

NYSDEC

Permitting for Highway Departments

April 6, 2023

Todd Phillips

Region 6 – Deputy Permit Administrator

What We Will Talk About

- What needs a permit



- What does not



What We Will Talk About

- If it does need a permit...
 - Which permit does it need
 - Individual Permit
 - General Permit
 - Emergency Authorization

We Won't Talk About

- Stream Geomorphology



- Available for specific questions

We Won't Talk About Fish – Well Maybe Some



- DEC Jurisdictions Only
 - U.S. Army Corps of Engineers (ACOE)
 - Local Municipality
 - Local Flood Plain Development Permit
 - Office of Parks Recreation and Historic Preservation (OPRHP)
 - Inside the Park?
 - Adirondack Park Agency –
 - Wetlands

DEC Jurisdictions



Stream Protection

ECL Article 15-0501

6 NYCRR 608.2

- Classification and Standard C(T) or Higher (potentially being revised)
- Disturbance to Bed or Banks
 - Unclassified perennial stream takes-on classification to which it is tributary
 - Includes borings beneath

Navigable Waters

ECL Article 15-0505

6 NYCRR 608.5

- At or Below Mean High Water
- Excavations and Fills
 - Includes adjacent and contiguous wetlands

Navigable waters of the State means all lakes, rivers, streams and other bodies of water in the State that are navigable in fact or upon which vessels with a capacity of one or more persons can be operated notwithstanding interruptions to navigation by artificial structures, shallows, rapids or other obstructions, or by seasonal variations in capacity to support navigation. It does not include waters that are surrounded by land held in single private ownership at every point in their total area.

Water Quality Certification

Section 401 Federal Clean Water Act

6 NYCRR 608.9

- Discharge to Waters of U.S. Must Satisfy Water Quality Standards
- For Projects Requiring a Federal Permit
 - Section 404 permits

If you need an ACOE permit – you need something from us too unless it meets Blanket WQC

Freshwater Wetlands

ECL Article 24
6 NYCRR 663, 664, 665

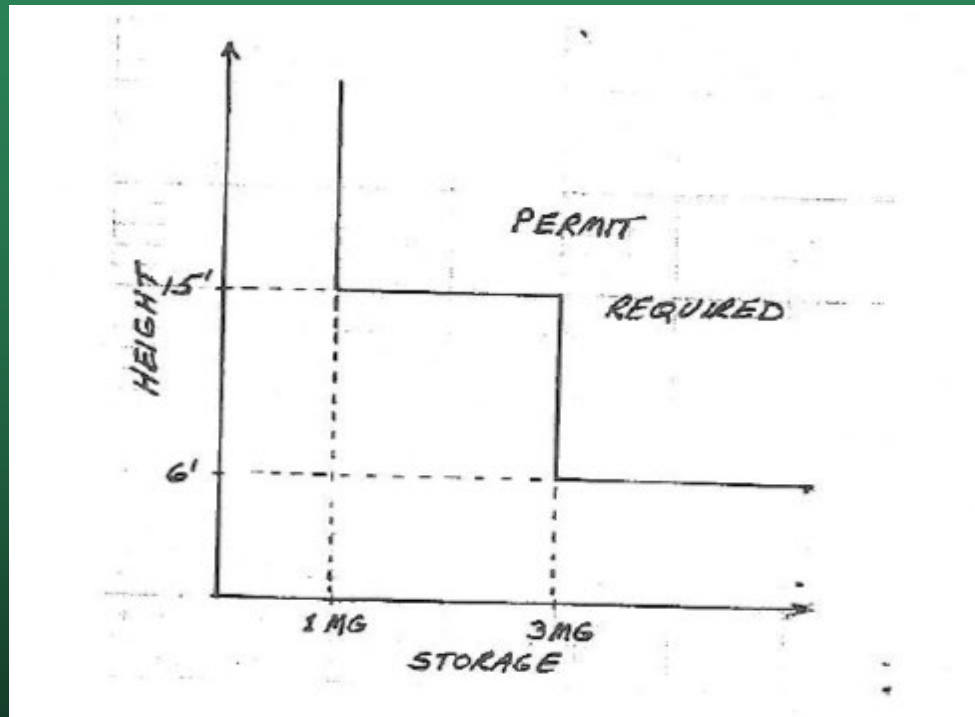
- Mapped as a NYS Wetland
- 12.4 Acres (5 hectares) and Larger
- Adjacent Areas extend 100 feet (30 meters) from wetland boundary
- Smaller of Local and Unusual Importance
- Regs currently being revised

Dam Safety

ECL Article 15-0503,
6 NYCRR Part 608.3

- Dams and Impounding Structures
 - Construct, Repair, Breach, Remove
 - Height \leq six feet regardless of impounding capacity;
 - Impoundment capacity \leq one million gallons regardless of height
 - Height < 15 feet and a maximum impounding capacity less than three million gallons
 - Ordinary maintenance

JURISDICTIONAL GRAPHIC



**Anything
to the
Right of
the Solid
Line
Requires a
Permit**

***NOTE: Height As Measured From the Downstream Toe of the Dam
to the Highest Point on the Dam and Impounded Water
Volume as if at the Top of the Dam)***

Wild, Scenic & Recreational Rivers

ECL Article 15, Title 27

6 NYCRR 666

- Land use Guidelines Based on Designation
 - Prohibited uses
 - Development restrictions
 - Permitting requirements
 - Variances
- Full list of Rivers available at:
 - <https://www.dec.ny.gov/permits/32739.html>
- Use details by Designation available at:
 - <https://www.dec.ny.gov/permits/6393.html>

Wild, Scenic & Recreational Rivers

Examples Include:

Moose River, Main Branch: Approximately fifteen and four-fifths miles from the confluence of the South and Middle Branches of the Moose River to a point where the Main Branch intersects the Adirondack Park boundary.

West Canada Creek: Approximately sixteen and four-tenths miles from a point where the creek intersects the Herkimer-Hamilton County boundaries to the Harvey Road bridge crossing.



Construction Stormwater

ECL

6 NYCRR Part

- Before commencing a construction activity, the owner or operator of a construction project that will involve soil disturbance of one or more acres must obtain coverage under the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity.

To Obtain SWPPP Coverage

- Develop a Stormwater Pollution Prevention Plan (SWPPP) in accordance with the requirements in the General Permit for Stormwater Discharges from Construction Activity.
- Submit a completed Notice of Intent (NOI) (PDF) to the Department. Issued from Central Office, Albany
 - Projects subject to MS4 regulation must submit a signed MS4 SWPPP Acceptance Form (PDF) along with their NOI. Consult the Stormwater Interactive Map to determine whether your project is within an MS4.
 - Some MS4s have extended their jurisdiction for SWPPP review to the municipal boundary; therefore, even if your project is located outside an MS4 regulated area, you should contact the municipal office to find out whether you need to submit your SWPPP for approval.
- For additional information the Stormwater Webpage may be found at <https://www.dec.ny.gov/chemical/43133.html>

No Permit Needed

- If you are not disturbing the bed or the bank
- Not excavating or placing fill below the MHW



No Permit Needed

- To remove debris when not entering the water
 - Hook a chain on it and drag it
 - Lift from above
 - Cut it up to make more manageable

No Permit Needed

- Hanging or leaning tree's may be cut but leave the roots
 - #1 no disturbance to the bed or bank
 - #2 stabilization of the bank
- Remember – Not all debris needs to be removed – good for habitat, cools the water, provides shade

Which Permit to Use

Department of Environmental Conservation

Office of General Services

Department of State

US Army Corps of Engineers

JOINT APPLICATION FORM

For Permits for activities affecting streams, waterways, waterbodies, wetlands, coastal areas, sources of water, and endangered and threatened species.

You must separately apply for and obtain Permits from each involved agency before starting work. Please read all instructions.

1. Applications To:

>NYS Department of Environmental Conservation Check here to confirm you sent this form to NYSDEC.

Check all permits that apply:

<input type="checkbox"/> Stream Disturbance	<input type="checkbox"/> Dams and Impoundment Structures	<input type="checkbox"/> Tidal Wetlands	<input type="checkbox"/> Water Withdrawal
<input type="checkbox"/> Excavation and Fill in Navigable Waters	<input type="checkbox"/> 401 Water Quality Certification	<input type="checkbox"/> Wild, Scenic and Recreational Rivers	<input type="checkbox"/> Long Island Well
<input type="checkbox"/> Docks, Moorings or Platforms	<input type="checkbox"/> Freshwater Wetlands	<input type="checkbox"/> Coastal Erosion Management	<input type="checkbox"/> Incidental Take of Endangered / Threatened Species

>US Army Corps of Engineers Check here to confirm you sent this form to USACE.

Check all permits that apply: Section 404 Clean Water Act Section 10 Rivers and Harbors Act

Is the project Federally funded? Yes No

If yes, name of Federal Agency: _____

General Permit Type(s), if known: _____

Preconstruction Notification: Yes No

>NYS Office of General Services Check here to confirm you sent this form to NYSOGS.

Check all permits that apply:

State Owned Lands Under Water

Utility Easement (pipelines, conduits, cables, etc.) Docks, Moorings or Platforms

>NYS Department of State Check here to confirm you sent this form to NYSDOS.

Check if this applies: Coastal Consistency Concurrence

2. Name of Applicant Taxpayer ID (if applicant is NOT an individual)

Mailing Address _____ Post Office / City _____ State _____ Zip _____

Telephone _____ Email _____

Applicant Must be (check all that apply): Owner Operator Lessee

3. Name of Property Owner (if different than Applicant)

Mailing Address _____ Post Office / City _____ State _____ Zip _____

Telephone _____ Email _____

For Agency Use Only Agency Application Number: _____

JOINT APPLICATION FORM 08/16 Page 1 of 4

**NYS Department of Environmental Conservation
MUNICIPAL GENERAL PERMIT (GP-6-18-001)
AUTHORIZATION FORM**

For DEC Use Only

<input type="checkbox"/> Stream Disturbance (Beds and Banks)	DEC # _____
<input type="checkbox"/> 401 Water Quality Certification	NYTM-E _____ NYTM-N _____
<input type="checkbox"/> Excavation & Fill in Navigable Waters	WIN: _____ Effective Date _____
<input type="checkbox"/> Freshwater Wetlands	

Signature: _____ Title: _____

cc: _____

New Installation Replacement/Repair

Municipality: _____

Address: _____

Contact Name: _____ **Title:** _____

Phone Number: _____ **Fax#:** _____

Project Start Date: _____ **End Date:** _____

Exact Project Location (Include location map): _____

Stream or Waterbody

Project Description and Purpose (include a description of materials and measurements of any existing structures and a description of materials and measurements of any new structures, esp. culverts): _____

Municipal Authorization

Name (print) _____ **Title** _____

Signature _____ **Date** _____

This form must be completed and submitted by Fax or US mail to the appropriate DEC office. Regulated work may not commence until DEC's review period has expired or authorization is received.

For projects located in Jefferson, Lewis, St. Lawrence Counties:

NYS DEC
Division of Permits
317 Washington Street
Watertown, NY 13601
Phone: (315) 785-2245

For projects located in Oneida and Herkimer Counties:

NYS DEC
Division of Permits
207 Genesee Street
Utica, NY 13501
Phone: (315) 793-2554

Individual Permit

- Joint Application for Permit
- Short Environmental Assessment Form
- Pictures
- Location Map
- Sketch/Drawings, accurate dimensions
 - Plan view
 - Cross Sectional view – Show MHW
 - Amount of Excavation and/or Fill
 - Written Description – How you will do it

Individual Permit

- Wetlands – Only application with a Fee
- Fees updated as of January 1, 2023
- \$100 for most projects
- \$1000 for commercial/industrial structures

General Permit

- Joint Application for Permit
- Pictures
- Location Map
- Sketch/Drawings, accurate dimensions
 - Plan view
 - Cross Sectional view – Show MHW
 - Amount of Excavation and/or Fill
 - Written Description – how you will do it

Types of General Permits

- DEC Region 6 Municipal General Permit (Expires May 16, 2023)
- Stream Activities Permit
- Logging General Permit
- Wetland Adjacent Area

What's the Difference

- Not much really
 - Same plans, same drawings, same photo's, same written description
 - Slightly simplified application form
- General Permit does get you out of the SEQR Form and Public Notice

Authorized Activities

- Very Important to READ the authorized activities section
 - If your project fits one of them then...
- Very Important to READ the Conditions
 - If you can comply with ALL of them
 - Submit the application form & documents

General Permit

- Generally minor projects
- Limited distance from an existing structure
- Culvert Sizing
- In-Work window slightly different
 - Regionwide Permit
 - GP No In-water work = Sept 15 – June 1
 - Southern portion of Region = October 1 – May 15

Blanket Water Quality Cert

- If you obtain a Nationwide Permit from the USACOE it may come with a Blanket Water Quality Certification
- You will need to meet all Special and General Conditions of the NWP
- Blanket Issued October 15, 2021

Thou Shall Not



How Long Does It Take

- Depends –
 - First come first served
 - Is your application complete or do we have to go back and forth? (a lot)
 - Did you use the correct application?
 - Major project = Public Notice
 - Did you wait until Sept 10 to apply for a permit in a Trout stream?
 - Hard copy vs electronic?

Excuses

- DOT bought all the stone and I can't get any...
- I don't have pipe that big...
- We were busy...

What if...



Emergency Authorization

- Definition of Emergency -
- “....immediately threaten life, health, property, general welfare or natural resources....
 - Note the definition does not include the words might, could, or but...

Pursuant to Section 70-0116.2, an emergency authorization may be issued for a term not to exceed 30 days and renewed for one additional term not to exceed 30 days. An emergency action must be concluded within 60 days of the original approval or necessary permits must be applied for.

Emergency Authorizations

Emergencies are events that immediately threaten life, health, property, general welfare or natural resources, and require a prompt response. For the Department's major environmental regulatory permit programs, the [Uniform Procedures Regulations](#) (link leaves DEC website) provide for expedited project review and issuance of an Emergency Authorization.

How to Request an Emergency Authorization

Prior to commencing any action or project, you must notify the Department's [Regional Permit Administrator](#) and provide:

1. A description of the proposed action;
2. A location map and plan of the proposed action;
3. Reasons why the situation is an emergency based on the immediate protection of life, health, general welfare, property or natural resources;
4. Actions to be taken to minimize environmental impacts; and
5. Any additional information requested by the Department.

If prior notice is not possible, a state or local government agency may take immediate action, but must notify the Department's Regional Permit Administrator within 24 hours of taking action. The notification must provide the Department a basis on which to issue an Emergency Authorization.

The Department will issue a decision to grant or deny the Emergency Authorization within two business days of receipt of the required information. The Department must:

- Make a "Finding of Emergency" stating why immediate action is needed (generally speaking an emergency declaration by New York State or a local government fulfills [this criteria](#) although the Department can make its own finding); and
- Determine that the project will be carried out in a manner which causes the least change, modification or adverse impact to life, health, property or natural resources. Conditions may be placed in the Emergency Authorization and enforced to assure compliance with the Emergency Authorization and other regulatory standards that normally apply.

Duration of Emergency Authorizations

Emergency Authorizations can only be issued for a period of up to 30 days and renewed for up to an additional [30 day](#) period. Projects that continue beyond the 60-day period require a full and complete application for permit and will be subject to all procedural requirements for review.

Key Points to Remember

- Immediate action –
- Good for 30-days with one 30-day extension
- You can act without approval but you must report it within 24 hours – we still have to issue the Authorization

Stream Crossings

The Good, the Bad and the Ugly

GOOD

- Pre-installation stream conditions should be retained to the maximum extent possible.



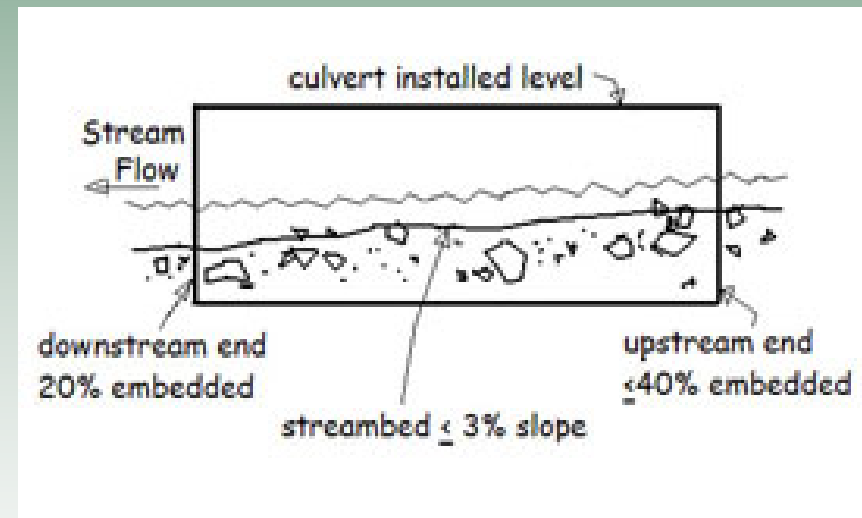
GOOD

- Bridges and bottomless arches are preferred and should be used whenever possible.



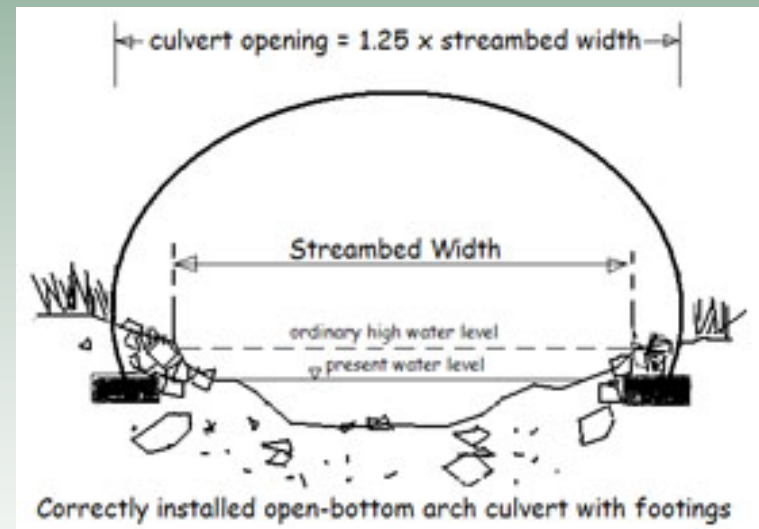
GOOD

- Embedded into the streambed to at least 20 percent of the culvert height at the downstream invert
- Used only on "flat" streambeds (slopes no steeper than 3 percent)
- Installed level



GOOD

- Culvert opening should be at least 1.25 times the streambed width
- Culvert should not restrict flow



BAD

- Insufficient culvert size for flow
- Large rock armoring suggests washout problems in the past



BAD

- Too shallow
- No substrate



BAD

- Perched culvert
 - Causes scour pools
 - Impassable to some aquatic wildlife



BAD

- Double culverts
 - Restrict natural flow
 - Prone to clogging
 - Can cause ponding and flooding
 - High washout potential



Of course, we couldn't forget about the ugly!!!



Contact Us

- Utica Permits Office - 315-793-2554
 - Hit Zero – ask for someone in permits
- Watertown Permits Office 315-785-2245
- DEP.R6@dec.ny.gov
- Environmental Resource Mapper,
Application Forms, Guidance at
- www.dec.ny.gov