

**DEPARTMENT OF THE ARMY PROGRAMMATIC GENERAL PERMIT  
STATE OF MARYLAND**

The Baltimore District of the U.S. Army Corps of Engineers (Corps) hereby issues a revised State Programmatic General Permit that includes the revised Category List for activities in Waters of the United States, including wetlands and navigable waters within Maryland. Activities with minimal adverse environmental effects, as specified by the terms and conditions of this general permit (MDSPGP), are either non-reporting to the Corps (provided required State and local permits and required State certifications are received), or will be reviewed by the Corps, with recommendations from the resource agencies and, in certain cases the public, for eligibility to be authorized under the MDSPGP. This MDSPGP will be used in Maryland to authorize most activities with only minimal individual and cumulative adverse effects on the environment. The Corps individual permit review process and activities exempt from Corps jurisdiction are not affected by the MDSPGP.

**I. Authorities:**

**A. Federal Authorities:**

1. Section 9 and 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 and 403).
2. Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344).
3. Pursuant to Section 404 of the CWA and Section 10 of the Rivers and Harbors Act, the Corps has the authority to issue general permits, which can operate in conjunction with a State regulatory program that protects the aquatic environment in a manner equivalent to the Department of the Army (DA) regulatory program, provided that the activities authorized under the general permit are substantially similar in nature and result in no more than minimal individual or cumulative adverse effects on the environment.
4. Upon the recommendation of the Chief of Engineers, and under the provisions of Section 404 of the CWA, as amended, and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the Secretary of the Army hereby authorizes the discharge of dredged, or fill material or the placement of structures into Waters of the United States including wetlands and navigable waters. These discharges and structures must comply with all terms and conditions identified in the MDSPGP. Discharges or structures that do not meet the terms and conditions of Category I will be

reviewed by the Corps to determine their eligibility for authorization under the MDSPGP.

5. Section 404(q) of the CWA states that agreements are to be entered to minimize to the maximum extent practicable, duplication, needless paperwork and delays in the issuance of permits. Memoranda of Agreement (MOAs) have been developed between U. S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), and Environmental Protection Agency (EPA) to outline the means for achieving these goals. The procedures established by these MOAs will be maintained, where applicable, in this permit.

**B. State Authorities:**

1. Nontidal Wetlands Protection Act, Environmental Article, Section 5-901, et Seq.;
2. Waterway Construction Law, Environmental Article, Section 5-501 et Seq.;
3. Tidal Wetlands Law, Environmental Article, Section 16-101;
4. Water Quality Certification, Environmental Article, Sections 9-313 through 9-323; and
5. All applicable regulations.

**II. Scope of Activities:**

**A. Applicability:**

This general permit applies to the discharge of dredged or fill material or the placement of structures into Waters of the United States, including wetlands and navigable waters. Discharges of dredged or fill material or the placement of structures, as described in Category I of the MDSPGP Category List, that comply with the terms and conditions contained in the MDSPGP and have only minimal individual and cumulative adverse effects on the environment are authorized by the Corps. Discharges of dredged or fill material or the placement of structures, as described in Categories II and III of the General Permit Category List, will be reviewed by the Corps and may be verified by the Corps under the MDSPGP. This review under Categories II and III is a term or condition for use of the MDSPGP. Authorization under the MDSPGP requires compliance with all the terms and conditions of the MDSPGP and that the activities authorized have only minimal individual and cumulative adverse effects

on the environment. The term “discharge of dredged material,” as defined at 33 CFR 323.2(d), means any addition of dredged material, including redeposit of dredged material other than incidental fallback, within Waters of the United States. The term “discharge of fill material,” as defined at 33 CFR 323.2(e) means the addition of any material, including the redeposit of dredged material that serves the primary purpose of replacing an aquatic area with dry land or changing the bottom elevation of a waterbody. The term “discharge of fill material” also means some discharges within Waters of the United States, including wetlands and navigable waters, associated with activities such as mechanized land clearing, ditching, channelization, or other excavation. The term “structure,” as defined at 33 CFR 322.2(b) shall include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle or obstruction. The term “Waters of the United States” means all waters defined by DA Regulations.

**B. Activities Authorized by the MDSPGP:**

Activities authorized by the MDSPGP include all activities listed in Category I of the attached MDSPGP Category List, and those activities in Categories II and III of the Category List that comply with all terms and conditions of the MDSPGP and have no more than minimal individual and cumulative adverse environmental effects. For activities in Category III, the Corps will consult with the resource agencies and the public, as appropriate, before making a decision to verify eligibility of projects for authorization under the MDSPGP. As a condition of its use, the MDSPGP requires verification in certain instances specified in the MDSPGP. Receipt of such verification does not eliminate the requirement that, to be authorized under the MDSPGP, the activity must comply with all its terms and conditions. The MDSPGP provides authorization in accordance with Section 404 of the CWA and/or Section 10 of the Rivers and Harbors Act.

**C. Activities Not Authorized by the MDSPGP:**

1. Instances where EPA’s Regional Administrator has notified the District Engineer and applicant in writing that he is exercising his authority under 404(c) of the CWA to prohibit, deny, restrict, or withdraw the use for specification, of any defined area for the discharge of dredged or fill material at the proposed site.
2. Activities that have been denied State authorization pursuant to the Maryland Nontidal Wetlands Protection Act or the Tidal Wetlands Act, or the Waterway Construction Act, or have been denied Water

Quality Certification or a Coastal Zone Consistency determination. Activities that previously have been denied DA authorization under Section 10 of the Rivers and Harbors Act of 1899 and/or Section 404 of the CWA also are not authorized by the MDSPGP without prior review and approval under the appropriate category of the MDSPGP, as determined by the Corps. Proposed activities that have not themselves been denied one of these authorizations, but are part of the same project or that occur on the same property as the denied project, may not be authorized by the MDSPGP without prior approval by the Corps.

3. Activities that were initiated prior to the MDSPGP without proper Federal authorization or without notification and approval by the State.
4. Activities that are proposed for MDSPGP authorization for the purpose of resolving violations of the CWA or the Rivers and Harbors Act of 1899 may not be authorized by the MDSPGP without prior approval by the Corps. Proposed activities that are not themselves violations, but that are part of the same project or that occur on the same property as the violation, may not be authorized by the MDSPGP without prior verification by the Corps.
5. Activities that will result in more than one acre of impact, both direct and indirect, and both temporary and permanent, to Waters of the United States, including wetlands and navigable waters.
6. Activities that have more than minimal individual and cumulative adverse environmental effects.
7. Activities that do not comply with the terms and conditions of the MDSPGP, which includes the terms and conditions of the MDSPGP Category List.

### **III. Procedures:**

Applicants who propose regulated activities must complete the Federal/State Joint Permit Application Form (application) in accordance with the application instructions, unless indicated otherwise. The delineation of wetland boundaries shall be accomplished in accordance with the current Federal Manual for Identifying Jurisdictional Wetlands and in accordance with appropriate guidance issued by the Corps. Applicants must submit the complete permit application to the Regulatory Services Coordination Office, Water Management Administration, Maryland Department of the Environment. General information and application forms can be obtained by calling the Regulatory Services Coordination Office at 1-800-876-0200. The complete application should be submitted

by the applicant to the Regulatory Services Coordination Office at the earliest possible date. Submission of an application is not required for certain activities identified in Category I on the enclosed General Permit Category List. All terms and conditions of the MDSPGP still apply to these activities.

**A. Federal, State and Local Approvals:**

Applicants are responsible for ensuring that all required federal, state and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP. The following State approvals, issued by the Maryland Department of the Environment (MDE), as applicable, must be obtained in order for the MDSPGP authorization to be valid.

1. Nontidal Wetlands and Waterway Construction: A State of Maryland Nontidal Wetlands and Waterways Permit; or a General Permit; or a Letter of Authorization; or an Authorization to Proceed.
2. Tidal Wetlands: A State of Maryland Tidal Wetlands License; or a Tidal Wetlands Permit; or a General Permit; or a General License.
3. Water Quality Certification (WQC): A WQC has been issued for Category I projects that meet the terms and conditions of the MDSPGP. Projects that are in other Categories and that meet the terms and conditions of the MDSPGP require individual or general water quality certification.
4. Coastal Zone Consistency (CZC): Projects that meet the terms and conditions of the MDSPGP have been determined to be consistent with the Maryland Coastal Zone Management Program (CZMP).

**B. MDSPGP Verification Procedures:**

1. **Category I (Corps review not required):** Proposed activities that are subject to Corps jurisdiction and that are part of a single and complete project that results in no more than minimal individual and cumulative adverse environmental effects, may proceed without an application to the Corps, provided that all required state and local authorizations are obtained and the activities meet all terms and conditions of the MDSPGP, that includes the terms and conditions of the MDSPGP Category List. Category I activities are shown on the enclosed MDSPGP Category List. NOTE: All Category I activities that meet one or more of the circumstances described in item #2 below (Category II) require an application to the Corps and review by the Corps under Category II. (i.e., Any activity that meets both Category I and Category II requires an

application to the Corps, regardless of whether or not the Category I activity condition says “No Application Required.”)

In all cases where an application is required, ONE of the following notifications must occur:

- The project proponent may not begin work until the Corps or MDE provides written verification to the applicant that the activity is eligible for authorization under the MDSPGP and that work can proceed as a Category I activity, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP, including activity-specific conditions in the MDSPGP Category List and any special conditions imposed by the Corps.
  - Alternatively, the Corps or MDE may provide notice to the applicant that the proposed work interferes with a Corps navigation or civil works project. The Corps will coordinate with the applicant to avoid the interference. Should the project be revised to avoid the interference, the applicant will be provided written verification that the activity is eligible for authorization under the MDSPGP. Work can proceed, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP, including activity-specific conditions in the MDSPGP Category List and any special conditions imposed by the Corps. If the project is not modified, the applicant will be notified in writing that an alternative Corps permit review is required.
  - Otherwise, the Corps or MDE will provide written notice to the applicant that an alternative Corps permit review is required.
2. **Category II:** An application to the Corps is required for all Category I activities under any of the circumstances listed below in items a through g, in which case that activity will be processed as a Category II activity. Category II activities are shown on the enclosed MDSPGP Category List.
- a. The project is proposed within 150 feet of the horizontal limits of a Corps navigation project as described in Category II.A.1;

- b. The project is proposed adjacent to or in a proposed or existing Corps civil works project, as described in Category II.A.2;
- c. The project is grandfathered by the State from MDE's permit requirements, as described in Category II.B;
- d. The project is exempt from MDE's permit requirements, as described in Category II.C;
- e. The project is proposed in a designated Special Area Management Plan (SAMP) area, as described in Category II.D;
- f. The project has been denied a Corps or MDE authorization as described in Category II.E.1; or
- g. The project is a violation of Section 404 of the CWA or Section 10 of the Rivers and Harbors Act of 1899 as described in Category II.E.2.

In these instances, the Corps will review the application to ensure that Corps interests and concerns are addressed. The project proponent must submit an application to the Regulatory Services Coordination Office to satisfy the application requirements of this category.

Upon receipt and review of the required application, ONE of the following notifications must occur:

- The project proponent may not begin work until the Corps or MDE provides written verification to the applicant that the activity is eligible for authorization under the MDSPGP and that work can proceed as a Category I activity, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP, including activity-specific conditions in the MDSPGP Category List and any special conditions imposed by the Corps.
- Alternatively, the Corps or MDE may provide notice to the applicant that the proposed work interferes with a Corps navigation or civil works project. The Corps will coordinate with the applicant to avoid the interference.

Should the project be revised to avoid the interference, the applicant will be provided written verification that the activity is eligible for authorization under the MDSPGP. Work can proceed, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP, including activity-specific conditions in the MDSPGP Category List and any special conditions imposed by the Corps. If the project is not modified, the applicant will be notified in writing that an alternative Corps permit review is required.

- Otherwise, the Corps or MDE will provide written notice to the applicant that an alternative Corps permit review is required.

3. **Category III:**

**General.** Applications for projects identified as Category III on the enclosed MDSPGP Category List will be reviewed by the Corps, and coordinated with Maryland Historical Trust (MHT), Maryland Department of Natural Resources (DNR), Environmental Protection Agency (EPA), National Marine Fisheries Service (NMFS) and/or U. S. Fish and Wildlife Service (FWS), and in some cases the public to determine eligibility for authorization under the MDSPGP. If the Corps determines that the applicant's proposed project will result in no more than minimal individual and cumulative adverse environmental effects, meets the terms and conditions of the MDSPGP, and does not contain unresolved issues that would be of Federal interest (e.g., endangered or threatened species, wild and scenic rivers, etc.), then the Corps will notify MDE and/or the applicant that it has determined that the proposed project is eligible for authorization under the MDSPGP, provided the required State and local authorizations are obtained.

- a. **Category III.A (State Public Notice Not Required).** For Category III.A applications, that do not require a State public notice for a Maryland Tidal Wetland License or Permit or a Nontidal Wetlands and Waterways Permit, the Corps will provide MHT, DNR, EPA, NMFS and/or FWS coordination notices for a 30-day review to comment upon whether authorization of the proposed projects under the MDSPGP is appropriate. EPA, NMFS, FWS, DNR, and MHT will provide their comments and recommendations, if any, to the Corps, with a copy to MDE. For each Category

III.A project, the coordination notice will provide the following: project tracking number, description of the project and proposed impacts; location of work; project purpose; and Corps contact person. MHT, DNR, EPA, NMFS and/or FWS may provide specific recommendations for special conditions, within their area of expertise and/or authority, to be included in the MDSPGP verification. The Corps will review these proposed projects, including consideration of whether or not compensatory mitigation should be required to replace the functions and/or acreage of aquatic resources lost due to unavoidable permanent impacts to wetlands and/or streams. After considering recommendations by MHT, DNR, EPA, NMFS, and/or FWS, the Corps will make one of the following determinations:

- i) Additional information is required to review the proposed project;
- ii) Projects are eligible for authorization under the MDSPGP;
- iii) Projects are eligible for authorization under the MDSPGP, with special conditions; or
- iv) Projects are ineligible for authorization under the MDSPGP and therefore require an alternative Corps permit review.

When the Corps has made its determination, it will notify MDE and/or the applicant. ONE of the following notifications must occur:

- The project proponent may not begin work until the Corps or MDE provides written verification to the applicant that the activity is eligible for authorization under the MDSPGP and that work can proceed as a Category III activity, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP, including activity-specific conditions in the MDSPGP Category List and any special conditions imposed by the Corps.
- Alternatively, the Corps or MDE may provide written notice to the applicant that the proposed work interferes

with a Corps navigation or civil works project. The Corps will coordinate with the applicant to avoid the interference. Should the project be revised to avoid the interference, the applicant will be provided written verification that the activity is eligible for authorization under the MDSPGP. Work can proceed, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP, including activity-specific conditions in the MDSPGP Category List and any special conditions imposed by the Corps. If the project is not modified, the applicant will be notified in writing that an alternative Corps permit review is required.

- Otherwise, the Corps or MDE will provide written notice to the applicant that an alternative Corps permit review is required.

b. **Category III.B (State Public Notice Required).** For Category III.B applications, for which a State public notice for a Maryland Tidal Wetland License or Permit or a Nontidal Wetlands and Waterways Permit is required, MDE will issue joint MDE/Corps public notices (JPNs) to EPA, NMFS, FWS, DNR, MHT and the public for a 30-day review to comment upon whether verification of the proposed projects under the MDSPGP is appropriate. EPA, NMFS, FWS, DNR, MHT and the public will provide two copies of their comments and recommendations, if any; one copy to be sent directly to the Corps, and one copy to be sent directly to MDE. For each Category III.B project, the joint public notice will provide the following: project tracking number; description of the project and proposed impacts; location of the project; project purpose; MDE contact person; opportunity to request a hearing; and the opportunity to request additional information, including plans. Joint public notices for the agencies (i.e., EPA, NMFS, FWS, DNR and MHT) will include project plans. The Corps and the resource agencies may request an extension of the 30-day comment period, provided the extension is requested within the 30-day comment period. The Corps will review these proposed projects, including consideration of whether or not compensatory mitigation should be required to replace the functions and/or acreage of aquatic resources lost due to unavoidable permanent impacts to wetlands and/or streams. After considering recommendations by MHT, DNR, EPA, NMFS and/or

FWS and the public, the Corps will make one of the following determinations:

- i) Additional information is required to review the proposed project;
- ii) Projects are eligible for authorization under the MDSPGP;
- iii) Projects are eligible for authorization under the MDSPGP, with special conditions; or
- iv) Projects are ineligible for authorization under the MDSPGP and therefore require an alternative Corps permit review.

When the Corps has made its determination, it will notify MDE and/or the applicant. ONE of the following notifications must occur:

- The project proponent may not begin work until the Corps or MDE provides written verification to the applicant that the activity is eligible for authorization under the MDSPGP and that work can proceed as a Category III activity, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP, including activity-specific conditions of the MDSPGP Category List and any special conditions imposed by the Corps.
- Alternatively, the Corps or MDE may provide notice to the applicant that the proposed work interferes with a Corps navigation or civil works project. The Corps will coordinate with the applicant to avoid the interference. Should the project be revised to avoid the interference, the applicant will be provided written verification that the activity is eligible for authorization under the MDSPGP. Work can proceed, provided all required State and local authorizations are obtained. Notwithstanding any such verification, the activities must still comply with all the terms and conditions of the MDSPGP, including activity-specific conditions in the MDSPGP Category List and any special conditions imposed by the Corps. If the project is not modified, the applicant will be notified in writing that an alternative Corps permit review is required.

- Otherwise, the Corps or MDE will provide written notice to the applicant that an alternative Corps permit review is required.

#### **Agency Objection:**

The resource agencies may request individual permit review of a project by notifying the Corps within the 30-day agency notification or JPN comment period. If the Corps agrees that individual permit review of the project is appropriate, the Corps will notify MDE and the applicant. If the Corps disagrees with an agency's recommendation that individual permit review is appropriate, the Corps will notify the agency of its intent to verify eligibility for authorization of the proposed project under the MDSPGP. The agency, at its discretion, may then pursue the agency objection procedures described below.

If FWS, EPA, or NMFS objects to the verification of a specific project under any Category of the MDSPGP, and if the Corps does not concur with the agency's objection, the agency has 15 days from the close of the agency notification or joint public notice comment period, or from the date of the Corps notification that it does not concur with the agency's objection, whichever date is later, for a Regional Administrator/Director (EPA, FWS, NMFS) to express a formal objection, within the agency's area of expertise and/or authority, to verification for authorization under the MDSPGP. The Corps will attempt to resolve the objection, within 30 days of receipt of the Regional Administrator's/ Director's written objection. If the Corps cannot resolve an agency objection within 30 days, the application will not qualify for verification for authorization under the MDSPGP and alternative Corps permit review will be required. The Corps will notify MDE and the applicant that the project requires an alternative Corps permit review. However, should all objections be resolved, the project may be verified for authorization under the MDSPGP. This verification may include project specific conditions to protect the public interest.

#### **IV. Corps Alternative Permit Review:**

Activities that require DA authorization, but that do not meet the terms and/or conditions of the MDSPGP are ineligible for authorization/verification under the MDSPGP and will be reviewed under alternative permit procedures. However, during the alternative permit review, the Corps may determine that the proposed

adverse environmental effects have been reduced to minimal and the proposed project meets the terms and conditions of the MDSPGP. At that time, the Corps may verify MDSPGP eligibility for the project.

If a project is ineligible under the terms and conditions of the MDSPGP, the Corps will notify MDE and the applicant that the project will require further evaluation under alternative permit procedures, including a public interest review. All information submitted by the applicant for MDSPGP review will also be used by the Corps for the alternative permit review. Individual Water Quality Certification (WQC) and Coastal Zone Management Consistency (CZC) determination may be required for projects alternatively reviewed. WQC and CZC may be included as part of MDE's tidal wetlands or nontidal wetlands and waterways authorizations.

## V. **General Conditions**

The following conditions apply to all activities authorized under the MDSPGP.

### A. **General Requirements:**

1. **Other Permits.** Authorization under the MDSPGP does not obviate the need to obtain other Federal, State, or local authorizations required by law.
2. **Applicability.** Applicability of the MDSPGP shall be reviewed with reference to the Corps definition of Waters of the United States, including wetlands, and navigable Waters of the United States. Applicants are responsible for delineating boundaries of all Waters of the United States, including wetland boundaries. The delineation of wetland boundaries shall be accomplished in accordance with the current Federal Manual for Identifying Jurisdictional Wetlands and appropriate guidance issued by the Corps of Engineers.
3. **Minimal Effects.** Projects authorized by the MDSPGP shall have no more than minimal individual and cumulative adverse environmental effects.
4. **Discretionary Authority.** Notwithstanding compliance with the terms and conditions of the MDSPGP, the Corps retains discretionary authority to require individual permit review for any project based on concerns for the aquatic environment or for any other factor of the public interest. This authority may be invoked on a case-by-case basis whenever the Corps determines that, based on the concerns stated above, the potential consequences of the proposed project warrant individual review.

Whenever the Corps notifies an applicant that an individual permit may be required, authorization under the MDSPGP is voided. No work may be conducted until the individual Corps permit is obtained, or until the Corps notifies the applicant that further review has demonstrated that the work may proceed under the MDSPGP.

5. **Single and Complete Projects.** The MDSPGP shall not be used for piecemeal work and shall be applied to single and complete projects, including maintenance activities. All components of a project shall be reviewed together as constituting one single and complete project. All planned phases of multi-phased projects shall be applied for and reviewed together as constituting one single and complete project. The MDSPGP shall not be used for any activity that is part of an overall project for which an Individual Permit is required.
6. **Stacking.** Activity E.1 in Category I (e.g., Underground and Overhead Utility Lines) may not be stacked or combined with any other Category I activity. If any other Category I activities, except Activity E.1, are stacked or combined to authorize a single and complete project, the impact to streams and wetlands for all activities in the single and complete project must not exceed either the 500 linear feet or the 5,000 square feet impact threshold.

**B. National Concern:**

1. **Historic Properties.** Any activity authorized by the MDSPGP shall comply with Section 106 of the National Historic Preservation Act. MDE, in cooperation with the Maryland Historic Preservation Office, shall conduct an initial review and notify the Corps if any archaeological or other cultural resources are in the vicinity of the project. The Corps may require applicants to perform a survey of archaeological and historical resources in the project area. The Corps shall determine if consultation under Section 106 with MHT or the Advisory Council on Historic Preservation is required. The applicant must notify the Corps if the activity may affect any historic properties listed or eligible for listing, or that the applicant has reason to believe may be eligible for listing on the National Register of Historic Places. If the permittee, during construction of work authorized herein, encounters a previously unidentified archaeological or other cultural resource within the permit area subject to DA jurisdiction that might be eligible for listing in the National Register of Historic Places, the permittee shall immediately stop work in the

permit area and notify the District Engineer. The permittee shall not begin or continue work until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity may proceed. Information on the location and existence of historical resources can be obtained from the Maryland Historic Trust, Office of Preservation Services, and the National Register of Historic Places.

2. **National Lands.** Activities authorized by the MDSPGP shall not impinge upon the value of any Federal land, including but not limited to, National Wildlife Refuges, National Forests, National Marine Sanctuaries or any area administered by the National Park Service (e.g., Assateague Island National Seashore).
3. **Endangered Species.** The MDSPGP does not authorize any activity that may affect a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA); or which may destroy or adversely modify the critical habitat of such species unless and until appropriate coordination with the applicable resource agency(s) is complete and all such issues are resolved in accordance with the applicable regulations and the procedures outlined in the MDSPGP Standard Operating Procedures. MDE, in cooperation with DNR, shall conduct an initial review and notify the Corps and FWS or NMFS if any Federally listed species or critical habitat is likely to be in the vicinity of the project. The Corps shall determine if consultation with FWS or NMFS is required under Section 7 of the ESA. If consultation is required, the applicant, after notification, shall not begin or continue work until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is eligible for authorization. Information on the location of threatened and endangered species and their critical habitat can be obtained from the FWS and NMFS.
4. **Wild and Scenic Rivers.** No activity is authorized under the MDSPGP that occurs in a component of the National Wild and Scenic River System, including rivers officially designated by Congress as study rivers for possible inclusion in the system, while such rivers are in an official study status, unless the appropriate Federal agency, with direct management responsibility for the river, has determined in writing that the proposed activity will not adversely affect any National Wild and Scenic River, including study rivers. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U. S. Forest Service, Bureau of Land Management, or U. S. Fish and Wildlife Service.)

5. **Corps Civil Works Projects**

- a. **Navigation Projects.** The MDSPGP does not authorize interference with any Corps navigation project. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
- b. **Other Corps Civil Work Projects (i.e., flood control, dams, reservoirs).** The MDSPGP does not authorize interference with any proposed or existing Corps civil works project.

6. **Federal Liability.** In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest;
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
- d. Design or construction deficiencies associated with the permitted work; and
- e. Damage claims associated with any future modification, suspension or revocation of the MDSPGP or any specific MDSPGP verification.

7. **Navigation.** Projects authorized under the MDSPGP shall not cause interference with navigation, and no attempt shall be made by the permittee to prevent the full and free use by the public of all

navigable waters at or adjacent to projects authorized under the MDSPGP. Nothing in the MDSPGP shall in any way restrict the District Engineer, U. S. Army Engineer District, Baltimore, from exercising his legal authority to protect the public interest in navigation or from exercising his authority under the Navigation Servitude of the United States.

**C. Minimization of Environmental Impacts:**

1. **Minimization.** Discharges of dredged or fill material into Waters of the United States and adverse impacts of such discharges on the aquatic ecosystem shall be avoided and minimized to the maximum extent practicable on-site.
2. **Work in Wetlands.** Heavy equipment working in wetlands shall be avoided if possible and, if required, soil and vegetation disturbance shall be minimized by using techniques such as timber mats, geotextile fabric, and vehicles with low pressure tires. Disturbed areas in wetlands shall be restored to preconstruction contours and elevations upon completion of the work.
3. **Temporary Fill and Mats.** Temporary fill and the use of mats are both considered a discharge of fill material and must be included in the quantification of impact area authorized by the MDSPGP. Temporary fill (e.g., access roads, cofferdams) in waters and wetlands authorized by the MDSPGP shall be properly stabilized during use to prevent erosion. Temporary fill in wetlands shall be placed on geotextile fabric laid on the existing wetland grade. Upon completion of the work, all temporary fills shall be disposed of at an upland site, suitably contained to prevent erosion and transport to a waterway or wetland. Temporary fill areas shall be restored to their original contours and revegetated with comparable native species.
4. **Sediment and Erosion Control.** Adequate sediment and erosion control measures, practices and devices, such as vegetated filter strips, geotextile silt fences, phased construction, or other devices or methods, shall be used to reduce erosion and retain sediment on-site during and after construction. These devices and methods shall be capable of a) preventing erosion, b) collecting sediment and suspended and floating materials, and c) filtering fine sediment. Sediment and erosion control devices shall be removed when the work is complete and the disturbed areas shall be stabilized. The sediment collected by these devices shall be removed and placed at an upland location, in a manner that will prevent its later erosion into a waterway or wetland. All exposed

soil and other fills shall be permanently stabilized at the earliest practicable date.

5. **Water Crossings.**

- a. All temporary and permanent crossings of waterbodies shall be suitably culverted, bridged, or otherwise constructed to withstand and to prevent the restriction of high flows; to maintain existing low flows; and to prevent the obstruction of movement by aquatic life indigenous to the waterbody.
- b. No open trench excavation shall be conducted in-stream without use of adequate diversion structures.
- c. Equipment shall cross streams only at suitably constructed permanent or temporary crossings.
- d. Temporary structures and fills shall be removed and the area restored to its original contours and elevations, or to the conditions specified in the approved plans. The temporary structures and the areas of fill associated with these structures must be included in the total waterway/wetlands impacts.

6. **Utility Lines.**

- a. Impacts shall be minimized by using directional drilling, jack and bore, missile, or similar methods when feasible.
- b. All in-stream work shall be conducted “in the dry” whenever practicable, by using stream diversion devices other than earthen or stone cofferdams.

7. **Discharge of Pollutants.** All activities that are authorized under the MDSPGP and that involve any discharge or relocation of pollutants into Waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. 1251 et. Seq.), and applicable State and local laws and regulations.

8. **Spawning Areas.** Discharges in fish and shellfish spawning or nursery areas during spawning seasons shall be avoided. Impacts to these areas shall be avoided or minimized to the maximum extent practicable during all other times of year.

9. **Waterfowl Breeding and Wintering Areas.** Discharges into breeding and wintering areas for migratory waterfowl shall be avoided to the maximum extent practicable.
10. **Environmental Values.** The permittee shall make every reasonable effort to construct or operate the work authorized under the MDSPGP in a manner that maintains as many environmental values as practicable, and that minimizes any adverse impacts on existing fish, wildlife and natural environmental values.

**D. Procedural Conditions:**

1. **Inspections.** The permittee shall permit the District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary to ensure that the work is being performed in accordance with the terms and conditions of the MDSPGP. The District Engineer may also require post-construction engineering drawings (as-built plans) for completed work, and post-dredging survey drawings for any dredging work.
2. **Compliance Certification.** Every permittee who receives a written MDSPGP verification shall submit a signed certification regarding the completed work and any required mitigation. The certification form will be forwarded to the permittee with the MDSPGP verification. The completed form will include the following:
  - a. A statement that the authorized work either was or was not done in accordance with the MDSPGP verification, including any general and/or specific conditions. If the activity was not done in accordance with the MDSPGP verification, including any general and/or specific conditions, the permittee shall describe the specifics of the deviation from the authorized activity.
  - b. A statement that any required mitigation was or was not completed in accordance with the permit conditions. If the mitigation was not completed in accordance with the permit conditions, the permittee shall describe the specifics of the deviation from the permit conditions.
  - c. The signature of the permittee, certifying the completion of the work and compensatory mitigation.

After the project is completed, the certification shall be sent to the Baltimore District at the following address:

U. S. Army Corps of Engineers  
Baltimore District  
Attn: CENAB-OP-R  
P. O. Box 1715  
Baltimore, MD 21203-1715

3. **Maintenance.** The permittee shall maintain the work or structure authorized by the MDSPGP in good condition and in compliance with the terms and conditions of the MDSPGP.
4. **Property Rights.** The MDSPGP does not convey any property rights, either in real estate or material, or any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws or regulations.
5. **Modification, Suspension and Revocation.** The MDSPGP, or any verification under it, may be either modified, suspended, or revoked, in whole or in part, pursuant to DA policies and procedures and any such action shall not be the basis for any claim for damages against the United States.
6. **Restoration.** The permittee, upon receipt of a notice of revocation of authorization under the MDSPGP, shall restore the wetland or waterway to its former condition, without expense to the United States and as directed by the Secretary of the Army or his authorized representative. If the permittee fails to comply with such a directive, the Secretary or his designee may restore the wetland or waterway to its former condition, by contract or otherwise, and recover the cost from the permittee.
7. **Special Conditions.** The Corps may impose special conditions on any project authorized under the MDSPGP, in cases where the Corps determines that special conditions are necessary to minimize adverse effects on the environment or on any other factor of the public interest. Failure to comply with all conditions of the authorization/verification, including special conditions, will constitute a permit violation/unauthorized work and may subject the permittee to criminal, civil, or administrative penalties, and/or restoration.
8. **False or Incomplete Information.** If the Corps verifies a project under the MDSPGP and subsequently discovers that it has relied

on false, incomplete or inaccurate information provided by the permittee, the MDSPGP verification may be revoked and the Government may institute appropriate legal proceedings.

9. **Compliance.** Any activity performed in Waters of the United States, including wetlands and navigable waters, that is not in compliance with all the terms and conditions of the MDSPGP that includes the MDSPGP Category List activity-specific conditions, constitutes unauthorized work and is subject to an enforcement action by the Corps or the EPA. Furthermore, the MDSPGP does not delegate any Section 404 enforcement or regulatory authority. When unauthorized work occurs in Waters of the United States, including wetlands and navigable waters, it is subject to one or more of the following responses by EPA and/or the Corps:
  - a. A Cease and Desist order and/or an administrative compliance order requiring remedial action.
  - b. Initiation and assessment of a Class I administrative penalty order pursuant to Section 309(g) of the CWA.
  - c. Initiation and assessment of a Class II administrative penalty for continuing violation pursuant to Section 309(g) of the CWA.
  - d. Referral of the case to the U. S. Attorney with a recommendation for a civil or criminal action.
  - e. If the Corps determines that an after-the-fact application is appropriate, it will be reviewed following the appropriate procedures.
  - f. Any other appropriate response.

## **VI. Duration of Authorization:**

### **A. Duration of Authorization:**

1. The MDSPGP is authorized for a period of 5 years. For individual projects verified/authorized by the MDSPGP the construction period expires within 3 years of the date of the project-specific MDSPGP verification letter, or when the MDSPGP expires, is suspended, or revoked, whichever date occurs sooner. The 3-year expiration date for construction of the project may be extended, with prior approval by MDE or the Corps, as appropriate, provided the permittee requests the extension prior to the expiration date of

the verification letter. However, the extension may not be extended beyond the expiration date of the MDSPGP itself, or its suspension or revocation.

2. If the MDSPGP is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void.
3. Activities authorized under the MDSPGP that have commenced construction or that are under contract to commence construction, prior to the expiration, modification, or revocation date of the MDSPGP itself, will remain authorized, provided the activity is completed within 12 months of the date of the MDSPGP's expiration, modification, or revocation; or until the expiration date of the project-specific verification, whichever is sooner. If a specific MDSPGP verification has been modified, suspended, or revoked, this provision does not apply.

**B. Previously Authorized Activities:**

1. Projects that were completed based on written verification from the Corps under the MDGP-1, nationwide permit, regional general permit or letter of permission for applications made prior to the effective date of the MDSPGP shall remain authorized, as specified in each project-specific verification.
2. Projects that have received written verification from the Corps under the MDSPGP-1, MDGP-1, nonduplicative nationwide permits, nonduplicative regional general permits or letters of permission, based on applications made prior to the effective date of the MDSPGP, but that have not been completed within 12 months of the effective date of this MDSPGP, may be reauthorized under this MDSPGP if reverified by the Corps or MDE. If the project is grandfathered by MDE, the request for reverification will be forwarded to the Corps for review under Category II or III procedures.
3. Activities authorized pursuant to 33 CFR part 330.3 (activities occurring before certain dates) are not affected by the MDSPGP.

**C. Changes to State Statutes, Regulations or General Permits:**

The Corps will review proposed changes to the State program statutes and regulations, including development of State general permits, to determine whether, and to what extent, the proposed changes will affect the MDSPGP. The Corps will determine whether or not to continue use of the MDSPGP under the modified State statutes, regulations or general permits

based on the considerations outlined in 33 CFR 325.7(a). The Corps review may result in immediate suspension or revocation of the MDSPGP, in accordance with DA Regulations.

**D. Reporting and Evaluation:**

1. MDE will provide quarterly and a more comprehensive yearly reports to the Baltimore District Engineer describing its implementation of the MDSPGP. These reports shall include information on the types and numbers of activities authorized under the MDSPGP, including specific types and numbers of activities authorized under Categories III.A and III.B, the impacts authorized, evaluation times, mitigation required and completed, State enforcement and compliance activities, and other data, as required. These reports will be available to the public.
2. Every two and one-half years, the Corps, with recommendations from the resource agencies will evaluate the MDSPGP, including its terms and conditions, and will determine if: (1) the MDSPGP has met its intended goal of reducing duplication; (2) authorizations/verifications comply with applicable laws and regulations; and (3) only projects with minimal adverse environmental effects were verified. Every two and one-half years, coordinated with the required 5-year cycle of MDSPGP reissuance, based on this review and evaluation, the Corps will further determine whether modification, suspension, or revocation of the MDSPGP is appropriate. These determinations will be in writing, will include the basis for each determination, and will be available to the public.

**E. Modification, Suspension, or Revocation:**

The Corps District may suspend, modify, or revoke MDSPGP authorization for any specific geographic area, class of activities, class of Waters, or any case-specific verification under the MDSPGP, within the State of Maryland, by issuing a public notice or notifying the MDE and the permittee involved. The MDSPGP will expire on

By Authority of the Secretary of Army:

Colonel, Corps of Engineers  
District Engineer