• Emergency Rulemaking
• District Wetlands and Streams
• Overview – District Wetland and Stream Regulations
• Overview – Permit Application Requirements
• Demonstration - How to Apply
• Next Steps
EMERGENCY RULEMAKING

- Federal rulemakings significantly curtailed District’s ability to protect wetlands and streams
- Navigable Waters Rule removed regulatory protection for ephemeral streams and many wetlands
- Chapters 25 & 26, Title 21 DC Municipal Regulations
- Effective now
WHAT IS A WETLAND?

Definition:

“An area that is inundated by tides or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions; and, includes a marsh, swamp, pond or vernal pool.”
WHAT IS A WETLAND?
AQUATIC RESOURCE FUNCTIONS

- Water quality
- Wildlife habitat
- Groundwater recharge
- Shoreline erosion protection
- Floodwater storage
- Retention, assimilation, and transformation of nutrients and pollutants
- Riparian buffers
- Stream baseflow
HISTORY OF WETLANDS IN THE DISTRICT
HISTORY OF WETLANDS IN THE DISTRICT
2020 Wetland Conservation Plan

- No net loss and eventual net gain of wetland acreage and function
- Inventory and assessment
- Wetland Registry geodatabase
- Detailed program and implementation plan
- Wetlands of special concern
2020 Status of District Wetlands

• 289 acres, 291 individual wetlands
• Over 92% located within 500 feet or less of development
• 76% <0.5 acre in size and 66% <0.25 acre in size
• 169 acres tidal, 120 acres non-tidal
• 114 acres forested, 7.6 acres scrub shrub, 144.6 acres emergent, 22.8 acres unconsolidated bottom
• 74% on NPS land
WHAT IS A STREAM?

Definition:

“A channel or conveyance of surface water with perennial, intermittent, or ephemera flow and having defined bed and banks, whether natural or artificial.”
HEADWATER STREAMS

EPHEMERAL AND INTERMITTENT STREAMS

• Individually or cumulatively exert a strong influence on the biological, chemical, and/or physical integrity of downstream waters
OVERVIEW - DISTRICT WETLAND AND STREAM REGULATIONS

- Fisheries and Wildlife Omnibus Act - critical areas designation
- Federal vs. District jurisdiction
- District Wetland and Stream permit (WSP) vs. Water Quality Certification (WQC)

Key Regulatory requirements:
- Water dependency and analysis of practicable alternatives
- Avoidance and minimization analyses
- Mitigation
- Fees
- Wetlands of special concern
21 DCMR § 2605

DOEE will only issue permits for water-dependent projects and non-water dependent projects that have no practicable alternatives

- Justification that water access is required for basic project purpose
- Does water access enhance project vs. function as essential element of project (i.e., dock, environmental education center)?
- Similar to 404(b) guidelines for special aquatic sites
- If non-water dependent, then analysis of practicable alternatives
Analysis of Practicable Alternatives

21 DCMR § 2605

- Can basic project purpose be accomplished using one or more other sites in same general area that would avoid impacts?
- Would reduction in size, scope, configuration, or density of project accomplish basic project purpose?
- Consider alternative designs
- Is project necessary to meet demonstrated public benefit?
- Examine at least 4 alternative sites, including no-action alternative
Avoidance and Minimization Analyses

First, you must **AVOID**

if you cannot, then **MINIMIZE**

as a last resort, **MITIGATE**
Avoidance and Minimization Analyses

21 DCMR § 2606

- Modify size, scope, configuration, density of project
- Address site constraints – infrastructure, access, zoning
- Confine impacts to fringe or periphery of wetlands and streams
Mitigation

Goal: no net loss and eventual net gain

- Required to offset functional, temporal, and permanent losses
- In advance or concurrent with approved impacts, otherwise higher ratios to offset temporal loss
- Minimum 1:1 ratio for in-kind functional replacement
- Higher ratios when in-kind functional replacement not possible
Mitigation Methods

In order of preference:

1. **Creation** of a new wetland
2. **Restoration** of a previously existing wetland or stream
3. **Enhancement** of an existing wetland or stream functions
4. **Preservation** of an existing wetland or stream

21 DCMR § 2607, 2608
Mitigation Sites

In order of preference:

1. **ON-SITE** where impacts will occur
2. IN DRAINAGE BASIN …
3. IN SUB-WATERSHED …
4. OUTSIDE WATERSHED, BUT WITHIN DISTRICT

**GOAL:** no net loss and eventual net gain

21 DCMR § 2607, 2608
Mitigation Mechanisms

Permittee responsible, on-site, in-kind

- No net loss of acreage and function

Payment into District’s Wetland and Stream Trust Fund

- Justification required
- Not USACE approved
- <2,500 SF unavoidable impacts

PREFERRED OPTION
\textbf{Wetland and Stream Trust Fund}

\textbf{21 DCMR § 2611}

- **Unavoidable impacts**
  \(<2,500\) SF for single project can pay

- **Not a substitute for avoidance and minimization**

- Not USACE-approved

- Payments calculated based on realistic cost for District to implement mitigation \textit{in-lieu} of permittee
**Fees**

**21 DCMR § 2604**

- Initial application - based on size, and project type
- Paid online through SGS when application is submitted

<table>
<thead>
<tr>
<th>Service Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wetland and Stream Permit Review and/or Water Quality Certification Review</td>
<td>$750.00</td>
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<tr>
<td>Minor Permit/Certification Modification (projects with impacts &lt; 5,000 SF)</td>
<td>$750.00</td>
</tr>
<tr>
<td>Major Permit/Certification Modification (projects with impacts &gt; 5,000 SF)</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>Request DOEE to perform Presence/Absence Survey</td>
<td>Desktop Review $50.00</td>
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<tr>
<td>Request DOEE to perform Presence/Absence Survey</td>
<td>Site Visit $75.00 for first hour plus $100 for each additional hour</td>
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## Fees

### 21 DCMR § 2604

- Supplemental - based on proposed impact
- Paid online through SGS after DOEE has commented on application but prior to issuance of WSP/WQC

<table>
<thead>
<tr>
<th>Area Description</th>
<th>Fee</th>
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<tbody>
<tr>
<td>&lt; 5,000 SF</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>≥ 5,000 SF to &lt; ¼ acre</td>
<td>$3,000.00</td>
</tr>
<tr>
<td>≥ ¼ acre to &lt; ½ acre</td>
<td>$4,500.00</td>
</tr>
<tr>
<td>≥ ½ acre to &lt; ¾ acre</td>
<td>$6,000.00</td>
</tr>
<tr>
<td>≥ ¾ acre to &lt; 1 acre</td>
<td>$7,500.00</td>
</tr>
<tr>
<td>≥ 1 acre</td>
<td>$9,000.00</td>
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</table>
## Fees

**21 DCMR § 2604**

- Additional - based on mitigation and contamination
- Paid online through SGS after DOEE has commented on application but prior to issuance of WSP/WQC

<table>
<thead>
<tr>
<th>Permittee-Responsible Mitigation Plan Review</th>
<th>$1,580.00</th>
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<tbody>
<tr>
<td>Permittee-Responsible Mitigation Site Inspection/Monitoring for Impacts to PEM(^1)/PSS(^2) Wetlands and/or Streams</td>
<td>$3,950.00</td>
</tr>
<tr>
<td>Permittee-Responsible Mitigation Site Inspection/Monitoring for Impacts to PFO(^3) Wetlands</td>
<td>$6,900.00</td>
</tr>
<tr>
<td>Contaminated soil, sediment, groundwater, or surface water within project site</td>
<td>$1,300.00</td>
</tr>
</tbody>
</table>
Wetlands of Special Concern

21 DCMR § 2616

- Similar to MD wetlands of special state concern
- Unique areas containing ecologically significant communities or habitat
- Higher mitigation ratios
- Nearly all located on NPS land
- Map available on website
OVERVIEW - WSP/WQC APPLICATION

REQUIREMENTS

• WSP vs. WQC
• Project Planning
  • Wetland Registry
  • Pre-application meeting
  • Presence/absence survey
  • Delineation/Jurisdictional determination
• DEMO - How to Apply
  • SGS
  • Fees
Proposed impacts to wetlands or streams

Waters of US (WOTUS)
- Apply to USACE for 404 permit and apply to DOEE for 401 WQC

Non-WOTUS (isolated)
- Apply to DOEE for wetland and stream permit
WETLAND REGISTRY:

- Mapped nearly all District Wetlands
- Critical tool for project planning
- Stream layer included
- Does not replace site-specific delineations
- Access on DOEE website: https://doee.dc.gov/service/wetland-registry
PROJECT PLANNING

Pre-application meeting

- 30 days prior to submitting WQC application – required by federal CWA regulations
- Recommended for most projects, especially large/complex
**PROJECT PLANNING**

**Presence/Absence Survey**

- Recommended prior to selecting a project site
- Very early in planning process
- Environmental consultants
- Can request DOEE to perform
- **Does not replace need for wetland and stream delineation**
Wetland and Stream Delineation
- Required for WSP/WQC applications
- Using USACE Method and Regional Supplements
- Flag boundaries and generate report

Jurisdictional Determination
- Necessary to determine WSP vs. WQC
- Preliminary JD or formal = any decision documentation from Corps
PERMIT APPLICATION REQUIREMENTS

21 DCMR § 2602

Application documents required for most projects:

• Project description
• USACE Joint permit application form
• Wetland and stream delineation report and mapping
• Site photographs
• USACE jurisdictional determination decision document
• Avoidance and minimization analysis
• Site plan - grading, ESC, profile, cross-sections
• Mitigation plan, if applicable
• Functional assessment, if applicable
HOW TO APPLY FOR WSP/WQC

DOEE’s website updated with details on required documentation, guidance, and instructions on how to apply: https://doee.dc.gov/service/wetlands-and-streams-district

Surface and Groundwater System:
http://doee.dc.gov/swdb
DEMO - HOW TO APPLY FOR WSP/WQC

Surface and Groundwater System:
http://doee.dc.gov/swdb
NEXT STEPS

• Gather feedback during public comment period
• Send comments to Wetlandprogram@dc.gov by 12/16/20
  • DOEE to consider and respond to comments
• Emergency rulemaking effective for up to 120 days from adoption
• Final rulemaking within 120 days from adoption
QUESTIONS/COMMENTS?

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