



DEPARTMENT OF THE ARMY
U. S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT
ATTN: REGULATORY DIVISION
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201-2930

MDSPGP-7
Activity i
Emergency Situations

The authorized Emergency Situations activities must comply with the following applicable activity specific conditions, all general conditions of this permit, and any project-specific special conditions.

This activity authorizes permanent and temporary structures or work in or affecting navigable waters of the United States and the permanent and temporary discharge of dredged or fill material into waters of the United States, including wetlands, necessary for emergency response and post-storm recovery activities where an imminent threat to life or property exists due to unforeseen events during an emergency situation, State of Maryland Emergency Declaration, or Federal Emergency Management Agency (FEMA) Declared Disaster. The activity shall be the minimum necessary to alleviate the immediate emergency. Typical activities authorized under this activity include, but are not limited to, restoration of damaged areas; bank stabilization; temporary fills for staging, access, and dewatering; and repair, replacement, or rehabilitation of existing structures and/or fills (i.e., roads, bridges, utility pipelines, and flood control structures, including attendant features, and other existing structures located in waters of the United States). The Corps regulations define an "emergency" as a situation, which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures. The situation must meet the Corps definition of "emergency" to qualify for this activity. An emergency situation necessitates that work be performed near the time of cause and/or discovery of the problem and need. Actions that require several months to plan and/or fund are not considered emergencies for the purpose of the Corps Regulatory Program. (Section 10 and/or 404; all waters of the United States).

Category A Impact Limits and Requirements:

- (i) The total temporary and permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters, are not to exceed 5,000 square feet, no more than 200 linear feet of streams, rivers, and other open waters.
- (ii) This activity does not authorize work in navigable waters under Section 10 of the Rivers and Harbors Act of 1899, tidal wetlands, or in nontidal wetlands adjacent to tidal waters. Category B or alternate Corps permit review procedure is required.
- (iii) Removal of storm deposited sediment/gravel in stream channels is limited to a total distance up to 200 linear feet in any direction from the structure.

(iv) Stream channel re-alignments must not exceed a total 100 linear feet along the stream centerline. Category B or alternate Corps permit review procedures are required for stream re-alignment/relocation projects that do not propose nature-based techniques such as bioengineering and vegetative stabilization to relocate impacted streams.

(v) Dredging and/or discharges associated with the excavation are limited to no more than 100 cubic yards.

(vi) The activity representing the single and complete project must be eligible under a FEMA Declared Disaster and/or State of Maryland Emergency Declaration.

(vii) No minor deviations are authorized under Category A. Activities resulting in minor deviations in the structure or fill areas, including those to existing structures or fills, require a Category B review.

(viii) Projects authorized under this Category A activity must be initiated within fourteen (14) calendar days of receiving written verification. The permittee has 180 calendar days from start of construction to complete the work from the date of the verification letter. Activities that cannot meet these timelines must be reviewed by the Corps under a Category B or other Corps permit process.

Category B Impact Limits and Requirements:

(i) Bank stabilization to prevent or minimize erosion or the loss of structures shall be constructed using nature-based stabilization techniques, unless determined to not be practicable by the Corps. Native plants appropriate for current site conditions, including salinity and elevation, must be used for bioengineering or vegetative bank stabilization.

(ii) Bank stabilization must not exceed 1,000 linear feet along the bank, unless the Corps waives this criterion by making a written determination concluding that the discharge of fill material will result in no more than minimal adverse environmental effects.

(iii) The single and complete project will result in no more than a total 0.5-acre loss of tidal and nontidal waters of the United States, unless the Corps waives this criterion by making a written determination concluding that the discharge of fill material will result in no more than minimal adverse environmental effects.

(iv) Minor deviations in the structure or fill area, including upgrades are authorized due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards.

(v) Work in waters of the United States may begin after receiving Corps notification that the project is authorized under this activity. If immediate action is required, the Corps may informally authorize the activities, and subsequently complete agency coordination and formal authorization.

(vi) Projects authorized under this Category B activity must be initiated within fourteen (14) calendar days of receiving written authorization. Projects that cannot be initiated within this immediate timeframe generally would not meet the definition of an “emergency situation”. If the project start time can be delayed, the imminent threat of impending loss may have diminished in magnitude as well as immediacy, and other permitting authorities may be more appropriate. However, there may be limited circumstances where after coordination with other agencies, the Corps determines that there are logistical considerations that necessitate an extension of time.

(vii) The time limit for completing the work authorized by this Category B activity is 180 days from the date of permit verification, unless otherwise specified in the Corps verification letter. If additional time is required to complete the authorized activity, a written request for a time extension, including justification for the request, must be submitted to the Corps at least 30 calendar days prior to the expiration of the verification.

Requirements Applicable to Both Category A and Category B Activities:

In an emergency situation, prior to performing the emergency work, an applicant must contact the Corps and MDE by telephone and/or email regarding the proposed emergency work (nab-regulatory@usace.army.mil) and use the subject, “Emergency Authorization Requested.”

(i) The applicant must provide the following activity-specific information in the Emergency Authorization request email:

a. A brief description of the nature of the situation (i.e., how the situation demonstrates the “clear, sudden, unexpected, and imminent threat to life or property”), the severity of the threat, and the estimated timeframe for completion of the construction. When applying for an emergency activity verification, you must describe the activity in detail and explain why the activity cannot be processed under normal timeframes.

b. A description of methods anticipated to be used to rectify the situation (“field engineering” is not an adequate description) along with a summary of any and all avoidance and minimization measures. Plans, drawings, or sketches depicting the area to be directly affected by filling and dredging activities, and other aquatic areas indirectly affected by the project activities (such as dewatering, stream diversion, access routes, etc.), cross-sections showing details of construction, and a short narrative describing how the work is to be completed.

c. A brief description of the project area’s existing conditions and anticipated impacts resulting from the proposed work (quantity and location of dredge or fill material deposited or excavated, removal of significant vegetation, loss of habitat, etc.).

(ii) For restoration of areas damaged by storm floods, or other discrete events: (a) the restored area must not extend waterward of the ordinary high-water mark or high tide line that existed prior to the damage (i.e., the restoration must not narrow the width of the water body as it existed prior to the damage), (b) the slope of the restored area

below the ordinary high water mark or high tide line must not exceed the slope that existed prior to the damage, and (c) the bottom elevation of the restored area must not exceed the bottom elevation that existed prior to the damage (i.e., the restored area must not result in a reduction in the depth of the waterbody that existed prior to the damage).

(iii) Upon initially contacting the Corps and MDE in an emergency situation in accordance with the procedures above, the applicant for the emergency work must submit a joint federal/state permit application and plans to MDE within three days of completing the emergency work, unless granted an extension.

(iv) The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

(v) Authorized activities must be limited to the minimum necessary to alleviate the immediate emergency situation.

(vi) The following activities or practices are not eligible for coverage under this activity:

a. Any work in waters of the United States to reclaim land that was lost over an extended period of time due to normal erosion occurring prior to the discrete emergency event.

b. Repair and/or replacement of existing structures and/or fills that were non-functional just prior to the discrete emergency event.

c. Restoration of non-functional bulkheads and their remnants (including deadman and pierheads) existing prior to the discrete emergency event.

d. Repair and/or replacement of bulkheads that extend greater than 18 inches channelward from the pre-storm location.

e. Installation of new bulkheads or vertical walls in wetlands, vegetated shallows or mudflats where structures did not exist prior to the discrete emergency event.

f. Installation of new bridges or culverts.

g. The removal of stream gravel for the express purpose of sale as part of a gravel mining operation.

h. Dredging or extraction of sediment or debris that was not deposited from the storm event or is not necessary to prevent the loss of property or reduce flooding and/or erosion.

i. Channelization, channel widening, deepening, or straightening activity that contributes to stream instability.

j. Side-casting of dredged material along streams.

- k. Construction of in-stream sediment detention basins,
- l. Installation of new gabion rock walls below the OHW or MHW elevation.
- m. Installation of new concrete aprons within waterways.
- n. Permanent replacement of multiple barrel culverts used at a single crossing within streams.
- o. Building permanent berms with the excavated stream material or any other materials.

(vii) The applicant must provide the Corps with a report within 30 days following completion of construction activities in waters of the United States, including:

- a. A complete description and quantification of impacts to waters of the United States for work completed at each single and complete project, including deviations from the activities in waters of the United States authorized by this activity, and the reason(s) for the deviations.

- b. Drawings of the as-built authorized work conducted for each single and complete project, and any on-site and/or off-site permittee-responsible compensatory mitigation. The drawings shall include a plan view drawing of the location of the authorized work (as shown on the permit drawings), with an overlay of the work constructed in the same scale as the permit drawings, and a cross-section view drawing. Please note that any substantial deviations from the work as authorized, must be coordinated with the Corps prior to impacts.

- c. Numbered and dated pre- and post-construction color photographs of the work conducted within a representative sample of the permanently filled waters of the United States, all of the partially filled waters of the United States, and all avoided waters of the United States on and immediately adjacent to the project area. The compass angle and position of all photographs shall be identified on the plan-view drawing(s).

- d. Information to show construction of each authorized single and complete project was conducted in accordance with all terms and conditions of this MDSPGP-7 activity.

- e. A description and photo-documentation of all best management practices, and construction limit markers.

- f. A description and photo-documentation of all temporary fill area(s) restored to pre-project contours and conditions, including photo documentation of the horizontal marker(s) installed. For temporary fill areas within waters of the United States that have not been restored to pre-project contours or conditions, a description and photo-documentation of the temporary fill within waters of the United States, including information on why restoration has not been completed.

Note: Prior to the use of emergency permitting, alternative means for authorizing the work will be considered. For example, exemptions for certain types of emergency work in nontidal and non-navigable waters are provided for in 33 CFR 323.4(a)(2). Under these regulations, any discharge or fill material that may result from 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, is not prohibited by or otherwise subject to regulation under Section 404 of the Clean Water Act. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption. The nationwide permits also authorize certain types of work that may be applicable to emergency situations. Letters of permission, regional general permits, or other activities authorized by the MDSPGP-7 may also provide acceptable options for permit decisions related to emergency work. If the work would not be started for several months, it would not normally be considered an emergency per the Corps definition at 33 CFR 325.2(e)(4).