

DEP Seeking Comments on Proposed Conditional State Water Quality Certification Under Draft PASPGP-7

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FNREL Water Law Newsletter

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On September 6, 2025, the Pennsylvania Department of Environmental Protection (DEP) published the Proposed Conditional State Water Quality Certification for the PASPGP-7 (SWQC), 55 Pa. Bull. 6477 (Sept. 6, 2025). The proposed conditional SWQC is for applicants seeking coverage under PASPGP-7 (the U.S. Army Corps of Engineers (Corps) Pennsylvania State Programmatic General Permit) for projects that do not require a federal license or permit other than a section 404 permit under the Clean Water Act (CWA). Comments on the SWQC were due by October 6, 2025.

DEP offered four main conditions, summarized below, that, if fulfilled, would demonstrate that a proposed activity under PASPGP-7 would comply with state water quality standards and certain provisions of the CWA:

1. Prior to beginning any activity authorized by the Corps under PASPGP-7, the applicant must obtain all necessary environmental permits or approvals and submit all required environmental assessments and other information necessary to obtain the permits and approvals.
2. The applicant must comply with required environmental assessments and other regulatory requirements.
3. Fill material may not contain any type of waste as defined in 35 Pa. Stat. § 6018.103 of the Solid Waste Management Act.
4. Applicants and projects eligible for the PASPGP-7 must obtain all state permits or approvals, or both, necessary to ensure that the project meets the state's applicable water quality standards, including a project-specific SWQC, if needed.

As background, PASPGP-7 allows applicants to obtain both Corps section 404 permits and coverage under DEP permits or other authorizations for water obstructions and encroachments submitted to the DEP and for projects requiring permits or authorizations in this Commonwealth. Section 401(a) of the CWA requires an applicant seeking coverage under PASPGP-7 to provide the Corps with certification from DEP that its discharge will comply with the applicable provisions of the CWA. This proposed conditional SWQC applies to activities that qualify for PASPGP-7 within the jurisdiction of section 404 and also structures or work in or affecting navigable waters of the United States under section 10 of the Federal Rivers and Harbors Appropriation Act of 1899.

The current PASPGP-6 expires on June 30, 2026, and, at present, the draft PASPGP-7 stands to take its place, with possible revisions from the proposed draft. The proposed changes in PASPGP-7 include the following:

1. Adds 0.03-acre area of permanent stream impact measurement in addition to the 250-linear-feet of permanent stream impact, whichever is less, for reporting (Corps review) threshold. A permanent loss of 0.03-acre area of stream may then require compensatory mitigation on a case-by-case basis.
2. Adds a reporting threshold of 1,000-linear-feet of permanent stream impacts for PASPGP-7 applications for DEP General Permit-1 (GP-1) (Fish Habitat Enhancement Structures).
3. Removes the table of waterways potentially occupied by federally listed, proposed, or candidate species of mussels or fishes from reporting activities, as they are to be included in the Pennsylvania Natural Diversity Inventory Environmental Review.
4. Adds that all regulated work within the Delaware Canal is a reporting activity to ensure compliance with the Wild and Scenic Rivers Act.
5. Adds the ability for the Corps to waive the eligibility threshold for emergency activities, as defined in PASPGP-7, on a case-by-case basis. The reporting threshold of 0.50-acre of permanent impact remains unchanged.

6. Adds a general or project-specific section 401 Water Quality Certificate as a type of state authorization to General Condition 29 (State Authorization).
7. Extends the General Condition 33 (Anadromous Fish Waters) time of year work restriction, from March 15–June 30 to March 1–June 30.

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