



Nancy Kopp, Treasurer
Martin O'Malley, Governor
Peter Franchot, Comptroller



MARYLAND

Board of Public Works



Martin O'Malley
Governor
Nancy K. Kopp
Treasurer
Peter Franchot
Comptroller

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Sheila McDonald
Executive Secretary
Mary Jo Childs
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Gregory Bedward
General Counsel
Doldon Moore
Wetlands Administrator

To: The Honorable Martin O'Malley
The Honorable Nancy Kopp
The Honorable Peter Franchot
From: Doldon Moore
Date: November 5, 2012
Re: Emergency Tidal Wetlands Licenses for Riparian Structures Damaged by Hurricane Sandy

Today in my capacity as the Board of Public Works Wetlands Administrator and working with the Maryland Department of the Environment, I issued an Emergency Tidal Wetlands License in response to Hurricane Sandy's destructive impacts. This action gives immediate permission to all Maryland riparian property owners to repair or replace structures damaged by Sandy. Specifically, any riparian owner will be able to restore a damaged structure to its previously undamaged condition (*i.e.*, the work may not alter the size or configuration of the previously undamaged structure) without the need to obtain individual permission as would otherwise be the case. The property owner is required only to submit a registration form to MDE for recordkeeping within 30 days of beginning work.

This course of action is identical to that which we followed in the wake of Tropical Storm Isabel which lashed the State on September 18, 2003. At a future Board of Public Works meeting, I will submit this emergency action for ratification.

This emergency license and related MDE actions complement the action of the U.S. Army Corps of Engineers which issued a public notice on October 31 authorizing emergency repairs, rehabilitation, or replacement of previously-authorized serviceable structures and fills.

If a riparian owner's project would exceed the emergency license limitation that authorizes restoration to pre-Sandy, we will work with the owner to issue an expedited individual Tidal Wetlands License under COMAR 23.02.04.05C.

To inform the public, we have (or soon will have):

- Emailed the enclosed packet to all registered marine contractors and consultants.
- Mailed the packet to county/municipal offices in 16 tidewater counties and Baltimore City.
- Placed the packet information on the Board of Public Works and on MDE's web pages.
- Issued a press release.
- Published notice in the Washington Post.
- Published notice in the bimonthly MDE/U.S. Army Corps of Engineers Joint Public Notice.

cc: The Honorable Sheila McDonald
The Honorable Robert Summers
Greg Bedward



Maryland Board
of Public Works

EMERGENCY TIDAL WETLANDS LICENSE



MDE

Maryland Department
of the Environment

REPAIR OR IN-KIND REPLACEMENT OF STRUCTURES DAMAGED BY HURRICANE SANDY

The State of Maryland, through this Emergency Tidal Wetlands License, hereby authorizes the repair and in-kind replacement of structures in State Tidal Wetlands damaged by Hurricane Sandy between October 28 and October 30, 2012 in accordance with the provisions outlined below.

Authority: Title 16 of the Environment Article, Annotated Code of Maryland; Code of Maryland Regulations (COMAR) 23.02.04; and COMAR 26.24

Application Fee: None

Expiration: This emergency license expires November 1, 2013.

Authorized Activities: Repair and in-kind replacement of:

- Piers, docks, and wharfs;
- Bulkheads, revetments, and marsh establishment projects;
- Jetties, groins, and breakwaters;
- Boat ramps; and
- Storm drain outfalls

Emergency License Conditions:

1. As of October 27, 2012, the structure to be repaired or replaced in-kind was: (a) functional, which means that the structure was performing at least 85 percent of the action that it was originally designed to perform; and (b) authorized by a State tidal wetlands license, or was not authorized because it was originally constructed prior to July 1, 1970.
2. The repair or in-kind replacement activities restore the damaged structure to its previously undamaged condition, and do not alter or exceed the size, dimensions, or configuration of the previously undamaged structure, as it existed on October 27, 2012.
3. The property owner must register the repair and in-kind replacement work by submitting the attached form along with photographs of the damaged structure, to the Maryland Department of the Environment, Tidal Wetlands Division, 1800 Washington Boulevard, Baltimore, MD 21230 within 30 days of commencing the project.
4. The property owner must obtain any necessary federal or local authorizations before commencing work. The U.S. Army Corps of Engineers has issued the attached public notice authorizing the repair and replacement of structures damaged by Hurricane Sandy.
5. Prior to commencing reconstruction activities, the property owner must notify the Water Management Administration's Compliance Program at 1-800-633-6101 or 410-537-3510.
6. Prior to commencing reconstruction activities, the property owner must notify the local Critical Area Program. A list of jurisdiction offices is available from the following website: http://www.dnr.state.md.us/criticalarea/planning_zoning_contacts.asp.
7. The terms of this permit apply unless notified in writing by the Maryland Department of the Environment.

PROPERTY OWNER ADVISORY

All work performed under this Emergency Tidal Wetlands License must be conducted by the property owner or by a marine contractor registered with the Maryland Department of the Environment in accordance with Section 17-301 of the Environment Article, Annotated Code of Maryland and Section 2 of Chapter 286 of the 2010 Laws of Maryland.

Failure to hire a registered marine contractor may subject a property owner to the civil and criminal penalties established in Sections 16-501—16-503 of the Environment Article, Annotated Code of Maryland. This includes fines or civil penalties up to \$10,000 per violation.

NOTE: A list of registered marine contractors may be obtained by contacting the Department at 410-537-3837 or by visiting the Department's Web site at: <http://www.mde.state.md.us/registeredMarineContractors>

MARINE CONTRACTOR ADVISORY

Failure to register as a marine contractor with MDE before performing marine contractor services may subject a person to the civil and criminal penalties established in Section 17-403 of the Environment Article, Annotated Code of Maryland. This includes fines or civil penalties up to \$10,000 per violation.



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Martin O'Malley
Governor

Robert M. Summers, Ph.D.
Secretary

Anthony G. Brown
Lieutenant Governor

October 31, 2012

EMERGENCY TIDAL WETLANDS PERMIT REPAIR OR REPLACEMENT OF STRUCTURES DAMAGED BY HURRICANE SANDY

The Maryland Department of the Environment, through this Emergency Tidal Wetlands Permit, hereby authorizes the repair and in-kind replacement of structures in Private Tidal Wetlands damaged by Hurricane Sandy from October 28, 2012 through October 30, 2012.

Authority: Title 16 of the Environment Article, Annotated Code of Maryland and Code of Maryland Regulations 26.24

Application Fee: None

Expiration: This emergency permit expires November 1, 2013.

Authorized Activities: Repair and replacement of:

- Piers, docks, and wharfs;
- Bulkheads, revetments, and marsh establishment projects;
- Jetties, groins, and breakwaters;
- Boat ramps; and
- Storm drain outfalls

Emergency Permit Conditions:

1. As of October 27, 2012, the structure to be repaired or replaced in-kind was: (a) functional, which means that the structure was performing at least 85 percent of the action that it was originally designed to perform; and (b) authorized by a State tidal wetlands license, or was not authorized because it was originally constructed prior to July 1, 1970.
2. The repair or in-kind replacement activities restore the damaged structure to its previously undamaged condition, and do not alter or exceed the size, dimensions, or configuration of the previously undamaged structure, as it existed on October 27, 2012.
3. The property owner must register the repair and in-kind replacement work by submitting the attached form along with photographs of the damaged structure, to the Maryland Department of the Environment, Tidal Wetlands Division, 1800 Washington Boulevard, Baltimore, MD 21230 within 30 days of commencing the project.
4. The property owner must obtain any necessary federal or local authorizations before commencing work. The U.S. Army Corps of Engineers has issued the attached public notice authorizing the repair and replacement of structures damaged by Hurricane Sandy.
5. Prior to commencing reconstruction activities, the property owner must notify the Water Management Administration's Compliance Program at 1-800-633-6101 or 410-537-3510.
6. Prior to commencing reconstruction activities, the property owner must notify the local Critical Area Program. A list of jurisdiction offices is available from the following website:
http://www.dnr.state.md.us/criticalarea/planning_zoning_contacts.asp.
7. The terms of this permit apply unless notified in writing by the Maryland Department of the Environment.



PROPERTY OWNER ADVISORY

All work performed under this Emergency Tidal Wetlands License must be conducted by the property owner or by a marine contractor registered with the Maryland Department of the Environment in accordance with Section 17-301 of the Environment Article, Annotated Code of Maryland and Section 2 of Chapter 286 of the 2010 Laws of Maryland.

Failure to hire a registered marine contractor may subject a property owner to the civil and criminal penalties established in Sections 16-501—16-503 of the Environment Article, Annotated Code of Maryland. This includes fines or civil penalties up to \$10,000 per violation.

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Maryland Board
of Public Works

REGISTRATION FORM
EMERGENCY TIDAL WETLANDS LICENSE
EMERGENCY TIDAL WETLANDS PERMIT



Maryland Department
of the Environment

Repair or In-Kind Replacement of Structures in Tidal Wetlands Damaged by Hurricane Sandy

Property Owner Name:

Property Owner Address:

Contact Information:

Telephone Numbers: Home

Mobile

Email Address:

Marine Contractor's Name:

Marine Contractor's Registration Number:

Project Site Address:

Description of Damage:

(Include dimensions of the previously undamaged structure(s) and attach photographs of the damaged structure(s))

Description of Proposed Work:

(Attach Plan if Available)



U.S. Army Corps
of Engineers

Baltimore District

Public Notice

In Reply Refer To CENAB-OP-R Date: 31 October 2012
PUBLIC INFORMATION ANNOUNCEMENT
HURRICANE SANDY STORM DAMAGE REPAIR
Special Public Notice # 12-85

The purpose of this notice is to inform the public that repairs of damage to public and private property caused by Hurricane Sandy occurring from October 28 to October 31, and associated flooding and weather conditions, may be authorized, subject to the procedures described below in Maryland, the District of Columbia, and Pennsylvania.

On October 28-31, winds, storm surge, and flooding from Hurricane Sandy resulted in severe flooding and other storm related damages in Maryland, the District of Columbia, and Pennsylvania. As a result, State and Federal emergency or disaster declarations were made throughout the region. It is anticipated that owners of damaged property caused by Hurricane Sandy will want to conduct repair activities in the near future. This advisory is intended to inform property owners of the U.S. Army Corps of Engineers (Corps) permit requirements for storm damage repairs proposed in the State of Maryland, the Commonwealth of Pennsylvania within the Baltimore, Philadelphia, and Pittsburgh District's regulatory geographic boundaries, the District of Columbia, and certain military installations of northern Virginia (i.e., Cameron Station, Fort Belvoir, Fort Myer, and the Pentagon).

The Corps has Federal jurisdiction over activities that include dredging or construction in, over, under, or affecting navigable waters of the United States, certain excavation activities, and the placement of dredged or fill material into waters of the United States (including wetlands). Such activities may require a Department of the Army permit, in accordance with Title 33 of the Code of Federal Regulations, Parts 320-332. Please note that waters of the United States include all navigable waters, rivers, streams, tributaries, drainage courses, lakes, ponds, impoundments, and wetlands, which meet applicable Federal criteria, regardless of their size.

It is expected that most proposed activities to remediate storm damage would be authorized under an existing general permit. A general permit is an authorization for construction in waters of the United States, including navigable waters, that substantially reduces the time needed by the Corps to process applications for a category of activities that cause only minimal individual and cumulative environmental impact, when those activities are substantially similar in nature. General permits are issued on a nationwide or regional basis and include Nationwide Permits and regional general permits that apply to a specific geographic area. These activities would be accomplished under the authorities of Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

For projects proposed within the State of Maryland, the Maryland State Programmatic General Permit-4 (MDSPGP-4) authorizes repair and maintenance activities. Specifically, MDSPGP-4 authorizes the in-kind repair, rehabilitation, or replacement of any previously-authorized, currently serviceable structures or fills destroyed by storms, floods, fire, or other discrete events. The MDSPGP-4 may be used to authorize one-acre or less of impact to jurisdictional waters of the United States, provided all terms and conditions are met and the required permit processing procedures are followed. Repair and maintenance work that qualifies under MDSPGP-4 Category A, Activity b(1) General Maintenance

does not require an application for Corps review and authorization except for replacement of previously authorized, currently serviceable structures located along a Federally authorized navigation channel that are destroyed by an act of nature or other sudden event or for modification of previously authorized, currently serviceable structures located along Federally authorized navigation channels. In this case, an application is required to be submitted to the Corps for review under Category B or alternate Corps permit review procedures, as appropriate. Repair and maintenance activities that are not eligible for Category A and must be reviewed under Category B of the MDSPGP-4 require an application for Corps review and authorization. The repair, rehabilitation, or replacement activity is limited to the original dimensions or configurations, except for minor deviations due to changes in materials, construction techniques, or current construction codes or safety standards. Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills destroyed or damaged by storms, floods, fire, or other discrete events must be started or under contract to start within 2 years of the date that they were damaged or destroyed.

For projects proposed within the Commonwealth of Pennsylvania, the Pennsylvania State Programmatic General Permit-4 (PASPGP-4) authorizes repair and maintenance activities. Specifically, the PASPGP-4 authorizes maintenance and repair work that is authorized by the Pennsylvania Department of Environmental Protection through their Chapter 105 program. Repair and maintenance work that qualifies under Category I or II of the PASPGP-4 does not require further coordination or notification to the U.S. Army Corps of Engineers. This includes those Emergency Permits issued by the Pennsylvania Department of Environmental Protection which do not require a Category III review under the PASPGP-4. The PASPGP-4 may be used to authorize one-acre or less of impact to jurisdictional waters of the United States, provided all terms and conditions are met and the required permit processing procedures are followed.

Repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or fill, destroyed or damaged by storms, floods, fire, or other discrete events that do not fall under the scope of the MDSPGP-4 or the PASPGP-4 may be eligible for authorization under nationwide permit (NWP) 3, provided the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification and the conditions are complied with. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. Currently serviceable means that prior to damage that occurred on October 28-31, 2012 as a result of Hurricane Sandy, the structure or fill was useable as is or with some maintenance, but not so degraded as to essentially require reconstruction. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project or within the boundaries of the structure or fill. NWP #3 does not authorize channelization or the restoration or re-establishment of a stream channel. The repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, must be commenced, or under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

Copies of the MDSPGP-4, PASPGP-4, and NWPs are available via the internet at:

<http://www.nab.usace.army.mil/Wetlands%20Permits/permits.htm>

Please thoroughly review the terms and conditions of the MDSPGP-4, PASPGP-4, and the NWP #3 and NWP regional conditions and note that some activities require written authorization prior to commencement of work. It is imperative that the conditions and the management practices be followed explicitly. If you are uncertain that the activity you propose qualifies for a MDSPGP-4, PASPGP-4, or NWP #3, you are advised to contact the appropriate Corps District office prior to the commencement of work.

The regional and nationwide general permits apply only to Department of the Army regulatory programs. It should be noted that authorization by a Corps regional or nationwide general permit does not obviate the need for state or local permits, or other federal permits required by law or the responsibility for obtaining all necessary property rights. It is recommended that you contact the Maryland Department of the Environment (MDE) at (410) 537-3000, the Pennsylvania Department of Environmental Protection (PA DEP) at (717) 787-5266, and the District of Columbia, Department of the Environment (DDOE) at (202) 535-2255.

Section 404 of the Clean Water Act provides for certain exemptions for discharges of fill material associated with maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. This maintenance exemption does not include any modification that changes the character, scope, or size of the original fill design. In addition, Corps authorization may be required if the work would take place in a navigable water of the United States. Emergency reconstruction must occur within a reasonable period of time after damage has occurred in order to qualify for this exemption. You are advised to contact the appropriate Corps District office to determine if your proposed activity falls under this exemption.

In certain cases where the proposed work does not qualify for a general permit or the exemption, and the situation would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen and significant economic hardship if corrective action is not undertaken within a time period less than the normal time needed to process a permit application under standard procedures, Division Engineers are authorized to approve special procedures in emergency situations. Even in an emergency situation, reasonable efforts will be made to receive comments from interested Federal, State, and local agencies and the affected public [33 CFR 325.2(e)(4)]. You are required to notify the appropriate Corps District office noted in this advisory if you believe your activity qualifies for emergency procedures. Notification will require identification of the project proponent, a point of contact, work description, photographs of the site, and the location of the work to be performed.

It is recommended that you retain for your records a copy of permits, photographs, drawings, surveys, etc. for the structures or fill being repaired, replaced, or rehabilitated and/or any other documentation that the structure or fill was serviceable immediately prior to the storm damage that occurred, or at the time the work was done.

The removal of debris, including floatable debris material, does not require Department of the Army authorization. This includes the cutting and removal of woody debris that has fallen into a waterway and the removal of tires, appliances and other debris which has been deposited by a storm event, provided that the work does not result in a regulated discharge of dredged and/or fill material and all material is placed in an upland location. Any inquiries regarding authorization or the referenced unregulated activities are to be directed to the applicable Permit Section at the U.S. Army Corps of Engineers, District, as indicated below.

Maryland:

Baltimore District Maryland Section Northern (410) 962-4252 (Allegany, Anne Arundel, Baltimore, Carroll, Cecil, Howard, Frederick, Garrett, Harford, Washington Counties and Baltimore City and all Maryland State Highway Administration projects).

Baltimore District Maryland Section Southern (410) 962-4500 (Calvert, Caroline, Charles, Dorchester, Kent, Montgomery, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties, District of Columbia, and certain military bases in northern Virginia).

Pennsylvania:

Baltimore District Pennsylvania Section, (814) 235-0570 (Susquehanna and Potomac River Watersheds)

Philadelphia District Regulator of the Day, (215) 656-6728 (Delaware River Watershed)

Pittsburgh District Branch Chief, (412) 395-7155 (Ohio and Genesee River Watersheds, and Lake Erie Watershed)

For and on behalf of the Pittsburgh, Philadelphia, and Baltimore Districts:



William P. Seib
Chief, Regulatory Branch
Baltimore District