MEMORANDUM
Department of Transportation

TO: Regional Design Engineers, Reg –
Regional Environmental Supervisors, Reg. –
Regional Local Projects Liaisons, Reg. -

FROM: D.P. Hitt, Environmental Science Bureau, MO – POD 4-1

SUBJECT: Joint Issuance of Checklist for Pre-construction Notification
For Section 404/10 Nationwide Permits within New York State

DATE: April 21, 2009

Attached for your use is an approved checklist to be as part of any Section 404/10 Pre-construction Notification (PCN) package being submitted to the US Army Corps of Engineers (USACE) within New York State. This document has been coordinated among the USACE (NY & Buffalo Districts), NYSDOT, and FHWA (NY Division Office); and is available for immediate use by all agencies for PCN submittals.

For any questions, please contact either:

Debra Nelson, Water/ Ecosystems Section - ESB, at:
DNELSON@dot.state.ny.us or 518- 485-5479
or:
Brandon Greco, Water / Ecosystems Section – ESB, at:
BGreco@dot.state.ny.us or 518-485-7753

DPH/DPN

cc: R. A. Dennison, Chief Engineer, 6th Floor
M. E. Ivey, Office of Environment, POD 4-1
D. D'Angelo, Office of Design, POD 2-3
D. Kenneally, Local Program Bureau, POD 5-2
A. Nolan, FHWA – NY Division
T. Creamer, USACE - Division
R. Tomer, USACE - NY District
T. Switala, USACE - Buffalo District
New York District Regulatory Branch
Buffalo District Regulatory Branch

April 20, 2009

SUBJECT: Joint Issuance of Checklist for Pre-construction Notification (PCN) for Section 404/10 Nationwide Permit (NWP) Authorization in New York State.

To Whom It May Concern:

The New York and Buffalo Districts, US Army Corps of Engineers (USACE), jointly forward herewith, for immediate use, the approved Checklist and Culvert Supplement, to be used for any PCN package being submitted to USACE for Section 404/10 Nationwide Permits within New York State. This document has been coordinated among USACE, NYSDOT, and FHWA.

For any questions, please contact the Regulatory Branch at either USACE office. New York District Regulatory information can be found at: http://www.nan.usace.army.mil/business/buslinks/regulat/index.htm
and Buffalo District Regulatory information can be found at: http://www.lrb.usace.army.mil/regulatory/

Sincerely,

Richard L. Tomer
Chief, Regulatory Branch
New York District

Thomas C. Switala
Chief, Regulatory Branch
Buffalo District

Copy Furnished:
FHWA (Mr. Griffin, Ms. Toni, Mr. Ruth)
NYSDOT (Ms. Ivey, Mr. Hitt, Mt. Dennison)
NYSDEC (Mr. Adriance, Mr. Jacobsen)
USACE (Mr. Haggerty, Ms. Kozlowski, Mr. Scarano)
The following checklist is designed to assist the NYSDOT when preparing Pre-Construction Notification (PCN) Packages for Nationwide Permit (NWP) Authorization. The intent of this checklist is to clarify and streamline information required by the USACE to process NWP Authorizations. The information listed below comprises basic required application contents. Some types of projects may require additional information to be submitted to the USACE District; therefore early coordination with the USACE Project Manager assigned to the NWP Authorization is essential.

Laws, regulations, descriptions of the Nationwide Permits, General Conditions to the NWPs, Regional Conditions to the NWPs, and other guidance are located on the appropriate USACE District website. New York District is: www.nan.usace.army.mil and Buffalo District is www.lrb.usace.army.mil.

A complete PCN Package consists of this signed Checklist, followed by all Attachments listed below, in the order presented. Please submit the completed PCN Package to the appropriate USACE District.

☐ ATTACHMENT A: Application
1. Form
   a. Submission of a completed Joint Application Form clearly labeled as a PCN
   b. The application must be signed by appropriate personnel
   c. Include latitude and longitude in deci-degrees on the form (2).

2. Supplemental information
   a. Provide a narrative description of the project (DAD executive summary)(1) that includes:
      i. PIN and BIN and/or culvert number. (DAD 1.2.1)(1)
      ii. Name of DOT contact person and phone number (see signature block at end of this document).
      iii. Indicate whether federal funding is involved
      iv. State the purpose and need for the project (DAD 1.2.2 and 1.2.3)(1)
   v. A complete description of the preferred alternative including:
      1. The Nationwide Permit(s) to be used
      2. Height, width, and length of structures and fills, along with quantities including volume of fill material below the ordinary high water mark (OHWM) of waterway and depth below the OHWM, as appropriate.
      3. Widths of cleared rights-of-way
      4. Location of all affected areas of waters of the United States, including wetlands, and
      5. Size and spacing of culverts, bridges, and other crossings of waters of the United States, along with size of existing structures when they are being replaced
   vi. A description of other alternatives considered, including the Null/No-Action alternative (DAD 1.3)(1)
vii. A description of the environmental impacts resulting from the preferred alternative (DAD 4.4)\(^{(1)}\) including preferred alternative (DAD 4.4, 4.6)\(^{(1)}\). Describe and quantify both temporary impacts (direct, indirect, permanent direct and indirect impacts and temporary) to waters and wetlands, including vegetation community type for wetlands (use English measurements) (DAD 4.4, 4.5).\(^{(1)}\)
   1. Describe the method of water diversion (cofferdams, pumping, etc.). Include a description of how long the cofferdam is to remain in place and how the area would be restored upon completion of the project
   2. Describe any temporary access roads and work pads within waters/wetlands. Indicate duration the fill would remain in place and provide a restoration plan

viii. Discussion of avoidance and minimization efforts considered for the preferred alternative

ix. A summary of the proposed mitigation to offset long term and temporary impacts to waters of the United States, if applicable, to include the following at a minimum:
   1. Acreage and/or linear feet
   2. Breakdown of proposed mitigation by vegetation community types compared to community types that would be impacted by the proposed project
   3. Where applicable, illustrate proposed mitigation on the plan sheets

b. Projects involving the installation of a new culvert, a replacement culvert or a culvert extension that do not meet the measures described in Buffalo District’s General Regional Condition I.10, and New York District’s General Regional Condition A.6 must also include the information included in the “Pre-Construction Notification Checklist Supplement for NWP Projects Involving New or Replacement Culverts”, which is attached to this Checklist.
   i. Excess fill material shall be disposed of in an upland location. A description of the environmental review for the disposal site shall be provided (i.e. DOT staff/environmental consultant on-site evaluation, in-house resource review),
   ii. The location of the disposal site(s) of excess fill material shall be clearly identified.

c. Any additional information requested in the specific nationwide permit in which you seek verification, including their regional conditions (i.e. Regional Conditions for NWP 3 state that for activities involving the removal of accumulated sediments and debris in the vicinity of existing structures to restore the waterway to previously existing depths, the applicant must provide evidence of such depths and if not available, the applicant must provide evidence of existing depths immediately outside the proposed work area).
ATTACHMENT B: Site Location Map
A map, preferably from a USGS Quadrangle, identifying the location of the project with an appropriate scale for the USGS to be able to locate the site. Include geographic coordinates of the project location center point on the map. (2)

ATTACHMENT C: Wetland/Waters Delineation Report
Wetland Delineation Report that contains, at a minimum, the following information for all waters (per General Condition 27 of the nationwide permit general conditions, delineations are required for all PCNs),

1. A narrative stating that the delineation was performed in conformance with the 1987 Corps wetlands delineation manual and any applicable supplements.
2. Indicate the relationship of the waterbody downstream to navigable waters (i.e. Hudson River, Mohawk River, etc.). Include the name of the waterbody and of the waterbodies to which the on-site waterbody is an immediate tributary
3. Completed Wetland Delineation Data Forms confirming wetland areas
4. Describe methods used to determine the Ordinary High Water Mark; Basic physical information about the wetlands and watercourses, such as: tributary substrate, vegetation cover type, surrounding land use, etc.
5. A descriptive functions and values assessment of the wetlands and watercourses proposed to be impacted. (An example of a functions and values assessment that should be considered for impacted wetland/waters delineation map which shall include all impacted waters of the U.S. on site (e.g. wetlands, streams, swales, ditches, ponds, etc.), delineation flags with their corresponding field identifier, and a table outlining the area of each delineated waterbody.

ATTACHMENT D: Jurisdictional Determination (JD) Form (3)
An approved JD will not generally be required. Attach a completed and signed Preliminary JD Form, which assumes that all wetlands and watercourses proposed to be impacted are regulated by the USACE. If an Approved JD is required, attach a request for Approved JD or documentation of any prior request.

ATTACHMENT E: Wetland and Waterbodies Impact Summary Table (4)
See attached template that provides the following information (if known):
1. Wetland/waterbody name; Cowardin wetland code;
2. HGM wetland code
3. Area or length of the entire wetland/waterbody (acres, linear feet; determined through photogrammetry)
4. Water type (per 12/2/08 EPA-USACE guidance, CWA Jurisdiction post-Rapanos)
5. Latitude and longitude
6. Closest named waterway
7. Area or length of proposed impacts (acres, linear feet; determined through field delineation)
ATTACHMENT F: Photographs
Photos should be taken from multiple directions and should show existing conditions within the areas proposed to be impacted.
1. The photos of the project area should include watercourses, bridge abutments, wetlands and upland areas. For example: if a bridge is to be replaced, photos should include each abutment and photos of the watercourse upstream and downstream of the crossing, to the limits of construction. Photos should be numbered and shown on plans. Place the number of the photograph at the location that it was taken, and use an arrow to point in the direction that the camera was facing.

ATTACHMENT G: Project Drawings
Plans, sections and details that include the following, at a minimum:
1. Drawings clear enough and of sufficient scale to read, and dark enough to allow clear reproduction
2. Black and white plans on 8.5x11” white paper, suitable for copying. Larger plans should accompany the smaller drawings if clarity is an issue
3. A clear title, appropriate dates and revision dates, north arrow, and map key or legend
4. Overview sheet depicting the entire project and index of detailed plan sheets (for projects of 3 or more plan sheets)
5. Plans depicting the following:
   a. In the vicinity of proposed impacts to existing waters of the U.S. (including wetlands), show:
      i. Existing contours and location and size of existing wetlands and other waters
      ii. Grading and drainage, including limits of cuts and fills and areas of temporary and permanent wetland or open water disturbance in relation to the delineation of aquatic resources. Distinguish between impacts to wetlands versus other waters below their OHWM. The OHWM should also be identified under existing bridges. If any new fills would completely bisect wetlands or other waters, culverts must be included in the fill area, and shown on the plans. Since drawings must be reproduced photographically, color shading and drawing cannot be used. Drawings can show work through the use of dot shading, hatching, border styles or similar graphic symbols.
   b. Dewatering practices, including any cofferdams to be used. Explain how water will be diverted or pumped (e.g. pumped in a hose through culvert, etc.) and report the total area below the OHWM to be dewatered.
   c. Stormwater management practices and erosion control measures (notes, etc)
   d. The flow path of water
   e. Water depths
   f. Areas needed for construction access
   g. Disposal locations. (Note: Disposal locations must be upland and well removed from waters of the US.)
   h. Labels of all dimensions (e.g. length, width, depth, area, volume below OHW) of existing and proposed structures and fill, including specific impacts to the delineated wetlands and open waters (use English measurements)
2. Cross section and detail drawings of road where crossing through or adjacent to wetland and stream impacts, including structure details and stone embankment/stone key details, erosion control, water diversion, notes etc. These drawings should include the OHWM of the waters or wetland boundary as applicable.
ATTACHMENT H: Mitigation and Monitoring Plan, and Drawings

1. Comprehensive compensatory mitigation plan - See Regulatory Guidance Letter 08-03, the Final Mitigation Rule as published in the Federal Register, Vol.73, No. 70 on Thursday, April 10, 2008 and mitigation guidelines/checklists at www.nan.usace.army.mil or www.lrb.usace.army.mil for full details on what to include in the comprehensive plan. Mitigation drawings must show:
   a. Existing and proposed topographic contours
   b. Existing wetland and waterways within the mitigation area
   c. Cross section drawings that show:
      i. Existing versus proposed topographic contours at representative locations
      ii. The location of existing ground water and proposed water levels
   d. Specify what soils would exist at the proposed elevations and what soils would be placed in the wetland mitigation area in order to promote plant growth. Include planting plans that show:
      i. The specific species and number of plants to be planted in the mitigation area
      ii. If a wetland seed mixture is proposed, it must be composed of native species. The drawing must include the specific species and percentage of each species to be included in the seed mixture. The drawing must also specify the proposed rate of application of wetland seed mixture within the mitigation area.

2. If a comprehensive compensatory mitigation plan has not been completed by the time of the PCN submittal, then a conceptual mitigation plan for unavoidable impacts to waters and wetlands must be submitted with the PCN and must include the following at a minimum:
   a. Size of proposed mitigation
   b. Location of proposed mitigation
   c. Time frame for submission of complete mitigation plan
   d. Habitat type
   e. Conceptual drawing
ATTACHMENT I: Environmental Reports/Correspondence – see note above regarding this report) or copies of any environmental reports and correspondence that address the applicable conditions of the specific Nationwide Permit (eg: Section 106, Section 7, Section 401, CZM, etc.).

1. For Threatened and Endangered Species or Essential Fish Habitat (EFH) include:
   a. The names of any T&E species or EFH in the project area
   b. In counties containing T&E species, or in areas with designated EFH include:
      i. A discussion/description of the potential T&E habitat or EFH in the project site and include any species facts sheets that may be available from the USFWS or NOAA-FS
      ii. Habitat survey(s)
      iii. Detailed description on how the project avoids direct and indirect effects to species or may affect the species or habitat, including approximate project construction schedule, tree removal activities, etc
      iv. Description of surrounding land use
      v. A description of conservation measures employed to avoid or minimize impacts to listed species or EFH
   c. If the project is federally funded, in lieu of item 1.b. above, submit a copy of any correspondence from the USFWS or NOAA-FS and any findings from FHWA regarding the presence of or effects to T&E species or EFH.

2. For Historic Properties include:
   a. Whether any properties listed or eligible for listing in the National Register of Historic Places may be affected by the proposed project
   b. A copy of any completed findings document, survey reports and/or a list of resources checked in the determination
   c. Copies of any correspondence to and from the NYSOPRHP, and FHWA if federally funded, related to Section 106 findings, including any proposed or executed MOA

3. For projects within ½ mile of a National Wild and Scenic River, include:
   a. Documentation and appropriate correspondence indicating whether the project may potentially affect the resource

4. For projects within the vicinity of a Critical Resource Water, include:
   a. Appropriate documentation if the project has the potential to affect a Critical Resource Water. Critical Resource Waters include NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance

5. For projects within a Coastal Zone, include:
   a. Documentation and appropriate correspondence with the Department of State regarding Coastal Consistency
NYSDOC SIGNATURE AND CONTACT INFORMATION

“This application is a complete package, including all ATTACHMENTS listed in the PCN Package Checklist.”

<table>
<thead>
<tr>
<th>Signature of Contact Person</th>
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<tr>
<td>Name of Contact Person</td>
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NOTES

(1) There are many references to the Design Approval Document (DAD) throughout the checklist revisions, which are provided as a convenient crosswalk between this document and the DAD. The purpose of the checklist is to minimize or eliminate the submission of large reports which necessitate time consuming searches through these reports to find information. The checklist concept is to make sure that all information required is presented in a clear, concise format. This will facilitate efficient and timely processing of permit actions. Information submitted for each project should be limited to data required by the checklist.

(2) Decidegrees is the preferred format for the Corps, and ensures easier, quicker entry into our database.

(3) Attachment D: Jurisdictional Determination Form:
Ordinarily, an approved JD will not be required by USACE. NYSDOT may request an approved JD, which will likely require submission of additional information consistent with the Approved JD form. In addition, an approved JD may take longer to complete than a preliminary JD, particularly if USEPA/HQUSACE coordination is required.

(4) Attachment E: Wetland and Waterbodies Location/Impact Assessment Table: Please use the spreadsheet previously provided and submit in either an electronic (e-mail) or digital (CD) form as well as hard copy for sites with more than two waters. This will facilitate the processing of the action.

(5) Attachment H: Mitigation and Monitoring Plan, and Drawings: As specified in the Final Mitigation Rule “Compensatory Mitigation for Losses of Aquatic Resources, Federal Register April 10, 2008,” no work can occur in waters or wetlands until a comprehensive mitigation plan is submitted and approved in writing by the U.S. Army Corps of Engineers. To avoid project delays, it is recommended that a comprehensive mitigation plan be submitted along with the PCN Application package or as soon as possible if the PCN Application Package is submitted only with a Conceptual Mitigation Plan.
Pre-Construction Notification Checklist Supplement
for NWP Projects Involving New or Replacement Culverts

Buffalo District General Regional Condition I.10 and New York District General Regional Condition A.6 apply to all Nationwide Permit activities involving the construction/installation of new or replacement culverts in fish-bearing streams. Any proposed crossing not meeting the measures described in this Regional Condition requires submission of pre-construction notification. In such cases, the PCN package shall also include the following information:

1. **Discussion of why such structures or measures (not meeting the measures described in this Regional Condition) would not be practicable.** This discussion should include all pertinent factors such as:
   a. Feasibility considering site constraints (e.g., buried utilities, insufficient right-of-way, channel confinement)
   b. Safety standards
   c. Design and construction cost and/or limitations
   d. Maintenance and inspection cost and/or limitations
   e. Flood or erosion hazard concerns
   f. Environmental concerns (e.g., systemic stream instability, potential for spread of invasive species)

2. **Evaluation of effects that the proposed crossing would have on aquatic species movement.** The evaluation of effects should include:
   a. NYSDEC stream classification
   b. Available data on use of the stream by aquatic species and any known critical habitat for aquatic species
   c. Impact on important life stages of aquatic species (e.g., spawning or migration)
   d. Description of any pre-existing impediments to aquatic species movement, and their proximity to the proposed crossing site (e.g., waterfalls, cascades, dams, other crossing structures)

3. **Alternate measures that will be employed to minimize impacts to aquatic species movement.** If the adverse effects noted in the evaluation (item 2 above) are more than minimal, describe proposed measures to minimize those effects. Possible measures include, but are not limited to:
   a. Outlet elevation drop control measures (e.g., rock riffle, stepped grade controls)
   b. Velocity control measures (e.g., baffles, weirs, energy dissipaters)
   c. Flow concentration measures (e.g., pre-established cross-sectional shape)
   d. Substrate measures (e.g., roughened barrel, bed retention sills)