

MD-DC Utilities Association 2013 Environmental Conference Cambridge, Maryland

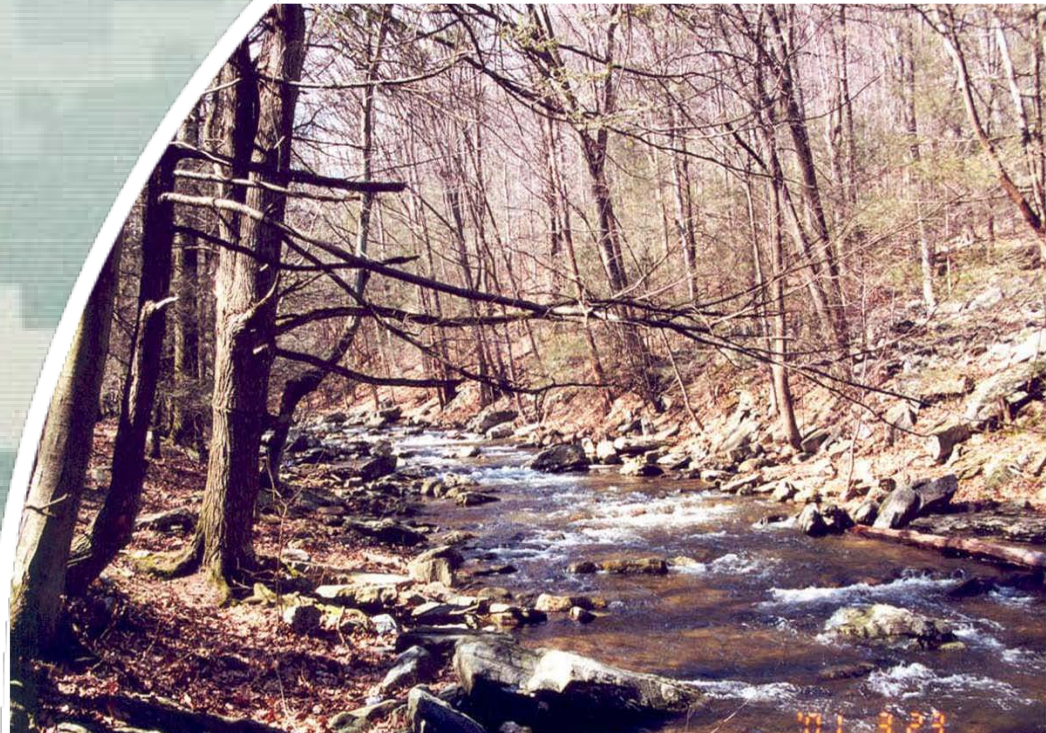
Wetlands and Waterways Permitting Update

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Presentation Overview

- ❑ Regulatory Authorities
- ❑ Types of Department of the Army (DA) permits
- ❑ Coordination & Actions to Streamline Permitting



Baltimore District Regulatory Boundaries



Federal Authorities

- ❑ [Section 404 of the Clean Water Act](#) requires a permit for the discharge of dredged or fill material into Waters of the U.S.

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

- ❑ [Section 10 of the Rivers and Harbors Act](#) requires a permit for work in navigable waters

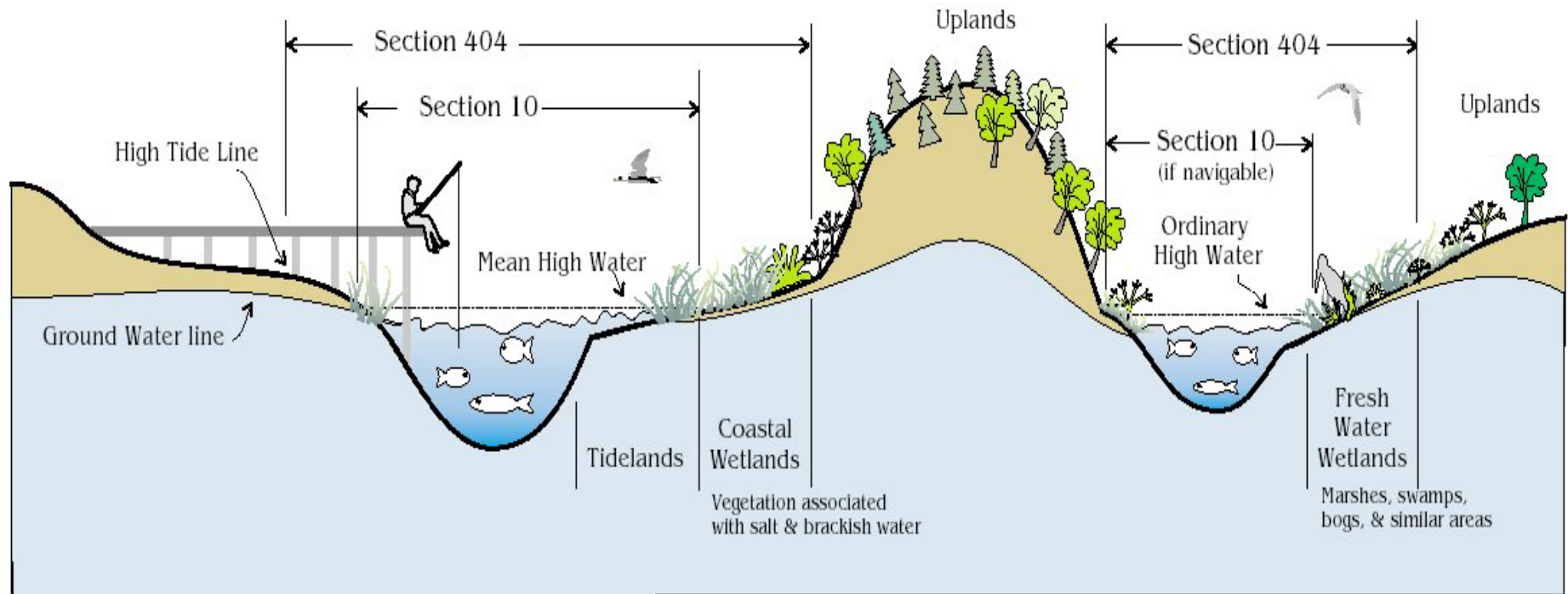
- Dredging
- Structures
- Tunnels, HDD & aerial crossings



CORPS OF ENGINEERS REGULATORY JURISDICTION

Tidal Waters

Fresh Waters



Section 103
Ocean Discharge
of Dredged Material

Typical examples
of regulated activities

Ocean discharges of
dredged material

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

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

Section 10
All Structures and Work
(navigable waters)

Dredging, marinas, piers, wharves,
floats, intake / outtake pipes,
pilings, bulkheads, ramps, fills,
overhead transmission lines, etc.

Regulatory Review

- ❑ *Permit required* from the Corps to discharge dredged or fill material into waters of the US; dredging and structures in, over, or under navigable waters
- ❑ *Alternatives analysis* is the *centerpiece* of the process. We can only authorize the least environmentally damaging practicable alternative (LEDPA).
- ❑ Measures to *avoid/minimize impacts*: alternative alignments, HDD, temporary construction matting, etc.
- ❑ Corps level of involvement in project review is commensurate with the *degree of impact*







Newspaper Headline

“Park pipeline stirs furor”

The Baltimore Sun

September 26, 2013



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Types of DA Permits For Utility Line Activities

- ❑ Department of the Army State Programmatic General Permit
 - Maryland (MDSPGP-4)
 - Pennsylvania (PASPGP-4)
- ❑ Nationwide Permit (NWP) 12
- ❑ Individual Permits



MDSPGP-4

- ❑ Must have *minimal* individual and/or cumulative adverse environmental effects
- ❑ Overall Impact Threshold: one acre of impact, both *permanent and temporary*, to waters of the U.S., including jurisdictional wetlands, and/or 2,000 linear feet of streams, rivers, and other open waters
- ❑ Adverse impacts must be avoided/minimized to the maximum extent practicable *on-site*
- ❑ *MDSPGP-4 expires on September 30, 2016*



MDSPGP-4

❑ Category A

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

❑ Category B

- ❑ Reporting to the Corps
- ❑ MDE forwards permit application to the Corps for review.
- ❑ Corps coordinates project review with Federal/State agencies
- ❑ Corps issues permit decision



MDSPGP-4

Utility Line Activities

☐ Underground and Overhead Utility Line Activities

- Utility Lines
- Foundations for Overhead Utility Line Towers, Poles, and Anchors
- Utility Access Roads



MDSPGP-4

Utility Line Activities

- Utility Lines – Category A
 - ✓ 10,000 sf and/or 200 lf streams/rivers (non-tidal only)
 - ✓ 30 feet maximum LOD in non-tidal waters
 - ✓ stream crossings perpendicular
 - ✓ In wetlands, the top 6 to 12 inches of trench must be backfilled with topsoil from trench (Category A/B)
 - ✓ no tidal impacts
- Utility Lines – Category B
 - ✓ one acre and/or 2,000 lf streams/rivers (tidal & non-tidal)



MDSPGP-4

Utility Line Activities

- Foundations for Overhead Utility Line Towers, Poles, Anchors – **Category A**
 - ✓ 10,000 sf and/or 200 lf streams/rivers (non-tidal only)
 - ✓ no towers, poles, anchors in streams
 - ✓ no tidal impacts
- Foundations for Overhead Utility Line Towers, Poles, Anchors – **Category B**
 - ✓ ½ acre and/or 2,000 lf streams/rivers (tidal & non-tidal)



MDSPGP-4

Utility Line Activities

- Utility Access Roads – Category A
 - ✓ 5,000 sf and/or 200 lf streams/rivers (non-tidal only)
 - ✓ Temporary crossings limited to one year
 - ✓ no tidal impacts
- Utility Access Roads – Category B
 - ✓ ½ acre and/or 2,000 lf streams/rivers (tidal & non-tidal)





8 16'00



NWP 12 – Utility Line Activities

(Washington, DC)

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

☐ *NWPs expire March 18, 2017*



Individual Permit

- ❑ Large, complex projects that exceed limits and terms of general permits
- ❑ Potential for more than minimal impacts
- ❑ Public notice to interested parties, general public, adjacent property owners', & coordination with involved agencies
- ❑ Environmental Assessment
 - Public interest review
 - Section 404(b)(1) Guidelines



Coordination with MDE

□ Joint Federal/State permit process

- Coordinated project reviews
- Office/field meetings
- Public notice
- Joint Evaluation Meetings in Annapolis
- Public hearings
- Consistent permit decisions and conditions



Actions for Efficient Permit Processing

- ❑ **Applicants:** Involve the agencies early in the planning process for your restoration project. Agencies are accessible for *pre-application consultation*
- ❑ **Outreach** – staff participation in interagency and stakeholder meetings and conferences
- ❑ Joint Federal/State permit application *revisions*



Pre-Application Consultation

- ❑ Agencies meet with the applicant *in advance of a permit application*
- ❑ Agencies offer input at the *planning stages* of a project (field/office meeting)
- ❑ Discuss *documentation requirements* and alternatives (e.g., alignments; open trench vs. horizontal directional drilling) that should be evaluated



Pre-Application Consultation

- ❑ Corps/MDE can provide guidance and preliminary feedback regarding the *regulatory feasibility*, and potential suggestions on *alternatives* that could make the project more feasible
- ❑ Expedites the permit process; *cost and time savings* to applicants
- ❑ Before you invest time and resources, contact the Corps/MDE to schedule a pre-app meeting



Pre-Application Consultation

- ❑ Monthly Interagency Joint Evaluation (JE)
Meetings in Annapolis, Maryland – 4th
Wednesday of the month
- ❑ JE Energy Meeting – 3rd Wednesday of month
- ❑ Federal/State agencies participate in JE



Important Issues/Reminders

- (1) Federal and State permits have different expiration dates
- (2) Permit modifications: require Corps and MDE approval
- (3) Excess fill from trenching must not be discharged/spread into wetlands/waters on-site without authorization
- (4) Construction mats are structures/fill and require authorization
- (5) Wetland conversion (e.g, palustrine forested to emergent) generally requires mitigation
- (6) Return the Corps compliance self certification form



Uh oh.....I have an **EMERGENCY**

- Minimum necessary to safeguard life/property against imminent danger
- Notify Corps and MDE prior to performing work.
- To the extent practicable/feasible, submit the following in writing to Corps/MDE: description/reason for work, location/waterway, site plans, stream diversion plans, quantify impacts, photographs, construction start/end dates
- You should not proceed until you have Corps/MDE approval
- Submit a joint Federal/State application to MDE within 3 days of completing the emergency work, unless granted an extension



Goals

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



Additional Information

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

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



