

## Coastal Use Permits: General or Site-Specific?

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Since my June 11th post addressing coastal use permits (CUPs) in the context of environmental management orders (EMOs), I've learned another lesson in accounting for the timing of when a CUP will be issued and the effect the timing may have on the parties. Even though parties have generally sought general permits, there are times when it may be much smarter to seek a site-specific permit.

Once a party determines that it needs a CUP, there is another step in the process that is often taken for granted: should you apply for a general permit or site-specific one? For the most part, experts have applied for general permits. The incentive for getting this type of permit is that it's good for two years from the date of issuance, requires minimal regulatory approval, and costs less than other permits. Another reason for the prevalence of general permits over site-specific permits is simply that the first sampling expert chose to apply for a general permit and later experts have followed suit. But that may not always be a good idea.

Part of the general permit application process requires that the applicant provide an explanation of efforts to mitigate environmental damage. In assessing the optimal environmental conditions based on the time of year for the type of testing necessary, an applicant may list an intended start date in the application, even if that date is months after the expected issuance date of the general permit. Thus, problems may arise when an EMO requires that testing be completed within a certain time period triggered by the issuance of the general permit, while the intended start date in the application is outside of the EMO's timeframe.

So what do you do when the intended start date and court-issued EMO have conflicting time periods for conducting testing? The Office of Coastal Management has expressed that its hands are tied to prohibit work under a general permit before the intended start date because, by its very nature, a general permit allows testing from the date of issuance. Thus, the unfortunate reality is that because a general permit technically allows testing to begin from the date of issuance (even if that date is long before the intended start date listed in the application), an applicant cannot rely on a general permit to ensure that testing will be done during optimal environmental conditions. Therefore, the only way to use the start date listed in the application for a general permit is by

agreement between the parties or through court intervention, which will inevitably lead to a battle of experts over what is in fact the optimal start date. This is not a good position you want to be in.

If optimal start dates are identified at the outset, the pitfalls of a general permit can be avoided by applying for a site-specific permit. This type of permit allows testing only during the time period applied for and thus avoids these timing problems with a general permit. A site-specific permit costs only about \$315 more than a general permit, so that should not be a significant factor. Both types of permits require the same level of mitigation, so that's a non-issue. The primary deterrent to seeking a site-specific permit is that it may take longer to obtain because it requires additional government agency approval. A general permit can also be converted into a site-specific permit; however, keep in mind that the conversion may be perceived or construed as an effort to delay testing.

As with most things, the key is understanding the full scope of testing before beginning the application process and not blindly following the lead of an earlier expert. If the area to be tested is particularly sensitive, which is likely since it's within the Coastal Zone, a site-specific permit may be the best way to guarantee that testing be completed during true, optimal conditions and to avoid tensions between an EMO and a CUP.