

STAFF DRAFT – NOT APPROVED BY AGENCY

 <p>Adirondack Park Agency</p> <p>P.O. Box 99 1133 NYS Route 86 Ray Brook, New York 12977 (518) 891-4050 · Fax: (518) 891-3938 www.apa.ny.gov</p>	APA General Permit 2017G-1	Effective Date:
	In the Matter of the Issuance of a General Permit for: ACCESS TO AND REPLACEMENT OF UTILITY POLES IN WETLANDS	

SUMMARY AND AUTHORIZATION

This general permit is issued to regional and municipal utility companies within the Adirondack Park to allow for the replacement of utility poles in wetlands and/or the establishment of temporary structures in wetlands to access utility poles.

This general permit is in effect until modified or revoked by the Agency.

JURISDICTION

Pursuant to Article 24 of the Environmental Conservation Law (the Freshwater Wetlands Act), Executive Law §§ 809(2)(a) and 810(1) (the Adirondack Park Agency Act), and 9 NYCRR §§ 570.2, 578.2(a), and 578.3(n)(1) and (2), within the Adirondack Park, any form of filling or any other activity that substantially impairs the functions served by or the benefits derived from freshwater wetlands is a "regulated activity" requiring a permit from the Agency. Replacing utility poles in wetlands when stone ballast is added to the new hole and placing temporary structures such as bog matting in wetlands constitute fill, and may also substantially impair the functions and values of wetlands.

ELIGIBILITY

This general permit only applies where:

- a. The sole basis of Agency jurisdiction on the project site is fill or substantial impairment to the functions and values of a wetland incidental to the replacement of a utility pole or the establishment of a temporary structure for access to a utility pole;
- b. The replacement pole will be located within the existing utility company right-of-way or fee ownership;
- c. The project will not result in an increase in the number of utility poles in wetlands; and
- d. The project will be undertaken by a regional or municipal utility company.

CONDITIONS

1. All utility companies undertaking an activity authorized herein shall comply with all terms and conditions of this general permit, and shall require that any agent, contractor, project engineer, or other person undertaking an activity authorized herein acknowledge in writing that they have received a copy of and have read and understand this permit and all conditions. Failure to comply with this permit is a violation and may subject the utility company and its agents, contractors, project engineers, and other parties to civil penalties and other legal proceedings.
2. Prior to undertaking the replacement of any pole to a height or structure width greater than the existing pole, the utility company shall obtain from the Agency either a letter of compliance with this general permit or a new permit for the proposal.
3. Whenever practicable, access through wetlands shall occur on frozen ground and with the use of wide-tracked vehicles.
4. All activities shall occur in compliance with the "Best Management Practice for Preventing the Transportation of Invasive Plant Species," published by Environmental Energy Alliance of New York, 4/26/2012.
5. Temporary access structures, including bog mats and work pads, shall be removed within 30 days.
6. Existing poles to be replaced shall be removed completely from the wetland, including the portion of the pole that was below grade.
7. If the hole for a replacement pole is to be backfilled with gravel or other ballast, the top six inches shall be backfilled with organic soil and the final elevation around the pole shall be the same as the surrounding wetland surface.
8. The total area of wetland disturbance shall be limited to the minimum necessary to repair, replace or construct the utility pole and line. Clearing of existing vegetation shall be limited to vegetation that poses an immediate hazard or hindrance to construction activities. Grading and grubbing of the wetland shall be minimized to the greatest extent practicable.
9. Each utility company that undertakes an activity pursuant to this general permit shall prepare an annual report, due on December 31 of each year, summarizing the activities proposed to be undertaken. The report shall include the geographic coordinates of each activity and the pole numbers involved, or a Geographic Information System (GIS) shape file containing the relevant information.

10. The Agency may conduct on-site investigations, examinations and evaluations as it deems necessary to ensure compliance with the terms and conditions of this permit. Such activities shall take place at reasonable times and upon advance notice where possible. The utility company shall provide access to the Agency upon request.
11. This permit does not grant any right to trespass upon the lands of, or interfere with, the riparian rights of others in order to perform the permitted work, nor does it authorize the impairment of any rights, title, or interest in real or personal property.
12. Nothing contained in this permit shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local. In particular, ECL Article 11 or Article 15 permits may be needed from the New York State Department of Environmental Conservation.

FINDINGS OF FACT

1. Freshwater wetland covertypes potentially affected by access to and replacement of utility poles include the covertypes referenced in the Freshwater Wetlands Act: wetland trees, wetland shrubs, emergent vegetation, rooted, floating-leaved vegetation, free-floating vegetation, wet meadow vegetation, bog mat vegetation, and submergent vegetation. These covertypes form the wetlands described in the Agency's implementing regulations: deciduous swamp, coniferous swamp, shrub swamp, emergent marsh, deep water marsh, wet meadows and bog.
2. The wetlands affected by pole replacement and access provide important benefits valued by society such as flood and storm control and abatement, wildlife habitat, surface and sub-surface water resource protection, recreation, erosion control, education and scientific research, open space and aesthetics, and nutrient cycling.
3. Using wide-tracked vehicles and bog mats on frozen ground helps to minimize rutting, compaction of soils, and alteration of drainage patterns in wetlands.
4. The timely removal of bog mats, work pads, and other structures from a wetland will allow the wetland vegetation to recover more quickly and will protect wetland values.
5. The replacement of any pole to a height greater than the existing pole may result in adverse impacts to the scenic, aesthetic, open space, and other resources of the Park.
6. The project will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR 426.2 for the purposes of implementing § 14.09 of the New York State Historic Preservation Act of 1980.

CONCLUSIONS OF LAW

The Agency has considered all statutory and regulatory criteria for project approval set forth in Executive Law § 809, 9 NYCRR Part 574, Environmental Conservation Law §§ 24-0103 and 24-0105, and 9 NYCRR Part 578. The Agency hereby finds that, for all wetland value ratings, the regulated activities authorized by this general permit and undertaken as authorized:

- a. will be consistent with the land use and development plan;
- b. will be compatible with the character description and purposes, policies, and objectives of the land use area(s) involved;
- c. will be consistent with the overall intensity guidelines for the land use area(s) involved;
- d. will comply with the shoreline restrictions of Executive Law § 806;
- e. will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the economic and social benefits that might be derived therefrom; and
- f. will secure the natural benefits of wetlands associated with the project, consistent with the general welfare and beneficial economic, social, and agricultural development of the state.

GENERAL PERMIT issued this
day of _____, 2017

ADIRONDACK PARK AGENCY

Richard E. Weber, III
Deputy Director (Regulatory Programs)

STATE OF NEW YORK
COUNTY OF ESSEX

On the _____ day of _____ in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber, III personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

REW:slp