



Public Notice

U.S. Army Corps
of Engineers
Baltimore District

In Reply Refer to CENAB-OP-RMN

Date 15 Sep 2000

Special Public Notice #00-036
Comment Period : 15 Sep 2000 to 15 Nov 2000

Subject: proposal to reissue with modifications, reissue without modifications, or not to reissue the Maryland State Programmatic General Permit (MDSPGP), for a five-year period.

On May 6, 1996 the Baltimore District Corps of Engineers issued the MDSPGP for a five-year period. Unless the Baltimore District decides to reissue the MDSPGP, either with or without modifications, the MDSPGP will expire on June 1, 2001.

The Baltimore District proposes to reissue the MDSPGP, with modifications, for a five-year period. Substantial changes to the MDSPGP are discussed in items 1 through 23 below. The proposed modified MDSPGP and Category List, in their entirety, can be viewed on the Baltimore District web site at www.nab.usace.army.mil/regulatory. Interested persons who do not have access to the Internet, but who would like to review the proposed modified MDSPGP and Category List, may request a copy of these documents by calling (410) 962-4252.

On August 15, 1997, the Baltimore District issued Special Public Notice #97-17 announcing suspension of the following Nationwide Permits (NWP) that are duplicated by the current MDSPGP:

- NWP 1 – Aids to Navigation
- NWP 2 - Structures in Artificial Canals
- NWP 3 – Maintenance
- NWP 4 – Fish & Wildlife Harvesting, Enhancement & Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures
- NWP 8 – Oil and Gas Structures
- NWP 9 – Structures in Fleeting and Anchorage Areas
- NWP 10 – Mooring Buoys
- NWP 11 – Temporary Recreational Structures
- NWP 12 – Utility Line Discharges
- NWP 13 – Bank Stabilization
- NWP 14 – Road Crossings
- NWP 15 – U.S. Coast Guard approved Bridges
- NWP 16 – Return Water From Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 18 – Minor Discharges
- NWP 19 – Minor Dredging
- NWP 20 – Oil Spill Cleanup
- NWP 21 – Surface Coal Mining Activities
- NWP 22 – Removal of Vessels
- NWP 24 – State Administered Section 404 Programs

NWP 25 – Structural Discharges
 NWP 26 – Headwaters & Isolated Waters Discharges
 NWP 28 – Modifications of Existing Marinas
 NWP 29 – Single Family Housing
 NWP 33 – Temporary Construction, Access & Dewatering
 NWP 34 – Cranberry Production Activities
 NWP 35 – Maintenance Dredging of Existing Basins
 NWP 38 – Cleanup of Hazardous and Toxic Waste
 NWP 40 – Farm Buildings

Since these NWPs are also duplicated by the proposed modified MDSPGP, we intend to continue suspension of these NWPs if we reissue the MDSPGP, with or without the proposed modifications. In the March 9, 2000 Federal Register, the Corps of Engineers issued 6 new NWPs to replace NWP 26, which expired on June 5, 2000. Those replacement NWPs are NWP #39, Residential, Commercial, and Institutional Developments; NWP #40, Agricultural Activities; NWP #41, Reshaping Existing Drainage Ditches; NWP #42, Recreational Facilities; NWP #43, Stormwater Management Facilities; and NWP #44, Mining Activities. Subsequently, the Baltimore District recommended to the North Atlantic Division that these replacement NWPs also be suspended. Attached to this public notice is a chart comparing the current NWPs with the existing MDSPGP and proposed modified MDSPGP. We also intend to suspend all Regional General Permits (RGPs) that are duplicated by the proposed modified MDSPGP.

The purpose of this 60-day public notice is to request comments on whether to reissue the MDSPGP for a five-year period, with or without the proposed modifications, or not to reissue the MDSPGP. Comments are requested by November 15, 2000.

PROPOSED MODIFICATIONS TO THE MDSPGP

MDSPGP

1. Paragraph 1, page 1: In this paragraph, the Baltimore District proposes to clarify that the MDSPGP is a single entity that includes both the MDSPGP and the Category List of activities.
2. II.C.5, page 4, Activities Not Authorized: Activities that result in impacts of up to 3 acres of tidal waters of the United States, including jurisdictional wetlands, and up to 5 acres of nontidal waters of the United States, including jurisdictional wetlands, may be authorized under the current MDSPGP. In the proposed modified MDSPGP, the Baltimore District proposes to reduce the impact limit to 1 acre of tidal or nontidal waters of the United States, including jurisdictional wetlands.
3. II.C.7, page 4, Activities Not Authorized: In this paragraph, the Baltimore District proposes to clarify that activities that do not comply with the terms and conditions of the MDSPGP, including the terms and conditions of the Category List, do not qualify for authorization under the MDSPGP.
4. III.A.3, page 5, Federal, State and Local Approvals: This paragraph states that a water quality certification (WQC) has been issued by the Maryland Department of the Environment (MDE) for

Category I activities that meet the terms and conditions of the MDSPGP. The Baltimore District proposes to clarify this paragraph to state that activities that are in other Categories (i.e., Categories II and III) and that meet the terms and conditions of the MDSPGP require either individual or general WQC.

5. III.B.1, page 5, MDSPGP Verification Procedures: This paragraph explains that Category I 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. The Baltimore District proposes to clarify this paragraph with a NOTE that explains that under certain circumstances, activities that meet the terms and conditions of Category I of the MDSPGP will require an application to the Corps and will be reviewed by the Corps under Category II procedures.
6. III.B.2. a-g, pages 6 and 7, Category II Procedures: In this paragraph, the Baltimore District proposes to list the circumstances under which Category I activities that otherwise would not require an application to the Corps, will require an application and review by the Corps under Category II procedures (e.g., the project is proposed with 150 feet of the horizontal limits of a Corps navigation project; the project is grandfathered by the State from MDE's permit requirements; the project is proposed in a designated Special Area Management Plan [SAMP] area, etc.).
7. III.B.3.a, page 8, Category III.A Procedures: This paragraph describes the agency coordination process for Category III.A activities, and the information that the Corps will provide to the agencies in the agency notification. The Corps proposes to modify this process such that the agencies will provide two copies of their comments in response to the agency notification, one copy to the Corps and one copy to MDE.
8. III.B.3.b, page 10, Category III.B Procedures: This paragraph describes the joint public notice process for Category III.B activities, and the information that MDE will provide to the agencies and the public in the joint public notice. The Corps proposes to modify this process such that the agencies and the public will provide two copies of their comments in response to the joint public notice, one copy to the Corps and one copy to MDE.

9. IV, page 12, Corps Alternative Permit Review: The Baltimore District proposes to eliminate Category IV from the MDSPGP. This Category refers to the Corps individual permit (IP) process, which is a completely separate process from the MDSPGP. This paragraph now describes that activities that require Corps authorization, but that do not meet the terms and conditions of the MDSPGP, will be reviewed under alternative permit procedures. These alternative procedures may include the Corps IP, letter of permission, or any appropriate, non-suspended NWP.
10. V.A.6, page 14, Stacking: The Baltimore District proposes to add a stacking condition to the general conditions of the MDSPGP. This condition will state that activity E.1 in Category I (i.e., Underground and Overhead Utility Lines) may not be stacked or combined with any other Category I activity. This paragraph further states that 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 Category I impact limits of 500 linear feet or 5,000 square feet.
11. V.C.6.a and b, page 18, Utility Lines: The Baltimore District proposes to add two utility line conditions to the general conditions of the MDSPGP. Condition 6.a requires that impacts shall be minimized by using directional drilling, jack and bore, missile, or similar methods when feasible. Condition 6.b requires that all in-stream work shall be conducted “in the dry,” whenever practicable, by using stream diversion devices other than earthen or stone cofferdams.
12. V.D.2.a-c, page 19, Compliance Certification: The Baltimore District proposes to add a compliance certification condition to the general conditions of the MDSPGP. This proposed condition requires every permittee who receives a written MDSPGP verification to 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.
13. V.D.5, page 20, Modification, Suspension, and Revocation: In this condition, the Baltimore District proposes to clarify that not only the MDSPGP, but also any project-specific verification under the MDSPGP, may be either modified, suspended, or revoked.
14. VI.A.1, page 21, Duration of Authorization: Condition A.1 states that the MDSPGP is authorized for a period of 5 years. The Baltimore District proposes to modify this condition to clarify that 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 or is revoked, whichever date occurs sooner. We propose to further clarify that the 3-year expiration date for construction of the project may be extended, with prior approval from the Corps or MDE, as appropriate, provided the permittee requests the extension prior to the expiration date of the verification letter. However, the extension may not exceed the expiration date of the MDSPGP itself, or its suspension or revocation.
15. VI.B.1 and 2, page 22, Previously Authorized Activities: The Baltimore District proposes to modify condition B.1 to clarify that projects that were COMPLETED based on written verification from the Corps under the MDSPGP-1, the MDGP-1, NWPs, RGPs, or letters of permission for applications made prior to the effective date of the proposed modified MDSPGP shall remain authorized, as specified in each project-specific verification. We also propose to modify condition B.2 to clarify that projects that have received written, project-specific

verification under the MDSPGP-1, the MDGP-1, nonduplicative NWP, nonduplicative RGP, or letters of permission, based on applications made prior to the effective date of the modified MDSPGP, but that have NOT BEEN COMPLETED within 12 months of the effective date of the modified MDSPGP, may be reauthorized under the modified MDSPGP, if reverified by the Corps or MDE, as appropriate.

16. VI.D.2, page 23, Reporting and Evaluation: The Baltimore District proposes to modify condition D.2 to state that the Corps will evaluate the modified MDSPGP every two and one-half years, not annually. We propose to further modify this condition to state that the Corps, with recommendations from the resource agencies, will evaluate the modified MDSPGP, including its terms and conditions, and will determine if: 1) the modified 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. Finally, the condition will clarify that every two and one-half years, based on this review and evaluation, the Corps will further determine whether modification, suspension, or revocation of the modified MDSPGP is appropriate, and that these determinations will be in writing, will include the basis for each determination, and will be available to the public.

CATEGORY LIST

17. MDSPGP Category List, Table of Contents: The Baltimore District proposes to reorganize the Category List such that similar activities are grouped together. Therefore, Category I consists of ten activity types (e.g., Category I, Activity A is Agriculture-Related Activities; Category I, Activity D is Repair and Maintenance Activities; Category I, Activity E is Fill Activities; Category I, Activity G is Boating/Navigation-Related Activities; etc.). Similarly, Category II consists of five activity types (e.g., Category II, Activity A is Activities In or Near Corps Navigation or Civil Works Projects; Category II, Activity C is Activities Exempt from MDE's Permit Requirements; etc.), and Category III consists of two activity types (i.e., Category III, Activity A is State Permit Public Notice Not Required and Category III, Activity B is State Permit Public Notice Required).

18. Category I Impact Limits: The Baltimore District proposes to modify Category I by adding an upper impact limit to all Category I activities that involve a discharge of dredged or fill material. For all Category I activities involving impacts to wetlands only, not streams, the total impact to wetlands is limited to less than 5,000 square feet. For all Category I activities that involve impacts to streams and/or wetlands, except activities I.E.2 (Underground and Overhead Utility Lines) and I.H.3 (Vegetative Stabilization), the total impact to streams and wetlands is limited to 500 linear feet, with a total impact to streams and wetlands of less than 5,000 square feet. The acreage of impact to streams and wetlands includes the filled area, plus streams and wetlands that are adversely affected by the project through flooding, draining, or mechanized landclearing. For linear projects, impacts to streams and wetlands are measured along the centerline of the project, across streams and wetlands. For activity I.E.2, Underground and Overhead Utility Lines, the total impact to streams and wetlands is limited to 500 linear feet, with a total impact to streams and wetlands not to exceed 10,870 square feet (0.25 acre). For activity I.H.3, Vegetative Stabilization, total impact is limited to 500 linear feet, with a total impact to unvegetated shallow waters not to exceed 17,500 square feet (0.40 acre).
19. New Category I Activities: The Baltimore District proposes to add the following activities to Category I: Scientific Measurement Devices and Survey Activities, Page 9; Maintenance of Tidal Roadside Ditches, page 16; Road Crossings, page 21; Dry Fire Hydrants, page 23; State Regulatory Markers, page 29; Nontidal Bank Stabilization, page 41; and Hazardous and Toxic Waste Cleanup, page 45.
20. Activity-Specific Conditions: The Baltimore District proposes to add activity-specific conditions to activities in Category I of the MDSPGP, as appropriate.
21. Repair and Maintenance Activity, page 13: The Baltimore District proposes to modify this activity in Category I to authorize minor deviations in the configuration of the structure or filled area (impact to streams and wetlands for these minor deviations is limited to 500 linear feet, with a total impact to streams and wetlands of less than 5,000 square feet), including changes in materials, construction techniques, current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement.
22. Category II: The Baltimore District proposes to add the following activities to Category II: Activities Exempt from MDE's Permit Requirements, page 47; Special Area management Plans (SAMPs), page 48; Denials, page 48; and Violations, page 48.
23. Category III: The Baltimore District proposes to modify Category III by reducing the number of activities to two, State Permit Public Notice Not Required (Category III.A) and State Permit Public Notice Required (Category III.B).

Maryland's Tidal Wetlands Protection Act, Nontidal Wetlands Protection Act, and Waterway Construction Act establish a statewide permit program for protecting Maryland waters. Maryland's procedures for granting permits and licenses require MDE to apply evaluation criteria consisting of alternatives analyses, avoidance and minimization techniques, and compensatory mitigation for unavoidable impacts. These State evaluation criteria are equivalent to Federal criteria required under Section 404(b)(1) of the Clean Water Act. Prior to making a decision whether or not to reissue the MDSPGP, with or without modifications, the Baltimore District will determine whether the MDSPGP complies with the 404(b)(1) guidelines. If the MDSPGP is reissued, with or without modifications, the Baltimore District will reevaluate it within two and one-half years.

The decision whether to reissue the MDSPGP, with or without modifications, will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed MDSPGP on the public interest. That decision will reflect national concern for protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal will be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects of the proposal. Among those factors are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, and in general, the needs and welfare of the people.

The Baltimore District is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties, in order to consider and evaluate the impacts of this proposed MDSPGP. Any comments received will be considered by the District to determine whether to reissue the MDSPGP with or without modifications, or not to reissue the MDSPGP. To make this decision, the District uses the comments to assess 404(b)(1) compliance and impacts on endangered species, cultural resources, water quality, general environmental effects, and the other public interest factors listed above. The District will also use the comments to prepare an Environmental Assessment and/or an Environmental Impact Statement, pursuant to the National Environmental Policy Act (NEPA), and to determine the overall public interest of the proposed modified MDSPGP.

A public hearing has been scheduled for Tuesday, October 24, 2000 from 5:30 to 8:30 p.m. The hearing will be held in the meeting room of the Anne Arundel County Public Library, 1410 West Street, Annapolis, Maryland. The purpose of the public hearing is for the Baltimore District to receive oral or written comments that will enable us to evaluate the impacts of the proposed modified MDSPGP on the public interest. All interested parties, including representatives of Federal, State, and local governments and private individuals and organizations, are invited to be present or to be represented. Each will be given an opportunity to express their views regarding the proposed modified MDSPGP. Each person wishing to make an oral statement is asked to complete a speaker's card as he or she enters the auditorium. To be included in the official record, written comments and information provided by interested parties must be received by the Baltimore District by November 15, 2000.

Water Quality Certification is required in accordance with Section 401 of the Clean Water Act prior to issuance of the proposed modified MDSPGP. MDE will be issuing a separate public notice regarding 401 Water Quality Certification.

Coastal Zone Consistency Certification is required in accordance with the Maryland Coastal Zone Program. MDE will also be issuing a separate public notice regarding Coastal Zone Consistency.

A preliminary review of the proposed modified MDSPGP indicates that its processing procedures and conditions are sufficient such that authorized work will not affect listed species or their critical habitat, pursuant to Section 7 of the Endangered Species Act, as amended. Similarly, a preliminary review of the proposed modified MDSPGP indicates that it complies with the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, as amended, and as such, will not have any adverse effect on essential fish habitat for Federally managed species. Finally, the proposed modified MDSPGP is conditioned to assure that, on a case-by-case basis, cultural resources listed in the latest published version of the National Register of Historic Places, or properties eligible or potentially eligible for inclusion therein, will be given the consideration required by Section 106 of the National Historic Preservation Act. As the evaluation of the proposed modified MDSPGP continues, additional information that could modify these preliminary determinations may become available.

The Baltimore District requests that you communicate the foregoing information to any persons known by you to be interested and who did not receive a copy of this notice. Questions and comments may be directed to Ms. Abbie Hopkins, Baltimore District Corps of Engineers, P. O. Box 1715, Baltimore, Maryland 21203-1715. A copy of the current MDSPGP may be obtained by calling the Baltimore District at (410) 962-4252. Comments are requested by November 15, 2000.

For the District Engineer: