

MARYLAND-DISTRICT OF COLUMBIA UTILITIES ASSOCIATION ENVIRONMENTAL SECTION ANNUAL CONFERENCE

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US Army Corps
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WETLANDS AND WATERWAYS PERMITTING UPDATE

- Overview
- Regulatory Authorities
- Department of the Army (DA) Permits
- Issues/Developments
- Pre-Application Process
- Emergency Work
- Infrastructure Projects
- Summary

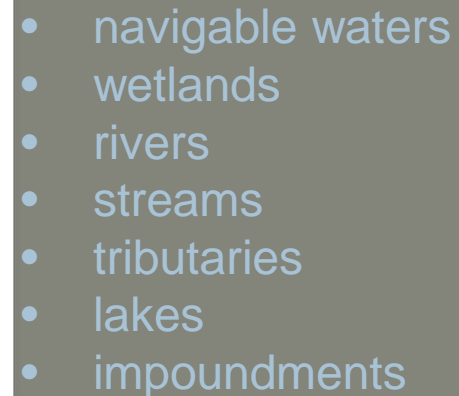


BALTIMORE DISTRICT REGULATORY BOUNDARIES



Maryland
Section
Northern

Maryland
Section
Southern



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

CORPS REGULATORY AUTHORITIES

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

Section 10 of the Rivers and Harbors Act of 1899

Corps authorization required for dredging, any obstruction or alteration, and the construction of any structure in, under, or over any “navigable waters of the U.S.”

Section 404 Clean Water Act

Corps authorization required for discharge of dredged or fill material into all waters of the U.S., including jurisdictional wetlands.

PERMIT TYPES

- Standard Individual Permit
- Letter of Permission
- Nationwide Permit
- Regional General Permit
- State Programmatic General Permit



REGULATORY REVIEW

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

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

Measures to **avoid/minimize impacts**: alternative alignments, horizontal directional drilling, temporary construction matting, etc.

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

PERMIT PROCESSING

Individual Permit

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

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



Letter of Permission

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

- Usually small electric lines or communication cables and associated conduits.



INDIVIDUAL PERMIT

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

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

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

Avoid | Minimize | Compensate

INDIVIDUAL PERMIT

- The Corps' evaluation of a Section 404 permit application is a *two part test*, which involves whether the project complies with EPA's Clean Water Act Section 404(b)(1) Guidelines, and a public interest review
- A permit will not be issued for an *alternative that is not the LEDPA*, nor will a permit be issued for an activity that is determined to be *contrary to the public interest*
- In considering both the LEDPA and the PIR the Corps must consider compliance with other applicable substantive laws such as the ESA and the NHPA as well as consult with other Federal Agencies. The Corps also must follow procedural laws such as NEPA, and other applicable laws described in 33 C.F.R. Section 320.3.

INDIVIDUAL PERMIT

- The decision whether to issue a permit will be based on an evaluation of the **probable impacts, including cumulative impacts**, of the proposed activity and its intended use on the public interest.
- Relative extent of the public and private need for the proposed structure or work.
- Practicability of using **reasonable alternative locations and methods** to accomplish the objective of the proposed work where there are unresolved conflicts as to resource use.
- Extent and permanence of the **beneficial and/or detrimental effects** that the proposed work is likely to have on the public and private uses to which the area is suited.

LETTER OF PERMISSION

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



Avoid obstruction to navigation

PERMIT PROCESSING

Nationwide Permit

Valid in Washington, DC

NWP #12, Utility Line Activities

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



Maryland State Programmatic General Permit-5

Valid in Maryland

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

Activities

- Utility Lines c (1)
- Utility Foundations c (2)
- Utility Access roads c (3)

NATIONWIDE PERMIT

EXPIRES MARCH 18, 2022

- Utility lines: Any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication.
- Utility line substations: construction, maintenance, or expansion of substation facilities associated with a power line or utility line.
- Foundations for overhead utility line towers, poles, and anchors: construction or maintenance of foundations for overhead utility line towers, poles, and anchors i provided the foundations are the minimum size and separate footings for each tower leg.
- Access roads: construction of access roads for the construction and maintenance of utility lines.

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

Must follow all regional and general conditions

STATE PROGRAMMATIC PERMIT EXPIRES SEPTEMBER 30, 2021

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

UTILITY LINE CATEGORIES

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

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

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

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

UTILITY LINE ACTIVITIES

Utility Lines

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

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

Utility Foundations

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

Utility Access Roads

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

ISSUES – PERMIT PROCESS

Complete Plans and Information

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

- Single and complete project
 - All proposed resource impacts
- Staging areas
- Method of work
- Project dimensions
 - Line depth below bottom substrate at points across the waterway
 - Total length and length across waterway (mean high water)
 - Line material – conduits
 - Substrate composition

UTILITY/FIBER OPTIC/BROADBAND LINE CHECKLIST

- ✓ Detailed written description of the project, including dimensions
- ✓ Latitude and longitude at regular intervals along the project
- ✓ Dimensions of impact areas within waters of the U.S., including wetlands, streams, tidal waterways, and others
- ✓ Dimensions of structures and/or fill within waters of the U.S., including wetlands, streams, tidal waterways, and others
- ✓ Controlling depth of proposed cable components below mean low water (MLW) or depth below sea/water/water interface
- ✓ Describe composition of substrate in submerged and terrestrial areas (sand, clay, gravel, rock)
- ✓ Describe the overall project and provide a general location map of the entire project from beginning to end, regardless of Corps District regulatory boundary
- ✓ Typical design and dimensions of the fiber optic cable system, including all structural components and materials submerged, resting on bottom, and terrestrial, identify those sections of cable that are proposed to be submerged, resting on bottom, or terrestrial
- ✓ Wetland properties information
- ✓ Threatened and endangered species information
- ✓ Essential Fish Habitat information
- ✓ Oyster bar information (natural and leased)
- ✓ Land or waterway use of project locations
- ✓ Typical methods of work and impact type and areas due to specific methods, including width and depth of trench, stabilization of the substrate, and disposal of excess excavated material
- ✓ Describe avoidance and minimization of impacts
- ✓ Describe why impacts were not avoided
- ✓ Describe purpose of the project, including public need and benefit
- ✓ Relationship of project location to oyster bars, artificial reefs, submerged historic sites, navigation fairways and Federal channels, waterfowl concentration areas, shellfish harvesting areas, fishing areas, scientific study areas, and other potential areas of concern in tidal waters
- ✓ Describe maintenance, including preservation of structures and protection methods
- ✓ Indicate method of marking cable location
- ✓ Indicate method of locating post installation cable
- ✓ Landing sites:
 - a) structures and situated features
 - b) mean high (MHW) and MLW
 - c) relationship of landing site to shoreline and fixed structures, such as piers, bulkheads, and other aquatic facilities
 - d) relationship of landing site area to submerged aquatic vegetation, mudflats, oyster bars, and

ISSUES – PERMIT PROCESS

Contingency plans must be included in the permit application.

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

Permit decision could include:

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



ISSUES – PERMIT PROCESS

Aquatic Resources

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



Project

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

RECENT DEVELOPMENTS

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



PRE-APPLICATION CONSULTATION

- Agencies meet with the applicant in advance of a permit application
 - Corps/MDE can provide guidance and preliminary feedback regarding the *regulatory feasibility*, and potential suggestions on *alternatives* that could make the project more feasible
- Agencies offer input at the planning stages of a project (field/office meeting)
 - Expedites the permit process; *cost and time savings* to applicants
- Discuss documentation requirements and alternatives (e.g., alignments; open trench vs. horizontal directional drilling) that should be evaluated
 - Before you invest time and resources, contact the Corps/MDE to schedule a pre-app meeting

PRE-APPLICATION CONSULTATION

Monthly Joint Evaluation (JE) Meetings

- Last Wednesday each month
- Federal and State agencies participate

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

EMERGENCY WORK

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

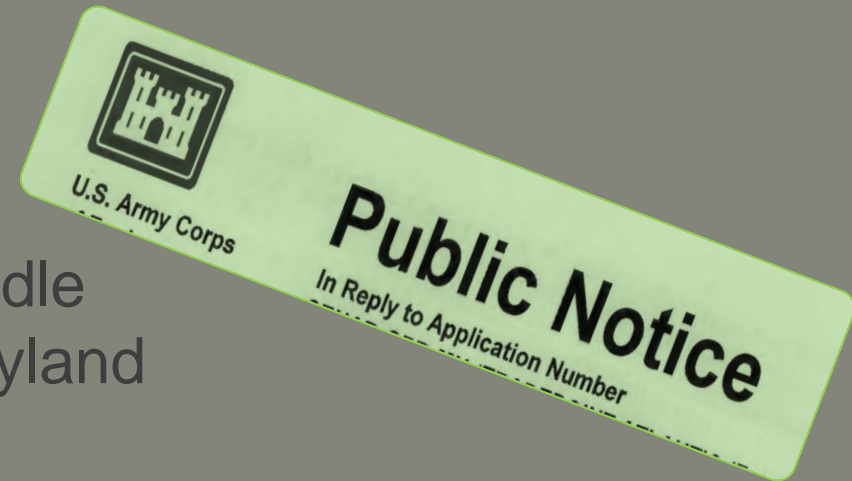
MAINTENANCE UMBRELLA PERMITS

- Baltimore Gas & Electric
- Colonial Pipeline
- Transco



PROJECTS UNDER REVIEW

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



GOALS

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



REMINDERS

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

QUESTIONS



U.S. Army Corps of Engineers Baltimore District

Regulatory Branch Website

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

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