



AUGUST 2011

## Reissuance of the Army Corps of Engineers' Programmatic General Permit for Connecticut

The United States Army Corps of Engineers (Corps) recently announced the reissuance of its Programmatic General Permit for Connecticut (2011 PGP), which became effective on July 15, 2011. Applicants will confront new procedural and substantive requirements in the 2011 PGP, as compared to the previous issuance, which expired on May 31, 2011 (Previous PGP), regarding activities authorized within inland waters and wetlands and within tidal, coastal, and navigable waters. The requirements apply for both Category 1 activities, which do not require an application or notification to be submitted to the Corps by the applicant, and Category 2 activities, which require review and written authorization by the Corps. Highlights of those new requirements are listed below.

### GENERAL CONDITIONS APPLICABLE TO ALL ACTIVITIES

There are new vernal pool requirements under federal delineation conditions for all Category 1 and Category 2 activities. Specifically, General Condition 26, entitled *Protection of Vernal Pools*, now provides that "[w]etland boundaries for vernal pools and isolated wetlands on the subject parcel(s) must be delineated in accordance with federal criteria defined at 33 CFR 328-329." Those federal delineation conditions establish the Corps' jurisdiction and define the term "navigable waters of the United States" as used to prescribe the Corps' authority. The 2011 PGP also requires that impacts to uplands within 750 feet from a vernal pool be minimized.

### ACTIVITIES OCCURRING WITHIN INLAND WATERS AND WETLANDS

For all Category 1 activities eligible for authorization, applicants are required to submit a self-certification form, found in Appendix 1A, prior to the commencement of work. Those forms are used by the Corps and the Connecticut Department of Energy and Environmental Protection (DEEP) to determine potential cumulative impacts from activities. Additionally, the Corps recommends that applicants apply for and receive a Flood Management Certification (issued pursuant to Conn. Gen. Stat. Section 25-68d) prior to submitting an application for work proposed within a FEMA floodway/floodplain for projects receiving state funding.

Section 1A has been added for activities occurring within inland waters and wetlands located within the boundaries of the Mashantucket Pequot Tribal Nation. In addition to describing eligibility criteria for activities, that section also notes the tribal review process.

Another important change is that temporary construction mats for right-of-way crossing activities are now allowed under the New Fill and/or Fill Associated with Excavation and Bank Stabilization sections under Category 2. Notably absent is any regulation concerning the impact of temporary construction mats on inland waters and wetlands.

Finally, the *Miscellaneous Projects within Waters of the U.S.* section of the Previous PGP that authorized activities under Category 2, provided they were "[l]ess than one acre of Inland Waters, Waterway and/or Wetland Fill, and Secondary Impacts that are not defined under any of the previous categories," has been omitted under the 2011 PGP. Such a general authorization for Category 2 activities is not found in the 2011 PGP.

### **ACTIVITIES OCCURRING WITHIN TIDAL, COASTAL, AND NAVIGABLE WATERS**

Aquaculture projects and fisheries are now permitted under Category 1. To be eligible under Category 1, such projects must present no hazard to navigation. Also, shellfish dredging, including mechanical or hydraulic, is prohibited under Category 1 in Special Aquatic Sites (SAS), which includes Submerged Aquatic Vegetation (SAV) sites. The 2011 PGP further provides that the use of any rearing, grow-out depuration devices or other structures not authorized under Category 1 may be authorized under Category 2. Both Category 1 and 2 aquaculture activities must comply with 14 special conditions set forth in Appendix 3 of the 2011 PGP.

SAV surveys may be required for activities involving aquaculture, moorings, and pile-supported structures and floats. Also, the Moorings section has added the new condition that moorings not be located in a SAS or shellfish beds under Category 1. In addition, Category 2 mooring activities have been expanded to include all moorings that do not meet Category 1 provided they do not interfere with navigation and do not adversely impact a SAS.

Finally, all dredging/excavation and associated disposal in the Byram River requires applicants to coordinate with the New York Department of State (NY DOS) for Coastal Zone Management Act consistency. All dredging project proponents with disposal at any of the Long Island Sound disposal sites are required to submit a Federal Consistency Assessment Form, along with an alternative analysis, to the Corps when they are requesting a sampling plan. The Corps coordinates with the NY DOS for state Coastal Zone Management Act concurrence.

### **PREVIOUSLY AUTHORIZED PROJECTS**

It is important to note that activities commencing (i.e., are under construction or are under contract to commence) prior to the expiration date of the Previous PGP, in reliance upon the terms and conditions of the category under which they were authorized, are to remain authorized as long as the activities are completed by May 31, 2012, or in accordance with specific expiration requirements contained in the individual Corps PGP authorization letter for Category 2 projects.

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## CONTACT US

These items are only the highlights of the act. If you have any questions or wish to discuss Army Corps permitting issues further, please contact one of the following attorneys:

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