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Questions & Answers for the Massachusetts General Permits

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 these new Massachusetts General Permits (GPs) now?

A1. 1) Ease of use. The new 2018 GPs are easier to use as users no longer have to flip through various parts of the document to determine if their activity(s) is eligible for authorization under a particular GP(s). The new GPs incorporate more information into the appropriate GPs and general conditions. We have also streamlined the content of the GPs and their terms and conditions in order to make them more understandable and easier to follow; 2) Ease Regulatory burden. We made changes that will ease the Regulatory burden for the public and our office while maintaining the same level of protection for the aquatic environment and the public interest.

Q2. Are there any significant changes?

A2. The 2018 GPs do not result 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 GPs every five years. The final public notice published at www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Massachusetts-General-Permit lists the noteworthy changes and clarifications.

Q3. What is a primary goal of the GPs?

A3. 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.

Q4. How do the GPs work?

A4. Users need to read:

- Section II to determine if the activity requires Corps authorization; and
- Sections III and IV 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.

First check the list of GPs (on page 3) to see the GP(s) that could authorize your project. If you have a bank stabilization project, for example, you would go to GP 7, which is shown below. Read the first cell highlighted in grey 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.

<p>GP 7. Bank and Shoreline Stabilization (Authorities: §§10 & 404) Bank and shoreline stabilization activities in waters of the U.S. necessary for erosion control or prevention, such as vegetative stabilization, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of techniques (e.g., living shorelines), provided the activity meets all of the following criteria: (a) No material is placed in excess of the minimum needed for erosion protection; (b) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the U.S.; and (c) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas).</p> <p><u>Not authorized under GP 7 (IP required):</u> (a) Bank stabilization >500 feet in total length including both stream banks unless the Corps waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse effects; (b) Stream channelization or relocation activities; or (c) Breakwaters, groins or jetties.</p>	
Self-Verification Eligible ¹	PCN Required ¹
<p>Activities in non-tidal waters that meet all of the following terms:</p> <ul style="list-style-type: none"> a. ≤100 feet in length including both stream banks; or ≤100 feet in length on each side of the stream bank when necessary to protect transportation infrastructure; and b. ≤1 cubic yard of fill per linear foot average along the bank waterward of the plane of OHW; and c. The slope of the structure is more gradual than 1V:3H in lakes/ponds; and 1V:1H in non-tidal streams; and d. No impacts to SAS. 	<ul style="list-style-type: none"> 1. Activities in non-tidal waters that are: <ul style="list-style-type: none"> a. >100 feet to ≤500 feet in length including both stream banks; or >100 feet in total length on each side of the stream bank and ≤500 feet including both stream banks when necessary to protect transportation infrastructure; or b. >1 cubic yard of fill per linear foot average along the bank waterward of the plane of OHW; or c. The slope of the structure is steeper than 1V:3H in lakes/ponds; and 1V:1H in non-tidal streams; or d. Impacts to SAS; or 2. The activity is located in tidal waters; or 3. Bulkheads, seawalls or similar structures for maritime activities; or 4. Activities in the Connecticut River from the Turners Falls Dam to the MA/CT border, or Merrimack River from the Essex Dam to the mouth, involving permanent or temporary impacts unless they are performed: (a) <5 feet waterward from OHW or HTL and in the dry; or (b) from Sep. 1 to Oct. 14. This is to protect endangered species; or 5. Activities that are not eligible for SV and do not require an IP.
<p>Note: See GP 1 for information on the replacement or maintenance of existing, currently serviceable structures.</p>	

Q5. What should I do if my project is eligible for self-verification?

A5. Continuing with the above example, if a project is SV eligible under GP 7, you then look through the general conditions in Section IV. If it meets the appropriate conditions there, complete the Self-Verification Notification Form (SVNF) (see page 34) and mail it to the Corps. The Corps will confirm receipt of the SVNF by email or hard copy. The Corps can also confirm that SV eligible activities are authorized under the GPs upon request. Prospective permittees are encouraged to contact the Corps with SV eligibility questions.

Q6. What should I do if my project is not eligible for self-verification and requires a PCN?

A6. Activities not eligible for SV must submit a PCN (an application) to the Corps for review. There is a list of information required for a PCN in Section VI. A Corps project manager will contact the applicant if the PCN is not complete or if additional information is needed. The Corps will issue a GP verification letter to the permittee after reviewing the PCN if the Corps determines that the proposed activity qualifies for GP authorization. The Corps encourages project proponents to apply concurrently for local, state and Federal permits.

Q7. How long does the Corps have to make a decision on GP proposals?

A7. The Corps goal is to issue the GP verification letter within 60 days from the date of receiving a complete PCN. 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.

Q8. Do I need to specify under which GP(s) my project is eligible for authorization in the PCN?

A8. It is not necessary to state this in the PCN. The Corps will determine the appropriate permit review.

Q9. Does the Corps coordinate PCNs with other agencies?

A9. For all GP activities that require a PCN, the Corps coordinates with appropriate local, state 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 may need permits or certificates from the state and local agencies and is responsible for obtaining those.

Q10. What if my project is not authorized under the GPs?

A10. An Individual Permit review may be required. This review process requires the same application as the PCN, but also involves the issuance of a thirty-day public notice and has a lengthier review process.

Q11. Should I keep a copy of my permit records?

A11. Yes. The Corps keeps records, but we recommend that permittees keep files of any written GP verification letter, confirmation of receipt of an SVNF or an Individual Permit.

Q12. What should I do if I'm unsure whether or not my existing activity is authorized by the Corps?

A12. Permits from the Corps are only needed for the regulated activities specified in Section II on Page 2 of the GPs. 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.

Q13. Who's responsible for ensuring that a regulated activity is properly authorized by the Corps?

A13. The property owner or 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.

Q14. When do I need authorization under GP 1, Maintenance?

A14. Generally, GPs issued in the past have a paragraph requiring/allowing maintenance. However, when they don't, or when the project was never issued a permit but is grandfathered in accordance with 33 CFR 330.3, project proponents should review GP 1 to see if their project is SV eligible or requires a PCN.