



DEPARTMENT OF THE ARMY
NORFOLK DISTRICT, CORPS OF ENGINEERS
FORT NORFOLK, 803 FRONT STREET
NORFOLK, VIRGINIA 23510-1096

REPLY TO
ATTENTION OF:

February 9, 2004

Regulatory Branch

See Distribution List:

Thank you again for attending and participating in our December 17, 2003 State Program General Permit (SPGP) stakeholders' meeting.

Attached are the comments you made at the meeting along with our responses. Where the issue relates to DEQ and Corps consistency, both agencies have provided a response.

The publication of an amended SPGP annual report has been delayed. When the amended report is published, it will be posted on our web site and the public will be provided 30 days to submit any comments.

We will fully consider all of your comments and those received from the public and our staff as we develop proposed changes to the SPGP. These proposed changes will be advertised by public notice and posted on our web to provide you, government agencies, and the public with an opportunity to comment after the close of the comments on our amended annual report.

If you have any comments, you may call Bruce Williams of my staff at 757.441.7418 or email him at bruce.f.williams@usace.army.mil.

Sincerely,

J. Robert Hume, III
Chief, Regulatory Branch

Enclosure

Distribution List:

Beth Jeronimus, Hampton Roads Planning District Commission
John Lowenthal, Landmark Design Group
Dave Ramsey and Mike Kelly, Williamsburg Environmental Group
Matt Bley, Chris Dodson & Nathan Kuhn, Timmons Group
Jim Cahoon, Bay Environmental

Mike Rolband, Wetlands Studies and Solutions
Kim Marbain, Fish and Wildlife Service
David Mergen, City of Chesapeake
Ann Jennings, Chesapeake Bay Foundation
Ellen Gilinsky & Brenda Winn, Virginia Department of Environmental Quality

Comments Received at the SPGP Stakeholders' Meeting on December 17, 2003

Corps/SPGP Issues

1. Fill in the gaps in the annual report to include DEQ data for the various categories, amend the geographic cumulative impact chart to include HUC Codes and localities, separate compensatory mitigation by the purchase mitigation bank credit from compensatory mitigation by restoration and creation, and include data on projects with impacts to less than 300 linear feet of stream bed for both development and linear transportation projects.

Corps' Response: These data and tables will be added to the report. The amended report will be posted on our web site at www.nao.usace.army.mil and you will be notified when that occurs.

2. Why do there appear to be less SPGPs issued than there were NWP 39s and 14s from previous years?

Corps' Response: To the best of our knowledge, in most cases, a development project is authorized under one SPGP authorization as opposed to multiple NWP verifications. We also have continued to use other non-suspended NWPs. We also saw a large number of NWP 39 PCNs submitted just prior to the implementation of the SPGP. We expect the SPGP permit applications to increase in 2004.

3. Utility lines- should they be considered as "separate permits" if they are only meant to serve the proposed development?

Corps' Response: If the utility line's sole purpose is to serve a development, then it should be included in the permit application for the development since it serves no other use beyond the development. However, if the utility line is to serve multiple developments, then it can be submitted under a separate application.

DEQ Response: The utility line impact can be considered under the development GP (WP4) or transportation GP (WP3) if it is an attendant feature to the development project.

4. Are Corps project managers able to devote more time to enforcement and compliance due to the decrease in workload related to the SPGP?

Corps' Response: To date, we have not been able to devote substantially more time to enforcement and compliance as we are still working out coordination procedures with DEQ. Furthermore, the elimination of ASP-18 has entailed the processing and issuance of additional individual permits. This has contributed to the backlog of permit applications. However, we are implementing/pursuing several measures (e.g., use of pre-printed delineation confirmation forms and more provisional permits). This will hopefully increase the effectiveness of the SPGP and allow us to devote more time on enforcement and compliance.

5. Is the reduced number of permits being issued due to the backlog in workload?

Corps' Response: See response to Comment 2 above.

6. No deadline for issuance of an authorization is included in the SPGP. This presents problems as it is taking a minimum of 30 days longer than under the NWP.

Corps' Response: This will be addressed in proposed revisions to the SPGP. In addition, we will propose a specific definition for what constitutes a complete application under the SPGP. Note that DEQ has certain requirements for a complete application under their general permit regulations.

7. Additional information requests from the Corps on NWPs need to be made within 30 days of receipt of the PCN per the regulations.

Corps' Response: In accordance with 33 CFR 330B Nationwide Permits General Condition 13, the Corps must determine if a PCN is complete within 30 days of receipt and request the additional information necessary to make the PCN complete only once. However, it should be understood that the response provided may prompt us to ask questions, but those questions should pertain to the additional information requested.

8. Long processing times for JD confirmations is delaying the "complete application" process. All consultants present (John Lowenthal from Landmark Design Group, Dave Ramsey and Mike Kelley from Williamsburg Environmental Group, Matt Bley, Chris Dodson, and Nathan Kuhn from Timmons Group, and Mike Rolband from Wetland Studies and Solutions) would like the Corps to use the "tear-off" JD confirmation form letters. They also recommended institution of a deadline for issuance of a delineation confirmation letter and questioned whether it was necessary for Corps project managers to visit all sites.

Corps' Response: While we do visit most sites, we don't visit all of them. Corps project managers have received specific instructions as to the use of the preprinted delineation confirmation forms. At the time of the site visit, the project proponent/consultant will be provided the pre-printed form along with the results of the historic properties and the endangered species database checks. The Corps project manager will also provide any appropriate avoidance and minimization recommendations. In short, the form will be used in

all cases except when there are disagreements between the Corps project manager and the consultant over such issues as jurisdiction, adjacency, and the wetland/upland boundary.

9. There was concern expressed over delays in project assignment.

Corps' Response: Over the last year, we have taken specific steps to improve the timeliness of project assignments. One, all applications/correspondence sent to VMRC is routed directly by VMRC to our field offices and not through Norfolk. Second, most of our multi-person field offices have specific locality assignments so there is not need for project-by-project assignment. Third, in the District Office, we have territories and most Section Chiefs meet weekly with their staffs to assign projects.

10. Stream mitigation is lacking and is heavily weighted on preservation when it is required.

Corps' Response: We believe the recently published draft stream attributes crediting methodology will enhance consistency and predictability of stream mitigation requirements. As indicated at the stakeholders' meeting, we encourage the consultant community to provide us with comments.

11. What does the Corps want to see for stream mitigation as ratios are inconsistent from project to project and the Corps and DEQ need to agree on the same mitigation proposal. Will the new stream assessment methodology be used on projects already submitted?

Corps Response: Per our joint public notice releasing the draft methodology, the public will be requested to use the stream methodology for projects submitted after January 15, 2004. However, this will be combined with field knowledge and best professional judgement to determine actual mitigation requirements during the testing phase of the methodology. The Corps and DEQ will continue to work closely together on this issue.

12. What happens during the first 3 months of use of the stream assessment methodology? Will there be a mechanism to deal with grievances in the assessment results?

Corps' Response: See our response to comment 11 above. We are seeking input on the utility, predictability, and reasonableness of the methodology. As always, if you do not concur with the results, inform the Corps or DEQ project manager and provide your supporting rationale and we will review it and determine if the mitigation requirement warrants adjusting.

13. When will the stream in lieu fee trust fund be approved?

Corps' Response: The revised agreement was signed on January 5, 2004, and the fund can now be used as appropriate.

14. Would like to see the ½ acre impact limit in the SPGP raised to 1 acre and the 1 acre limit raised to 2 acres and eliminate Corps review on all projects to eliminate duplication of effort.

Corps' Response: These comments will be fully considered as we develop proposed revisions to the SPGP. Both the Corps and DEQ are committed to trying to eliminate unnecessary duplication within the constraints of our regulations.

15. The Corps and DEQ need to be consistent on the interpretation of "single and complete" project on linear transportation projects.

Corps' Response: Based on the discussion at the meeting, we believe we are. If when you don't believe we are in a specific case, you can request the Corps and DEQ to resolve their differences.

16. Not all information related to historic properties is provided by the Corps project managers at the time of the preapp site visit. Also, sometimes Corps project managers are not reviewing all the information submitted by the applicant. Consultants are not consistently receiving the submittal information (endangered species and historic properties information and avoidance and minimization advice) with the delineation confirmation letter.

Corps' Response: See our response to Comment 8.

17. VMRC is not forwarding all applications.

Corps' Response: In the September 2003 revision to the SPGP, we provided the option for the public to send the JPA directly to the Corps and DEQ. We strongly recommend that you do this.

18. Need to improve general consistency between all offices.

Corps' Response: This is a very general comment and is hard to address. We coordinate guidance with our staff before it is finalized and we have regular Branch meetings to address outstanding issues. DEQ has a permit manual outlining procedures for staff to follow and also has regular meetings to address issues. If you have specific issues where you believe there are inconsistencies, let us know and we will address them.

19. Were there SPGP "kickouts"? If so, how many and what happened to them?

Corps' Response: There was one and an individual permit was recently issued.

20. Look for opportunities to reduce duplication of effort before considering raising the impact limits in the SPGP.

Corps' Response: This is a very general comment, but we are looking at options as both agencies are involved in all projects to some degree. Specific suggestions would be welcome. Also see Comment 14 above.

21. Need consistency on preservation ratios for wetland and upland buffers.

Corps' Response: Both the Corps and DEQ look at various factors when considering ratios for preservation of wetland and upland buffers, relating to the nature of the buffer and the degree of water quality protection and habitat provided. We believe we are consistent within the general parameters, but each case is different. We will address this issue and provide joint guidance.

22. Need to standardize the quantification of impacts in dry stormwater management ponds.

Corps' Response: This issue was discussed in one of our joint DEQ/Corps staff meetings. Joint agency guidance is being drafted and will be distributed when it is finalized.

23. Need to standardize the quantification of indirect or secondary impacts

a. to waters of the U.S. on individual lots outside the limits of clearing:

Corps' Response: Our present guidance indicates that all wetlands on lots that are less than 15,000 square feet with sewer are considered to be impacted. All wetlands on lots that are less than 30,000 square feet without sewer are considered to be impacted. DEQ has used the Corps' guidance on this issue. Subdivision guidance is currently being reviewed by the Corps and DEQ for possible revision.

b. to waters of the U.S. downstream of stormwater outfalls:

Corps' Response: We do not consider impacts downstream of stormwater ponds provided the work complies with NWP General Condition 21: Management of Water Flows. DEQ believes that these potential impacts should be considered more in the design of outfalls in terms of frequency and duration of releases and their effects on the stream.

c. to waters of the U.S. on interiors of lots (e.g., open space).

Corps' Response: We sought further clarification from the consultant who posed this question. The amended question is- Does the Corps consider wetlands within the boundaries of common property secondarily impacted by the filling of wetlands on adjacent lots? The Corps' and DEQ position is that if the wetlands within the boundaries of the common property are deed restricted and the fill on the lots will not affect the hydrology of those wetlands, then those wetlands within the common property are not secondarily impacted. However, if it turns out that there is an alteration

of hydrology or excessive sedimentation released to the common area wetlands, there would be secondary impacts.

d. when waters of the U.S. are created a leaky dam.

Corps' Response: If the proposed repair satisfies the conditions of NWP 3 (i.e, within 2 years of the discrete event), then they can proceed without notification. If it's been longer, then it doesn't meet the NWP and we have to look at the situation.

24. Are stormwater management ponds excavated from upland regulated?

Corps' Response: No. See attached letter.

25. How does the Corps handle a change of agent?

Corps' Response: No notification is needed. Permits are not issued to agents. DEQ asks as a courtesy that they be notified when the agent changes so that correspondence is sent correctly. Of course, a change in the permit holder does require official notification and transfer of the permit.