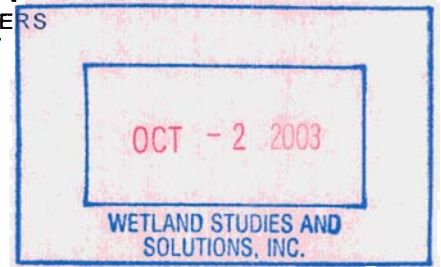




DEPARTMENT OF THE ARMY
NORFOLK DISTRICT, CORPS OF ENGINEERS
FORT NORFOLK, 803 FRONT STREET
NORFOLK, VIRGINIA 23510-1096

REPLY TO
ATTENTION OF:



Regulatory Branch

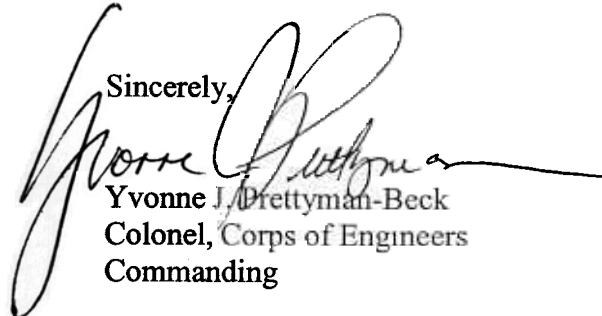
See Distribution

This is letter in regard to your comments submitted in response to our public notice proposing certain changes to our State Program General Permit (SPGP-01).

I have fully considered your comments and my response to each is outlined in the enclosed decision document. The first annual review of the SPGP will be in the November-December 2003 time frame. You, the public, and interested agencies or organizations will be provided the opportunity to submit additional comments and meet with my staff to discuss how the SPGP is working and any changes you recommend.

If you have any questions, you may call Bruce Williams of my staff at 757.441.7418.

Sincerely,



Yvonne J. Prettyman-Beck
Colonel, Corps of Engineers
Commanding

Enclosure

Distribution List

Lee Mallonee, Richmond
Michael S. Rolband, Chantilly
Alex Adams, Richmond
Richard C. Woody, II, Richmond
Richard K. Thomas, Richmond

**Amendment to the Statement of Findings for the Norfolk District's
State Program General Permit (SPGP-01)**

On 30 May 2003, the Norfolk District issued a public notice advertising the following proposed changes to our State Program General Permit (SPGP-1):

1. provide a more streamline review for small impact projects (loss of less than 1/10 acre of nontidal wetlands or less than 300 linear feet of stream bed) by eliminating the requirement for a Corps confirmed delineation;
2. enhance our ability to assess individual and cumulative impacts through the amending the pertinent verbiage;
3. address changes in notification requirements for projects affecting federally listed threatened and endangered species and designated critical habitat in Southwest Virginia; and
4. amend the process so that submission of permit applications under the SPGP are made directly to Virginia Department of Environmental Quality, the Corps, and the Virginia Marine Resources Commission.

In response to the public notice, I received five comments from the public. These are outlined below followed by my position on each:

Comment: The requirement for a distinction between the acreage of wetlands and the linear footage and square footage of waters.

Corps' Response: This comment relates to making a distinction on the delineation map at the preapplication stage between waters and wetlands. The commenter contends that the acreage, linear feet, and square feet of these resources can only be made with a survey. This is a valid point and the SPGP will be amended to only require a distinction between the waters and wetlands on the delineation map. When an application is submitted, the proponent will need to distinguish between the acreage of wetlands and the linear feet and square footage of waters.

Comment: On Residential, Commercial, and Institutional Development Category C projects, what is considered to be a "complete application" and how long does the Corps have to make this determination? How many times can the Corps request additional information? The one opportunity to request additional information provided for in the nationwide permits is better. Multiple requests for additional information is not an expeditious way to review/issue permits for minimal impacts. I have had as many as four additional information requests. I sometimes think it is a convenient vehicle for not dealing with a project for another 45 days.

Another commenter indicated there is no required response time for the Corps on permit applications until after an application is deemed complete. This allows substantial amounts of

time to pass before any action is taken and often a DEQ permit is received long before the Corps authorization. Therefore, can a timeline for completeness review be instituted by the Corps?

Corps' Response: As presently written, the SPGP does not contain a date by which the application must be deemed complete or define what makes an application complete. This will be addressed in the first annual review of the SPGP in the fall of 2003. In the meantime, it will be emphasized to the staff that this review should be prompt and any additional information needed to review the application be requested once.

Comment: Please clarify the status of the Virginia Wetlands Restoration Trust Fund regarding accepting in lieu fees for stream impacts. It is my understanding that there is only one bank in the Richmond area with stream credits available.

Corps' Response: At this time, we cannot accept contributions into the Trust Fund for stream impacts. This hopefully will be resolved shortly. There is only one mitigation bank located in the Richmond area with stream credits and it is the Virginia Habitat II Mitigation Bank.

Comment: Does the Corps have a time limit on reviewing and commenting on mitigation proposals? Currently, Corps review is considered the "black hole" that no project wants to enter.

Corps' Response: No specific time frame is specified, but that also will be discussed at our first annual review of the SPGP. In the meantime, it will be emphasized to the staff that these requests should receive prompt attention.

Comment: The SPGP is an attempt to allow DEQ to issue permits on projects of minimal impact. The regulations should be set up so that the Corps input/involvement is one set of comments and be time limited so that we are dealing with one lead agency, DEQ on these permits.

Corps' Response: For Residential, Commercial and Institutional Development projects causing the loss of less than ½ acre of nontidal wetlands or less than 300 linear feet of stream, DEQ is responsible for making the permit decision including all permit conditions. The Corps' only involvement is to review of the permit application is to insure the aforementioned impact limits are not exceeded and that the project will not affect a federally listed or proposed threatened or endangered species or an historic property listed or eligible for the National Register of Historic Places. The Corps makes the determination of whether or not a project satisfies the requirements of the SPGP. If this is the case, the Corps project manager simply sends an email to the DEQ project manager indicating such and the Corps closes the file. When DEQ issues their permit, they include a statement that the work satisfies the conditions of the SPGP.

Comment: I would like to express concern for the method in which with minimal impacts (less than 0.10 acre) are to be handled administratively or without a confirmed delineation. The Chesapeake Bay Local Assistance Department has worked hard on educating localities and ensuring local ordinances require wetland delineations and any necessary permits prior to authorizing clearing or grading. Therefore, I agree that projects that are submitted for review

and show less than 0.10 acre of impacts should not need further regulatory actions on permits, however these parameters must be quantified using a Corps approved delineation. Additionally, an evaluation program will need to be in place observing these projects periodically to insure the impacts are indeed minimal as constructed.

Corps' Response: Corps Nationwide Permit 39 (which the SPGP replaced) does not require a confirmed delineation for project impacts less than 1/10 nontidal acre of waters or wetlands. However, it does require submission of a Preconstruction Notification for any proposed loss of waters. The current SPGP requires a Corps confirmed wetland and waters delineation for all proposed residential, commercial, and institutional developments. From our experience thus far, this has become an unnecessary burden to our staff and the regulated public. While these projects have minimal impacts to the aquatic environment, such projects require submission of Joint Permit Application and are reviewed by the DEQ. I believe this review is adequate and therefore I am eliminating the requirement for a confirmed Corps delineation prior to the submission of the application for projects proposing the loss of less than 1/10 of an acre of nontidal wetlands or less than 300 linear feet of stream bed. In addition, DEQ is responsible for conducting the compliance reviews on these projects. Their compliance efforts will be part of the SPGP annual review.

Comment: The distribution process is inefficient. There have been many instances where the original signature copies have not been delivered to DEQ though labeled appropriately. There have been other instances where DEQ and the Corps have not received the appropriate number of copies. The commenter suggested that one copy be sent to DEQ and the other copies be sent directly to DEQ and the Corps.

Corps' Response: I agree and the SPGP has been changed so that the applicant submits one copy of the permit application to VMRC and distributes the necessary copies directly to DEQ and the Corps.

Comment: Please clarify the threshold limits for stream impacts. Are stream impacts allowed up to 2,000 linear feet in the SPGP regulations or 1,500 linear feet in the DEQ general permits?

Corps' Response: DEQ's general permits authorize losses up to 1,500 linear of intermittent streams and 500 linear feet of perennial streams while the Corps' SPGP authorizes losses of up to 2,000 linear feet of stream bed (which includes both intermittent and perennial stream bed). Therefore, DEQ may issue an individual permit for a project covered by the Corps' SPGP.

Comment: There are significant problems associated with phased Activity 1 projects with respect to authorization. It is difficult to plan and account for future phases and impacts. While the Corps tracks the impacts cumulatively, there appears to be difficulty with DEQ on how to address future phases and authorization.

Corps' Response: I believe the proposed changes to the SPGP included revisions to the cumulative impacts verbiage that will provide better guidance to the public and the DEQ and Corps staffs on how to consider cumulative impacts and phased developments.

Comment: Please clarify how the 1/10 acre per crossing actually applies to roads. There has been some confusion as to what constitutes a single and complete project for the purposes of this rule.

Corps' Response: Under the residential, commercial, and institutional development activity, if the only proposed impacts to waters and wetlands involved road crossings, each crossing is considered to be a single and complete project. However, if the project includes road crossings and nonlinear features with impacts to waters and wetlands (lot fills, stormwater management facilities, etc.) then the impacts will be considered cumulatively for the entire project. Under the linear transportation activity, each road crossing is considered to be a single and complete project.

Comment: The mitigation language as taken from the DEQ general permit language is very unclear as it applies to SPGP projects. There has been much discussion regarding on-site versus off-site, preservation, buffers, etc. that seems to change depending upon which DEQ official is involved and what region the project is in. There needs to be more consistency on this matter and one way to achieve this would be to revise the language directly.

Corps' Response: I cannot address the DEQ mitigation requirements. However, the Corps will likely require mitigation for all impacts to waters and wetlands for residential, commercial, and institutional developments with losses of more than ½ acre of nontidal wetland and 300 linear feet of stream bed. (The mitigation ratios for each aquatic resource are specified in the SPGP.) With respect to linear transportation projects, the DEQ will determine the wetland mitigation requirements. If a project causes the loss of more than 300 linear feet of stream bed, the applicant must submit a mitigation plan to and obtain approval from the Corps.

Comment: With respect to Activity 2, Category A (linear transportation projects), change the verbiage to read "For permanent unavoidable losses to less than or **equal to 1/10 acre...**". These changes will make the SPGP consistent with DEQ's general permits.

Corps' Response: I agree and the change has been made.

Comment: Revise the same section, paragraph b to state "comply with all of the DEQ..."

Corps' Response: I agree and the change has been made.

Comment: With respect to Activity 2, Category B (linear transportation projects), revise the second sentence of the first paragraph to state "... water conveyances) of **greater than 1/10 but no more than 1/3...**". In first sentence of the first paragraph, revise the sentence to state "... losses to **greater than 1/10 but no more than 1/3...**". These changes will make the SPGP consistent with DEQ's general permits.

Corps' Response: I agree and the change has been made.

Comment: Under Activity 2, change the third sentence of Special Condition 2, delete the word "work" after "work cannot begin".

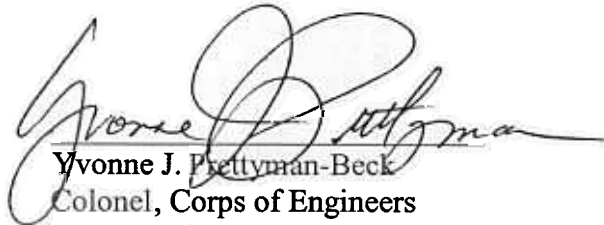
Corps' Response: I agree and the change has been made.

Comment: Under Activity 2, Special Condition 2, North Fork Holston River, please clarify that the stretch of Big Moccasin Creek runs **“from its confluence with the North Fork Holston River upstream to the confluence with Little Moccasin Creek.**

Corps' Response: I concur and the change has been made.

In this evaluation, I have found no unresolved conflicts concerning alternative uses of aquatic resources. In addition, I have determined that the proposed minor administrative changes will not be contrary to the public interest and will comply with the Environmental Protection Agency's 404(b)(1) guidelines. Therefore, my decision is to issue the changes to the State Program General Permit (SPGP-01).

25 Sep 03
Date


Yvonne J. Prettyman-Beck
Colonel, Corps of Engineers
Commanding