (i.e., temporary causeways extending greater than $\frac{3}{4}$ the width across the waterway) shall be removed in their entirety upon completion of their use; and shall be clearly marked for purposes of public safety. Nothing in the PASPGP-3 shall in any way restrict the Corps of Engineers from exercising the legal authority to protect the federal interest in navigation and in the navigation servitude of the United States.

22 Inspections: The permittee shall allow a District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary in order to ensure that the work is being performed in accordance with all the terms and conditions of the PASPGP-3. The District Engineer may also require post-construction engineering drawings (as-built plans) for completed work.

23. Compliance Certification: A compliance certification form, regarding the PASPGP-3 authorized work and required mitigation, will be forwarded to each permittee with the PASPGP-3 authorization. Every permittee, who receives a written PASPGP-3 authorization, shall submit the signed compliance certification form upon completion of the authorized work and required mitigation. The completed form shall be returned to the appropriate Corps District and include:

- a. A statement that the authorized work was or was not done in accordance with the PASPGP-3 authorization, including any general and/or special conditions. If the work was not done in accordance with the PASPGP-3 authorization, the permittee shall describe the specifics of the deviation from the authorized activity.
- b. A statement that any required mitigation was or was not done in accordance with the permit conditions and approved plans. If the mitigation was not performed in accordance with the permit conditions and approved plans, the permittee shall describe the specifics of the deviation from the permit conditions and plans related to the required mitigation.
- c. Photographs with written descriptions, showing completed authorized work and mitigation, as required by the terms of the compliance certification form.
- d. The signature of the permittee, certifying the completion (or not) of the authorized work and mitigation.

24. Permit Modifications: Any proposed modification of the authorized project that results in a change in the authorized impact to, or use of waters of the United States, including jurisdictional wetlands, must be approved by PADEP. Corps approval is also required if the project had been previously reviewed by the Corps or the proposed

modification causes the project impacts to exceed 1.0 acre of waters of the United States, including jurisdictional wetlands, or 250 linear feet of streams, rivers, or other jurisdictional waterbodies including open water areas. Project modifications that cause total project impacts to exceed 1.0 acre of waters of the United States, including jurisdictional wetlands, are not eligible for PASPGP-3 and will be forwarded to the Corps for processing through alternate permit procedures.

25. Recorded Conservation Instruments: As per Part III. A. Activity 22 and Part III. B. Activity 4, proposed conservation instruments may be submitted by the applicant as part of the permit application package. When such proposed conservation instruments are submitted by the applicant, verification of the recorded deed restriction, conservation easement, or deed restricted open space area shall be forwarded to the appropriate Corps District and appropriate PADEP offices, prior to the initiation of any permitted work.

U.S. Army Corps of Engineers District Offices

Pittsburgh District

<http://www.lrp.usace.army.mil>

Federal Building
1000 Liberty Avenue
Regulatory Branch
Pittsburgh, PA 15222-4186
412-395-7152

Baltimore District

<http://www.nab.usace.army.mil/Regulatory/>

P.O. Box 1715
Regulatory Branch, PA Section
Baltimore, MD 21203-1715
410-962-4522 or 814-235-0570

Philadelphia District

<http://www.nap.usace.army.mil>

Wanamaker Building
100 Penn Square East
Regulatory Branch
Philadelphia, PA 19107-3390
215-656-6728

26. Property Rights: This PASPGP-3 does not convey any property rights, either in real estate or material, or any exclusive privileges; nor does it authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.

B. Procedural Requirements:

All activities authorized under PASPGP-3 must be in compliance with the following:

1. Waters of the United States Including Jurisdictional Wetlands: Applicability of the PASPGP-3 shall be evaluated with reference to the Corps definition of waters of the United States, including jurisdictional wetlands. Applicants are responsible for delineating boundaries of all waters of the United States, including jurisdictional wetland boundaries. The delineation for jurisdictional wetland boundaries shall be accomplished in accordance with the current Corps of Engineers Wetland Delineation Manual (1987 Manual) and appropriate guidance issued by the Corps of Engineers.

2. Single and Complete Projects: The PASPGP-3 shall not be used for piecemeal work and shall be applied to single and complete projects. All components of a single project shall be evaluated together, for purposes of PASPGP-3 authorization.

3. State Authorization: The activity must receive State authorization. For the purpose of this requirement, any one of the following would be considered as State authorization:

- a. A PADEP Chapter 105 Water Obstruction and Encroachment Permit, including a PADEP approved Environmental Assessment pursuant to 25 Pa. Code 105.15, or
- b. A PADEP GP issued pursuant to 25 Pa. Code 105.441 – 105.449, or
- c. A PADEP approved Environmental Assessment for activities not otherwise requiring a PADEP permit pursuant to 25 Pa. Code 105.15, or
- d. A CWA Section 401 Water Quality Certification for activities which qualify for waiver of PADEP permit requirements per 25 Pa. Code 105.12, or
- e. A PADEP Dam Permit, including the maintenance or repairs of existing authorized dams, including maintenance dredging , or,
- f. A PADEP Emergency Permit issued pursuant to 25 Pa. Code 105.64, or
- g. The maintenance provision of a previously authorized PADEP permit for the construction of a bridge or culvert (including bridges and culverts authorized by PADEP prior to the implementation of the PASPGP-1 in March 1995), which allows for maintenance activities of bridges and culverts, or
- h. A PADEP Chapter 105 Dam Safety and Encroachment Enforcement Action, or
- i. A CWA Section 401 Water Quality Certification where no other State authorization as listed above, is required.

4. Other Authorizations: Additional Federal, State and/or local authorizations or approvals are required, where applicable, and must be secured by the applicant, prior to initiating any discharge of dredged or fill material, and/or the placement of structures into waters of the United States, including jurisdictional wetlands. These approvals include, but are not limited to:

- a. A 401 Water Quality Certification issued by PADEP pursuant to Section 401 of the CWA.
- b. A Consistency Determination issued by PADEP pursuant to Section 307 of the Federal Coastal Zone Management Act for activities located within designated Coastal Zone Management Areas.
- c. For activities resulting in permanent, above-grade fills in waters of the United States, including jurisdictional wetlands within 100-year floodplains mapped by the Federal Emergency Management Agency (FEMA) or State or local governments, the permittee must comply with the applicable FEMA, State, and local floodplain construction requirements.

5. Corps Special Conditions: The Corps may impose other special conditions on a project authorized pursuant to the PASPGP-3, where it is determined necessary to minimize adverse environmental effects or based on any other factor of the public interest.

6. Avoidance, Minimization and Compensatory Mitigation: Discharges of dredged or fill material and/or the placement of structures into waters of the United States, including jurisdictional wetlands must be avoided and minimized to the maximum extent practicable at the project site. Applicants must avoid and minimize impacts to the aquatic environment, in accordance with the PADEP requirements under Chapter 105.1 *Mitigation*, 105.13 (d)(1)(viii), 105.14 (b)(7), 105.16 (a), 105.18 a (3), and 105.18 b (3). Once avoidance and the minimization of unavoidable adverse impacts has been demonstrated to the satisfaction of the reviewing office (Corps, PADEP, or the County Conservation District), compensatory mitigation may be used to offset unavoidable adverse impacts.

7. Use of the Pennsylvania Wetland Replacement Project (PWRP): The PWRP may be used to compensate for impacts approved under the authority of PASPGP-3. After it has been determined by the Corps or PADEP that compensatory mitigation is not practicable, the applicant, on a case by case basis, may be given the opportunity to consider using other forms of acceptable mitigation, including the PWRP.

8. Activities Potentially Obstructing Fish Passage: Any activity which could potentially obstruct the passage of diadromous fish, including but not limited to, the placement of dams, weirs, or permanent fill, stream channelization, stream relocation, or the placement of pilings or structural supports which have the same effect of a discharge of fill material in the Juniata River main stem, including the Raystown Branch to Raystown Lake and Frankstown Branch to Hollidaysburg; or the Susquehanna River main stem, to the New York State line and the West Branch Susquehanna River to Lock Haven, must be coordinated with the USFWS, and the PFBC to insure minimization of impacts upon passage and migration of diadromous fish.

9. Threatened and Endangered Species: No activity is authorized under the PASPGP-3 which is likely to, individually or cumulatively, adversely affect a Federally listed threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. If a proposed activity may affect a Federally listed threatened, endangered, or proposed species, or its critical habitat, the Corps must initiate consultation with USFWS and NMFS in accordance with the ESA prior to authorization of the activity under the PASPGP-3. If through the informal consultation process (50 CFR part 402.13), it is determined that adverse effects to Federally listed threatened or endangered species and its critical habitat will be avoided, the activity is eligible for Federal authorization under the PASPGP-3. If, however, adverse effects cannot be avoided, the activity is NOT eligible for Federal authorization under the PASPGP-3

A Pennsylvania Natural Diversity Inventory (PNDI) review is required for all applications reviewed and authorized under the PASPGP-3. If the PNDI review indicates a potential conflict with a Federally listed threatened, endangered species, or proposed species or its critical habitat, the USFWS will be consulted by PADEP or the Corps to determine the appropriate course of action to ensure compliance with the Endangered Species Act. Additional project screening and review will be conducted for activities proposed to occur in areas known to or likely to support Federally listed species or proposed species. A PASPGP-3 will not be issued until consultation pursuant to Section 7 of the ESA is concluded and adverse effects to Federally listed threatened, endangered, proposed species, and critical habitat are avoided.

10. Cultural Resources: Any activity authorized by the PASPGP-3 shall comply with Section 106 of the National Historic Preservation Act (NHPA). No activity, which may affect Historic Properties, listed, or eligible for listing, in the National Register of Historic Places is authorized under PASPGP-3, until the Corps has complied with the provisions of 33 CFR part 325, Appendix C, Historic Properties include historic and prehistoric (archaeological) sites. The applicant must provide evidence that the SHPO at the PHMC has been notified, using the PADEP Cultural Resources Notification Form for all PADEP Individual Permits. Proof of notification may be in the form of a copy of the response letter from PHMC or a copy of the certified mail receipt resulting from sending the Cultural Resources Notification Form. The Corps may require applicants to perform a survey of historic and archaeological resources in the project area.

11. Temporary Fill: Temporary fill in waters of the United States, including jurisdictional wetlands, is considered a discharge of fill material and must be included in the quantification of impact area authorized by the PASPGP-3.

12. Federal Liability: In issuing this permit, the Federal government does not assume any liability for the following:

- a. damages to the permitted project or uses, thereof, as a result of other permitted or unpermitted activities or from natural causes;
- b. damages to the permitted project or uses, thereof, as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
- c. damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
- d. design or construction deficiencies associated with the permitted work; and
- e. damage claims associated with any future modification, suspension, or revocation of the PASPGP-3.

13. False and Incomplete Information: If any of the information and/or plans contained in or made a part of the Pennsylvania/Corps Joint Permit Application, PADEP GP registration, PADEP Environmental Assessment is found to be in error, falsified, and/or incomplete, the PASPGP-3 authorization may be subject to modification, suspension, or revocation in accordance with 33 CFR 325.7.

14. Permit Transfer: Any modification that only involves a transfer of ownership for any PASPGP-3 will be forwarded to the appropriate Corps District, using the PADEP Application For Transfer Of Permit and Submerged Lands License Agreement (form no. 3930-PM-WM0016).

Part VI – Enforcement and Compliance

Any activity performed in any Federally regulated waters of the United States, including jurisdictional wetlands, that is not in full compliance with all the terms and conditions of the PASPGP-3 constitutes unauthorized work and is subject to an enforcement action by the Corps and/or the EPA. Violations of a PADEP authorization including permit conditions, are violations of the PASPGP-3. PASPGP-3 does not delegate Federal Section 10/404 enforcement authority. When

unauthorized work occurs in a Federally regulated wetland or other waters, it is subject to one or more of the following responses by the Corps and/or EPA:

- A.** A Cease and Desist Order and/or an administrative compliance order requiring remedial action. Initiation and assessment of Class I administrative penalty orders pursuant to Section 309(g) of the CWA up to \$11, 000 per violation.
- B.** Initiation and assessment of a Class II administrative penalty for a continuing violation of \$11, 000 per day, up to a maximum of \$137,500.
- C.** Referral of the case to the U.S. Attorney, or Department of Justice with a recommendation for civil or criminal action. If the Corps District determines that an after-the-fact permit application is appropriate, it will be evaluated following the appropriate permit processing procedures.

The PASPGP-3 may not be issued or modified for authorization of after-the-fact work nor does it apply to any existing or proposed activity in Corps jurisdiction associated with an on-going Corps enforcement action, until such time as the action is coordinated between the Corps and PADEP; and the enforcement action is resolved or the Corps determines that the activity may proceed

Part VII – PASPGP-3 Duration, Program Changes, Monitoring, Reissuance, Modifications, Suspension, and Revocation:

A. Duration of Authorization:

The PASPGP-3 is authorized for a period of 5 years. For projects authorized by the PASPGP-3, the project must be completed within 3 years of the date of the project-specific PASPGP-3 authorization letter, or when the PASPGP-3 expires, is suspended, or revoked, whichever date occurs sooner. The 3-year expiration date for construction of the project may be extended, with prior approval by PADEP or the Corps, as appropriate, provided the permittee requests the extension in writing prior to the expiration date of the authorization letter.

If the PASPGP-3 is not modified or reissued within 5 years of its effective date, it automatically expires and becomes null and void on June 30, 2011.

Activities authorized under the PASPGP-3 that have commenced construction or are under contract to commence construction, will remain authorized provided the activity is completed within 12 months of the date of the PASPGP-3's expiration, modification, or revocation; or until the expiration date of the project specific verification, whichever is sooner. If the activity authorized under PASPGP-3 is not under contract to commence and the PASPGP-3 has expired, the authorization may be extended only if the PASPGP-3 is reauthorized, and the project specific authorization complies with all terms and conditions of the reauthorized PASPGP-4. This extension, if applicable, may not exceed 3 years from the date of the original authorization.

B. Changes to State Statutes, Regulations or PADEP Permits:

Proposed changes to all pertinent State programs, regulations or State laws, affecting the implementation of the PASPGP-3, will be reviewed by the Corps of Engineers. In the event that the PADEP regulations are revised in such a manner as to substantively modify the current review mechanisms and/or coordination procedures as defined in this document, including the elimination of the current PADEP equivalent 404(b)(1) review, the PASPGP-3 will be reassessed to determine its legality. A determination will be made through a public interest review, including consultation with appropriate resource agencies, to determine whether or not to continue use of the PASPGP-3 in light of the modified State regulation, State law, or programmatic changes.

C. Changes to the Federal Program:

A Corps Public Notice will be issued to solicit comments before making any substantive changes to the PASPGP-3. A determination will be made through a public interest review, including consultation with appropriate resource agencies, to determine whether or not to continue use of the PASPGP-3 in light of the modified Federal regulation, guidance or programmatic changes.

D. Reporting and Evaluation:

The Baltimore District, in consultation with the PASPGP-3 Interagency Monitoring Committee, shall review operational issues related to successful implementation of the PASPGP-3 and shall coordinate and provide modifications to the operational procedures, and/or the PASPGP-3 as appropriate.

PADEP will provide annual data and statistics to the Corps concerning permits issued through the PASPGP-3. This will include data concerning the number, type, and processing time for permits issued by each PADEP Regional Office and the Delegated County Conservation Districts; the number, type, and scope of permitted wetlands and stream impacts; the number, type, scope, and location of wetlands replacement or other mitigation areas; and pertinent data concerning operation of the Pennsylvania Wetlands Replacement Project (PWRP). These reports will be available to the public.

Prior to the expiration of the PASPGP-3 the Corps, with recommendations from the resource agencies will evaluate the PASPGP-3, including its terms and conditions, and will determine if: (1) the PASPGP-3 has met its intended goal of reducing duplication; (2) authorizations/verifications comply with applicable laws and regulations; and (3) only projects with minimal adverse environmental effects were verified. Based on this review and evaluation, the Corps will further determine whether reissuance, modification, suspension, or revocation of the PASPGP is appropriate. These determinations will be in writing, will include the basis for each determination, and will be available to the public.

E. Modification, Suspension, or Revocation:

The Corps may decide to suspend, modify, or revoke the PASPGP-3 authorization in its entirety or for any specific geographic area, class of activities, or class of waters within the affected District, by notifying PADEP and issuing a public notice notifying the general public. The notice will state the concerns regarding the environment or other relevant factors of the public interest. Before the Corps modifies or revokes such PASPGP-3 authorizations, the Corps will provide, if appropriate, a grandfathering period for those who have commenced work or are under contract to commence work in reliance on the PASPGP-3 authorization. Affected parties will be notified of the modification, suspension, or revocation, including the effective date. The Corps may also suspend, modify, or revoke a project specific activity's authorization under the PASPGP-3 at any time, if necessary.

Substantive changes to the Pennsylvania Chapter 105 program may require immediate suspension and revocation of the PASPGP-3 in accordance with 33 CFR 325.7. or formal modification subject to public review and input.

By Authority of the Secretary of the Army:

Robert J. Davis
Colonel, Corps of Engineers
District Engineer, Baltimore

Robert J. Ruch
Lieutenant Colonel, Corps of Engineers
District Commander, Philadelphia

Stephen L. Hill
Colonel, Corps of Engineers
District Engineer, Pittsburgh

PADEP REGIONAL OFFICE

COUNTY RESPONSIBILITY

PADEP Northwest Regional Office

Permitting & Technical Services Section
230 Chestnut Street
Meadville, PA 16335
814-332-6984

Butler, Clarion, Crawford, Elk, Erie,
Forest, Jefferson, Lawrence, McKean,
Mercer, Venango and Warren

PADEP Southwest Regional Office

Permitting & Technical Services Section
400 Waterfront Drive
Pittsburgh, PA 15222-4745
412-442-4000

Allegheny, Armstrong, Beaver,
Cambria, Fayette, Greene, Indiana,
Somerset, Washington, and
Westmoreland

PADEP Northcentral Regional Office

Permitting & Technical Services Section
208 W. Third Street Suite 101
Williamsport, PA 17701
570-327-3574

Bradford, Cameron, Centre, Clearfield,
Clinton, Columbia, Lycoming, Montour,
Northumberland, Potter, Snyder,
Sullivan, Tioga and Union

PADEP Southcentral Regional Office

Permitting & Technical Services Section
909 Elmerton Avenue
Harrisburg, PA 17110
717-705-4707

Adams, Bedford, Berks, Blair,
Cumberland, Dauphin, Franklin, Fulton,
Huntingdon, Juniata, Lancaster,
Lebanon, Mifflin, Perry, York

PADEP Northeast Regional Office

Permitting & Technical Services Section
2 Public Square
Wilkes-Barre, PA 18711-0790
570-826-2511

Carbon, Lackawanna, Lehigh, Luzerne,
Monroe, Northampton, Pike, Schuylkill,
Susquehanna, Wayne, Wyoming

PADEP Southeast Regional Office

Permitting & Technical Services Section
2 East Main Street
Norristown, PA 19401
484-250-5970

Bucks, Chester, Delaware, Montgomery
and Philadelphia

PADEP Central Office (Dam Permits)

Bureau of Waterways Engineering
Rachel Carson State Office Building
P.O. Box 8554
Harrisburg, PA 17105-8554
717-787-8568

All

U.S. Army Corps of Engineers District Offices

Pittsburgh District

<http://www.lrp.usace.army.mil>

Federal Building
1000 Liberty Avenue
Regulatory Branch
Pittsburgh, PA 15222-4186
412-395-7152

Baltimore District

<http://www.nab.usace.army.mil/Regulatory/>

P.O. Box 1715
Regulatory Branch, PA Section
Baltimore, MD 21203
410-962-4522 or 814-235-0570

Philadelphia District

<http://www.nap.usace.army.mil>

Wanamaker Building
100 Penn Square East
Regulatory Branch
Philadelphia, PA 19107-3390
215-656-6728