

Review of USACE Permitting Tools for Restoration Projects

William P. Seib

Chief, Regulatory Branch

U.S. Army Corps of Engineers, Baltimore District

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Objectives

- USACE – Regulatory authority
- Application submittal
- Types of Department of the Army (DA) permits



Federal Authorities

1. Section 404 of the Clean Water Act requires a permit for the discharge of dredged or fill material into Waters of the U.S.
 - ephemeral, intermittent, and perennial streams
 - wetlands adjacent to jurisdictional waters

2. Section 10 of the Rivers and Harbors Act requires a permit for work in a navigable water of the U.S.
 - dredging
 - permanent structures



The CWA sets up three independent permitting systems:

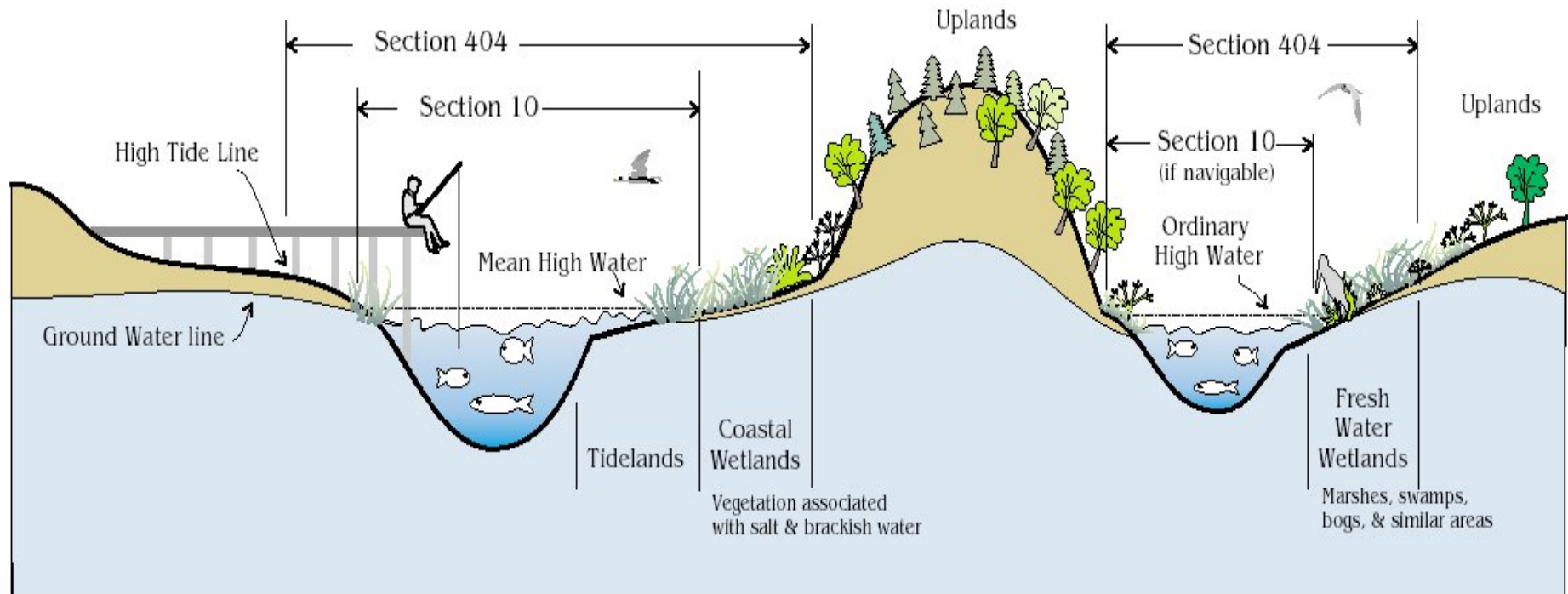
- 1) **§401** – State Water Quality Certification
- 2) **§402** authorizes EPA (or delegated states) to issue NPDES permits to control the discharge of wastewater into navigable waters.
- 3) **§404** authorizes the COE to issue permits for the discharge of dredged or fill material into navigable waters.



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

Stream restoration, TMDL, and Stormwater Management projects in *perennial, intermittent, and ephemeral streams, and jurisdictional wetlands*: DA permit required.

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



Pre-application

Applicant is strongly encouraged to conduct a pre-application meeting.

- identify potential concerns
- help prepare complete application
- monthly JE meeting



Application Submittal

Joint Federal/State permit process in Maryland and Pennsylvania.

- ▶ Coordinated project reviews
- ▶ Office/field meetings
- ▶ Public Notice
- ▶ Monthly Joint Evaluation Meetings
- ▶ Public Hearings (if necessary)
- ▶ Consistent permit decisions and conditions



Types of DA Permits

- Nationwide Permit 27 (NWP)
- Department of the Army Maryland State Programmatic General Permit (MDSPGP-4)
- Individual Permits



NWP 27 - Aquatic Habitat Restoration, Establishment, & Enhancement Activities

- No acreage limit, but the terms limit the types of activities authorized.
- Activities must result in *net increase in aquatic resource functions and services.*
- Functions: *physical, chemical, biological* processes that occur in aquatic ecosystems.



NWP 27 - Aquatic Habitat Restoration, Establishment, & Enhancement Activities

- Does not ***authorize conversion of a stream or wetland to another aquatic habitat type***, stream channelization, or the relocation or conversion of tidal waters, including tidal wetlands to other aquatic uses (e.g., conversion of tidal wetlands into open water impoundments)
- Applicant must demonstrate/document in the permit application and supporting information how the terms and conditions of the NWP are met, including how the project will achieve a net increase in aquatic resources functions and services over the existing conditions.



NWP 27 - Aquatic Habitat Restoration, Establishment, & Enhancement Activities

- Pre-Construction Notification (PCN) required for all NWP 27 activities in the Baltimore District.
- Applicants required to coordinate with appropriate agencies...See Regional Condition 31a.
- Consultation with Native American Tribes.



MDSPGP-4

- 1) Went into effect on October 1, 2011.
- 2) Authorized 34 activities over eight categories.
- 3) Consists of Category A and B activities:
 - Category A is reviewed by MDE
 - Category B is reviewed by the Corps
- 4) Fill activities are limited to 0.5 acres and 2000 lf of stream (Category B);
- 5) Category A threshold is either 5,000 (0.1 acre) or 10,000 square feet of permanent impact and/or 200 lf of stream (activity specific).



MDSPGP-4

- Tidal Marsh Creation/Beach Nourishment Activity
 - ▶ Tidal marsh creation and/or beach nourishment activities, including construction of stone containment structures (e.g., groins and low profile stone sills) and placement of fill for shoreline erosion control.
 - ▶ Limits – ½ acre impacts to tidal waters of the U.S. and no more than 50 feet channelward of MHW.
 - ▶ Must be located in unvegetated shallow water areas (i.e., no impacts to marsh, wetland, SAV).



MDSPGP-4

- Minor Nontidal Fills Activity
 - ▶ Discharges of fill material into nontidal wetlands and nontidal streams.
 - ▶ Limits – ½ acre impacts to nontidal waters of the U.S. and 2,000 linear feet of streams.
 - ▶ Does not authorize stream restoration or mitigation projects.
 - ▶ Does not authorize in-stream berms for stormwater management facilities, permanent dikes, dams, or water diversions.
 - ▶ Does not authorize construction of ponds.



MDSPGP-4

- Nontidal Bank Stabilization Activity
 - ▶ Bank stabilization activities necessary for erosion prevention and protection.
 - ▶ Limits – ½ acre nontidal waters of the U.S. and 2,000 linear feet of stream.



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 & coordination with involved agencies.
- Public interest review.
- Environmental Assessment.
- Section 404(b)(1) Guidelines.



Corps Requirements

- Data demonstrating existing conditions.
- Clear purpose and goals; good plans.
- Alternatives and site justification.
- Direct and indirect impacts.
- Monitoring reports for permit compliance and success.
- Measureable data to document the functional gain.



AQUATIC HABITAT RESTORATION, ESTABLISHMENT, and ENHANCEMENT ACTIVITIES PERMIT PROCESS SUMMARY

| PERMIT TYPE | DESCRIPTION | ACTIVITY | TIMEFRAME METRICS | ADVANTAGE | THRESHOLDS |
|--|--|---|-------------------|---|--|
| Maryland State Programmatic General Permit (MDSPGP-4) | Activities that would cause no more than minimal adverse environmental effects, individually and cumulatively, subject to the permit's specific terms and conditions. | Tidal Marsh Creation Nontidal Bank Stabilization Activities | 60 days | Quick coordination with resource agencies. | Marsh - Limited to 1/2 acre (21,780 square feet) and must not extend more than 50 feet channelward of the mean high water shoreline. Stream - Limited to 1/2 acre (21,780 square feet) and 2,000 linear feet 5-year valid period or less - to expiration of MDSPGP-4 |
| Nationwide Permits | Minor activities that have no more than minimal impacts to the aquatic environment provided those activities result in net increases in aquatic resource functions and services. | NWP 27 - aquatic habitat restoration, establishment, and enhancement activities | 45 days | No size threshold Can be combined with other NWP activities for elements that do not meet NWP 27 | Does not authorize the conversion to another aquatic habitat type; stream channelization; relocation of tidal waters; conversion of tidal waters/wetlands to other aquatic uses; non-native shellfish seeding; and reversion of compensatory mitigation area. 2-year valid period or can be re-verified up to expiration of NWP |
| Individual Permits | Projects with potential for substantial environmental impacts that requires a full public interest review. | | 120 days | Easier to handle permit modifications 5-year valid period | Involves public notices and coordination with involved agencies, interested parties and the general public. |

Permit Type Comparison

| Review Option | Benefits | Challenges |
|--------------------------|--|---|
| NWP 27 | <p>Process is familiar to public; Predictable outcomes; No specific thresholds in project size; Shorter review than IP; Mitigation typically not required;</p> <p>Limited interagency coordination ↔</p> | <p>Showing the functional gain; All applications come to the Corps; Difficult to address indirect impacts; Consistent definitions between agencies; Ensuring no conversion of wetlands;</p> <p>Limited interagency coordination</p> |
| MDSPGP-4 | <p>Category A projects not reviewed by Corps;</p> <p>Shorter review than IP and NWP 27;</p> <p>Limited interagency coordination ↔</p> | <p>Impact threshold is typically 0.5 acres for Category B activity (Corps review);</p> <p>Ensuring project stays within the criteria associated with MDSPGP-4.</p> <p>Limited interagency coordination</p> |
| Individual Permit | <p>Projects can be larger; Allows for public input; Outreach - chance to show benefits; Full interagency coordination ↔</p> | <p>Complete review process; Mitigation component; LEDPA & PIR; Full interagency coordination</p> |
| New RGP | <p>Address specific issues/activities; Incorporate agency input; Identify limitations in existing processes;</p> <p>Establish an increased level of consistency</p> | <p>Benefit is unclear; Legal issues; Educating the public; Not a joint review process; Identifying between agencies what is considered minimal impact</p> |

Questions ?????



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