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Questions & Answers for the General Permits for Massachusetts

U.S. ARMY CORPS OF ENGINEERS

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We may update the attached questions and answers periodically. Please contact Greg Penta at gregory.r.penta@usace.army.mil or (978) 318-8862 with any questions or suggestions.

Q1. Why are you issuing the General Permits (GPs) now?

A1. The Massachusetts General Permit (MA GP) expired on January 20, 2015. Section 404 of the Clean Water Act states, “No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance.” We issued the GPs for Massachusetts (GPs for MA) on February 4, 2015 to replace the MA GP and ensure the regulated public continues to have an efficient tool in place to authorize activities with no more than minimal individual and cumulative adverse effects on the aquatic environment. See our website¹ for the GPs for MA and supporting documents.

Q2. Why does the GPs for MA document look different than the MA GP?

A2. Appendix A of the 2010 MA GP had 6 inland and 5 navigable water categories. The 2015 GPs for MA has 23 categories (i.e., GPs) that are more similar in nature. Section 404 of the Clean Water Act states, “...the Secretary may issue general permits for any category of activities if the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effects on the environment.” For national consistency, the 23 GPs and other aspects of the document are similar to the Corps Nationwide Permits. For example, the terms “Category 1” and “Category 2” have been replaced with “self-verification” and “preconstruction notification”.

Q3. Are there any significant changes?

A3. The GPs for MA have not resulted in any significant substantive changes to how activities in waters of the U.S. are regulated in the New England states. We made changes to update the terms and conditions. This was also done in the past when we reissued the MA GP every five years.

The activities authorized under the 23 GPs were also authorized under the MA GP. For example, the Appendix A of the 2010 MA GP had categories for “repair, replacement and maintenance”, “moorings”, “pile-supported structures and floats” and “bank stabilization”. Similarly, these are now authorized under GPs 1, 2, 3 and 7 respectively. The 2010 MA GP had the catch-all category “new fill/excavation discharges”. In the 2015 GPs for MA, this is expanded to activities that are similar in nature: GP 8, Residential, Commercial and Institutional Developments, and Recreational Facilities; GP 9, Utility Line Activities; GP 10, Linear Transportation Projects Including Stream Crossings; GP 11, Mining Activities; GP 12, Boat Ramps and Marine Railways, etc. Similarly the “miscellaneous” category of the 2010 MA GP was expanded to GP 16, Response Operations for Oil and Hazardous Substances; GP 17, Cleanup of Hazardous and Toxic Waste; GP 18, Scientific Measurement Devices; GP 19, Survey Activities; GP 20, Agricultural Activities; GP 21, Fish and Wildlife Harvesting and Attraction Devices and Activities; and GP 22, Habitat Restoration, Establishment and Enhancement Activities.

Q4. What is a primary goal of the GPs?

A4. The primary goal of the GPs is to authorize, with limited delay and paperwork, certain activities that have no more than minimal individual and cumulative adverse effects on the aquatic environment.

Q5. How do the GPs work?

A5. As stated, Section I, General Criteria #1, prospective permittees need to read:

- a. Section II to determine if the activity requires Corps authorization; and
- b. Sections III, IV and IX to determine if the activity may be eligible for authorization under the

GPs, specifically whether it is eligible for self-verification (SV) or whether preconstruction notification (PCN) is required.

For example, see GP 8 below. Proponents must read the first cell highlighted in grey and the “Not authorized under GP 8 or IP Required” column to see whether or not the activity is authorized.

If the activity is authorized, read the “Self-Verification Eligible” and “PCN Required” columns. The word “and” following each requirement in the “Self-Verification Eligible” column means that all applicable requirements must be true in order to be eligible. However, the word “or” follows each requirement in the “PCN Required” column, which means that a PCN is required if an activity meets just one requirement. If the activity is not authorized, it may be eligible for authorization under another GP.

GP 8. Residential, Commercial and Institutional Developments (Sections 10 & 404, non-tidal waters of the U.S.); Recreational Facilities (Section 404, non-tidal waters of the U.S.).		
Discharges of dredged or fill material for the construction or expansion of: a) residences and residential subdivisions; b) residential, commercial and institutional building foundations and building pads; and c) recreational facilities. This GP authorizes attendant features that are necessary for the use such as parking lots, garages, and yards. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. Examples of recreational facilities include playing fields (e.g., football fields, baseball fields), basketball courts, tennis courts, golf courses, ski areas, nature centers, and campgrounds. Associated utilities are eligible for authorization under Activity 9. Associated driveways, roads, stream crossings, hiking trails, bike, cart and horse paths are eligible for authorization under Activity 10.		
Self-Verification Eligible	PCN Required	Not authorized under GP 8 or IP Required
1. Permanent impacts: a. Meet the SV limits on page 4; and b. Do not occur in non-tidal SAS, except permanent impacts to non-tidal wetlands may be eligible for SV; and 2. No work occurs in navigable waters of the U.S.; and 3. No stream channelization, relocation or loss of streambed including impoundments.	1. Permanent impacts: a. Meet the PCN limits on page 4, or b. Occur in non-tidal SAS, except permanent impacts to non-tidal wetlands may be eligible for SV; or 2. Work occurs in non-tidal navigable waters of the U.S.; or 3. Stream channelization, relocation or loss of streambed including impoundments occurs.	1. Permanent impacts require an IP as stated on page 4; or 2. Work occurs in tidal waters of the U.S.; or 3. A stormwater treatment or detention system occurs in waters of the U.S. See Note 2; or 4. A subsurface sewerage disposal system occurs in waters of the U.S. See Note 2.
Notes: 1. Impacts include the aggregate total impact area for subdivisions and associated individual lots. 2. Stormwater conveyance components and non-porous, septic effluent pipes that transmit effluent to or between components may be eligible for authorization under GP 9.		

Q6. What should I do if my project is eligible for self-verification?

A6. If a project is SV eligible, as stated on page 2 in Section I, General Criterion #6, project proponents are responsible for verifying that the activity will meet the terms and conditions of applicable GPs. Consultation with the Corps and/or other relevant Federal and State agencies may be necessary to ensure compliance with the applicable general conditions and related Federal laws. Prospective permittees are encouraged to contact the Corps with SV eligibility questions. Once a permittee has self-verified that the project is authorized under the GPs, a Self-Verification Notification Form (SVNF) is required unless a GP specifies otherwise. A proponent may request that the Corps verify that a project is eligible for SV, in which case a PCN may be required. Contact the Corps for details.

Q7. Why is a SVNf required?

A7. Submitting a SVNf is required in accordance with General Condition 30. As stated on the SVNf, the Corps acknowledges the receipt of a SVNf in writing. However, the Corps acknowledgement of receipt doesn't confirm that the activity qualifies for SV. The Corps receipt of the SVNf will allow the Corps to inspect the project if necessary, and help the Corps to verify compliance if future questions arise regarding the permitting status. Failure to submit the SVNf when required results in non-compliance with the conditions of the GP.

Q8. What should I do if my project is not eligible for self-verification?

A8. Activities not eligible for SV must submit a PCN to the Corps for the Corps to review and verify that the activity qualifies for the GP. The PCNs provide the Corps with opportunities to confirm whether or not the proposed activities qualify for GP authorization. Work in Corps jurisdiction may not commence until written verification is received from the Corps for any project that requires a PCN. A Corps project manager will contact the project proponent if the PCN is not complete or if additional information is needed. If, after reviewing the PCN, the Corps determines that the proposed activity qualifies for GP authorization, the Corps issues a GP verification letter to the project proponent. The Corps encourages project proponents to apply concurrently for local, state and Federal permits

Q9. Should I keep a copy of my permit records?

A9. Yes. The Corps keeps records, but we recommend that permittees keep files of any written GP authorization letters or Individual Permits. For Category 1/self-verified projects, the permittee should keep the entire GP document in their file. This is recommended even when recording a Corps permit at the Registry of Deeds as it may be helpful to have that record in the future. Of course, keeping appropriate state and local authorizations is recommended as well.

Q10. What should I do if I'm unsure whether or not my existing activity is authorized by the Corps?

A10. Permits from the Corps are only needed for structures or fill that require authorization under the Corps Regulatory Program. Page 3 of the GPs for MA provides more information. We recommend contacting us to discuss the permitting status of past and planned activities when there is uncertainty, and the necessary steps to get the activity permitted in the event that no permit is on record. We can research our files to determine the status of existing activities or facilities. Also, the Corps or the project proponent may be able to determine whether an activity was authorized under Category 1 of the MA GPs or self-verification of the GPs for MA. You can find the MA GPs dating back to 1993 and the 2015 GPs for MA on our website¹.

Q11. Who is responsible for ensuring that a regulated activity is properly authorized by the Corps?

A11. The project proponent is responsible for ensuring that a regulated activity is properly authorized. The property owner can be held responsible for any unauthorized work on his/her property.

Q12. How long does the Corps have to make a decision on GP proposals?

A12. The Corps goal is to issue the GP verification letter within 60 days from the date of receiving a complete PCN/application. The GP verification may contain special conditions to ensure that the GP activity results in no more than minimal individual and cumulative effects on the aquatic environment and is consistent with the Corps public interest review factors.

Q13. Do I need to specify under which GP(s) my project is eligible for authorization in the PCN?

A13. It is not necessary to state this in the PCN. The Corps will determine the appropriate permit review.

Q14. What if my project is not authorized under the GPs for MA?

A14. An Individual Permit review is required. This does not significantly change the application and permit review process for the applicant. One difference is that the only acceptable application form is the Corps of Engineers Application for Department of the Army Permit ENG Form 4345, where as ENG Form 4345 or the MassDEP WQC or Chapter 91 application forms are acceptable for GPs.

Q15. Does the Corps coordinate PCNs with other agencies?

A15. For all GP activities that require a PCN, a copy of the complete PCN is sent to the appropriate state, local and Federal resource agencies (e.g., MA Office of Coastal Zone Management, EPA, National Marine Fisheries Service, etc.). Agency comments on the impacts of the proposed project on the aquatic environment will be considered prior to the Corps making a decision on the proposal. Note that the applicant still needs to coordinate with state and local agencies, the SHPO/MCH and tribes as appropriate.

Q16. Under what circumstances is my project authorized under GP 1, Repair, Replacement and Maintenance of Authorized Structures and Fills?

A16. This applies when the activity was permitted in accordance with 33 CFR 330.3 (“grandfathered”), or when maintenance was *not* authorized in the original authorization. For example, General Condition 29 of the 2010 MA GP stated, “The permittee shall maintain the work authorized herein in good condition and in conformance with the terms and General Conditions of this permit.” Thus, maintenance, including replacement, of previously authorized work is *required* if the work was authorized under the 2010 MA GP. The MA GPs issued from 1993 through 2005, and the 2015 GPs for MA, also include a maintenance requirement. In these cases, maintenance, including replacement, does not require further permitting or an SVNF. It is likely that other authorizations (e.g., an IP) included a maintenance requirement as well, but if not, GP 1 could apply. It is important to note that any authorized work must be currently serviceable in order to be maintained (see GP 1 for an example). If not, the proponent must obtain Corps authorization via the GPs for MA (SV or PCN) or an IP.

Q17. Is excavation from an inland/non-tidal waterbody (e.g., inland pond) authorized?

A17. Excavation from a non-navigable waterbody may be authorized under the GPs, e.g., the removal of accumulated sediments may be authorized under GPs 1 or 22. The Corps only regulates excavation from non-navigable waters when there are discharges associated with the excavation, e.g., bulldozing, stockpiling in the waters of the U.S., construction mats, etc. Removing sediments from navigable waters is known as dredging and may be authorized under GP 5.

¹ Follow this path to locate the GPs for MA and supporting documents:

<http://www.nae.usace.army.mil/Missions/Regulatory.aspx> >> State General Permits. Then click “Massachusetts” for the GPs for MA and referenced docs, and “Permit Resources” for additional referenced documents.