

U.S. Army Corps of Engineers Regulatory Program

NY Sea Grant
Lake Ontario Permitting
Monroe County - 30 Aug 2019

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Section 10 of the Rivers and Harbors Act of 1899

- Applies to Navigable Waters - waters that are currently, historically and could in the future represent opportunity for interstate commerce
- All activities and structures within, above, over or beneath navigable waters are regulated
- Limit of jurisdiction - Ordinary high water mark, extending to adjacent wetlands if present

Section 404 of the Clean Water Act of 1977

- Applies to 'waters of the United States' (**33 CFR 328.3**)
 - e.g. Navigable waters, inland lakes/ponds, tributaries (rivers, streams, creeks), wetlands
- Discharges of dredged or fill material are regulated
 - e.g. dredged material, or rock, sand, dirt
- Limit of jurisdiction - ordinary high water mark or wetland/upland boundary



Permits:

- Examples of activities or structures requiring permits in Lake Ontario, Genesee River, Irondequoit Bay, Ponds (Cranberry, Long, Buck, Round)
 - Docks/Decks
 - Boathouses
 - Riprap/Stone revetments
 - Bioengineered protective structures
 - Breakwalls/Jetty
 - Seawalls

Permits

➤ General Permits

- Nationwide Permits (NWP) 3, 13, 19
 - Nested w/DEC GP 0-19-003
 - NWPs may also be used separate from the DEC GP
- Nationwide Permit No. 3 – repair, rehab or replacement of currently serviceable structures or fills; minor deviations allowed; provides for structures or fill damaged as a result of storms, floods, or other discrete events
- Nationwide Permit No. 13 – bank stabilization for erosion control; > 500 linear feet and 1 cy of material per running ft of bank; no work in wetlands
- Nationwide Permit No. 19 – dredging of no more than 25 cy of material; no work in wetlands

Permits

- Individual Permits (IP)
 - Require Joint Application for Permit form
 - Public Notice
 - Evaluation of alternatives
- Emergency Permit (EP) Authorization
 - Imminent threat of loss to life or property
 - Corps District must request authority from Division office
 - Provides for abbreviated process
- Other Authorizations – for both IPs and EPs, DEC permits, water quality certification, and DOS consistency concurrence are required.

Permits

➤ DEC GP 0-19-003

- Projects that qualify for the General Permit will also qualify for the USACE Nationwide Permit (NWP) No. 3, 13, and/or 19 and have received Coastal Consistency Certification from the New York State Department of State (NYSDOS).
- All GP applications must be submitted to the DEC who will determine if the GP applies. If the GP applies, **no coordination with the USACE or DOS is required except for the following circumstances:**
- **You must contact the USACE at 716-879-4330 or LRB.Regulatory@usace.army.mil to obtain approval prior to starting work to ensure compliance with the Endangered Species Act:**
- **a.) All projects involving tree removal in any of the affected counties.**
- **b.) For projects in federal jurisdictional wetlands in: Towns of Huron and Wolcott, Wayne County and all Towns in Cayuga and Oswego Counties.**
- **c.) For any work subject to this permit in the Towns of Sandy Creek and Richland, Oswego County, and the Towns of Henderson and Ellisburg, Jefferson County.**

Consideration on Permitting Activities and Structures

- Recognize right of landowner to protect property from erosion (33 CFR 320.4(g)(2))
- Consideration of and balancing the following factors:
 - Need for the project
 - Navigation impacts
 - e.g. access to Lake Ontario, safety
 - Impacts to up and down drift properties
 - e.g. increased erosion
 - Affect on aquatic resource
 - e.g. environmental, littoral system
 - Effectiveness of the protective feature (not an engineering assessment)

Questions?



References

- http://www.dec.ny.gov/docs/permits_ej_operations_pdf/gp019003appl.pdf
- <https://www.lrb.usace.army.mil/Lake-Ontario-High-Water/>
- [https://www.lrb.usace.army.mil/Portals/45/docs/regulatory/HighWaterInfo/Condensed%20NWP%203_13_2019%20for%20GP-0-19-003\(final\).pdf?ver=2019-05-24-100640-997](https://www.lrb.usace.army.mil/Portals/45/docs/regulatory/HighWaterInfo/Condensed%20NWP%203_13_2019%20for%20GP-0-19-003(final).pdf?ver=2019-05-24-100640-997)