



Public Notice

DATE: August 31, 2001

**In Reply Refer to CENAB-OP-RM
Special Public Notice #01-052**

**US Army Corps of
Engineers
Baltimore District**

Subject: Re-issuance with Modifications of the Maryland State Programmatic General Permit (MDSPGP-1), as the MDSPGP-2 for a Five-Year Period

This Public Notice is issued by the Baltimore District of the U.S. Army Corps of Engineers (Corps). This Public Notice may be viewed on the Baltimore District web site:

<http://www.nab.usace.army.mil/Regulatory/PublicNotice/spnotices.htm>.

On May 6, 1996, the Baltimore District Engineer, issued the Maryland State Programmatic General Permit (MDSPGP-1) for a five year period. The MDSPGP-1 was extended on May 15, 2001, and expires on September 30, 2001.

On September 15, 2000, the District Engineer issued Special Public Notice #00-036 requesting comments on whether to: (1) reissue the MDSPGP-1 with the modifications as listed (MDSPGP-2), (2) reissue without modifications for a five-year period, or (3) not reissue the MDSPGP-1. Following a thorough review of all comments received in response to the special public notice and the public hearing held on October 24, 2000, the Corps has decided to reissue the MDSPGP-1 with modifications. This new General Permit is entitled the MDSPGP-2.

The purpose of this Public Notice is to inform the public that the MDSPGP-2 has been issued by Colonel Charles J. Fiala, Jr., District Engineer for the Baltimore District of the U.S. Army Corps of Engineers. The MDSPGP-2 will be implemented and in full effect within the State of Maryland on

October 1, 2001. A copy of the MDSPGP-2 can be viewed on the Baltimore District web site:

<http://www.nab.usace.army.mil/Regulatory/PublicNotice/spnotices.htm>. Interested persons who do not have access to the Internet, but who would like to review the MDSPGP-2, may request a copy of this document by calling Mrs. Maria Lasek at (410) 962-4501.

The following modifications have been incorporated into the MDSPGP-2 and Activity List:

1. The Baltimore District has clarified that the MDSPGP-2 is a single entity that includes both the MDSPGP-2 and the Category List of activities.
2. **The upper threshold of impacts to waters of the United States, including jurisdictional wetlands, is reduced from three acres of tidal waters and five acres of nontidal waters to one acre of tidal or nontidal waters** for a single and complete project to ensure no more than minimal impacts to the aquatic environment. Under the MDSPGP-1, permit applicants had a right to expect that any project under three acres for tidal or five acres for nontidal impacts would qualify for and be authorized by the MDSPGP-1. Based on our experience and our evaluation of the MDSPGP-1, we have found that when impacts had been proposed for over one acre, an Individual Permit (IP) evaluation was often appropriate.

This change in the upper threshold will not adversely affect the overall processing time, or service to the public, since the vast majority of applications in Maryland propose to impact less than one acre of waters of the United States, including jurisdictional wetlands. In practice, applications for impacts of more than one acre under the MDSPGP-1 have proven to require a process that involves analysis comparable to Corps' IPs, providing no additional benefit to the applicants. With this change, all projects impacting more than one acre of waters of the United States, including jurisdictional wetlands, will be evaluated by the District under alternate permit procedures, including the IP process.

3. The Baltimore District has clarified that those activities that do not comply with the terms and conditions of the MDSPGP-2, including the terms and conditions of the Category List, do not qualify for authorization under the MDSPGP-2.
4. By the effective date of the MDSPGP-2, the Maryland Department of the Environment (MDE) intends to issue a Water Quality Certification (WQC) for all Category I activities and projects that impact ephemeral streams. MDE also intends to issue WQC for all Category III activities that meet the terms and conditions of the MDSPGP-2, subject to the condition that the applicants obtain all necessary permits and approvals from MDE. The exceptions to this certification are Federal projects occurring in tidal waters and/or vegetated tidal wetlands, and Category II and III activities that are exempt from the State's regulatory requirements, that meet the terms and conditions of the MDSPGP-2, and will require individual or general WQC.
5. The Baltimore District clarified MDSPGP-2 Verification Procedures with a NOTE that explains that, under certain circumstances, activities that meet the terms and conditions of Category I of the MDSPGP-2 will require an application to the Corps and will be reviewed by the Corps under Category II procedures.
6. The Baltimore District has listed in Category II Procedures 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 in or near federally authorized civil works projects; the project is grandfathered from MDE's permit requirements; the project is exempt from MDE's permit requirements; or the project is a violation or previously has been denied).
7. The Baltimore District has modified the agency coordination 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. The Baltimore District modified the joint public notice 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. The Baltimore District has added a definition section, immediately following Category III activities.
10. The Baltimore District has eliminated Category IV from the MDSPGP-2. This Category refers to the Corps' IP process, which is a completely separate process from the MDSPGP-2. This paragraph now describes activities that require Corps authorization, but that do not meet the terms and conditions of the MDSPGP-2 and will be reviewed under alternative permit procedures. These alternative procedures may include the Corps' IP, letter of permission, or any appropriate, non-suspended Nationwide Permit (NWP).

11. The Baltimore District has added a stacking condition to the general conditions of the MDSPGP-2. Activity d(2) in Category I (e.g., Underground and Overhead Utility Lines) may not be stacked or combined with any other Category I activity. Any single and complete project with both utility line impact(s) and other Category I activity(s), will be reviewed as a Category III project in accordance with the Category III process, provided the total impact to Waters of the United States, including wetlands, is less than one acre. If any other Category I activities, except Activity d(2), are stacked or combined to authorize a single and complete project, the total impact to Waters of the United States for all activities in the single and complete project must not exceed the 500 linear feet limit or be less than the 5,000 square feet impact limit (except for tidal marsh creation projects that have a limit of less than 17,500 square feet), while complying with each activity-specific impact limit and conditions.
12. The Baltimore District has added two utility line conditions to the general conditions of the MDSPGP-2. Condition VI.C.6.a requires that impacts shall be minimized by using directional drilling, jack and bore, missile, or similar methods when feasible. Condition VI.C.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.
13. The Baltimore District has added a compliance certification condition to the general conditions of the MDSPGP-2. This 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.
14. The Baltimore District has clarified the Modification, Suspension, and Revocation condition to state that not only the MDSPGP-2, but also any project-specific verification under the MDSPGP-2, may be either modified, suspended, or revoked.
15. The Baltimore District has modified the Duration of Authorization condition to clarify that for individual projects verified/authorized by the MDSPGP-2, the construction period expires within 3 years of the date of the project-specific MDSPGP-2 verification letter, or when the MDSPGP expires or is revoked, whichever date occurs sooner. Further clarification states 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-2 itself, or its suspension or revocation.
16. The Baltimore District has modified Previously Authorized Activities condition VII.B.1 to clarify that projects that were COMPLETED based on written verification from the Corps under the MDSPGP-1, the MDGP-1, NWP, Regional General Permits (RGPs), or letters of permission for applications made prior to the effective date of the MDSPGP-2 shall remain authorized, as specified in each project-specific verification.

Condition VII.B.2 has been modified to clarify that projects that have received written, project-specific verification under the MDSPGP-1, based on applications made prior to the effective date of the MDSPGP-2 and that have NOT BEEN COMPLETED, but that meet the terms and conditions of the MDSPGP-2, including the applicable activity-specific impact limits and conditions, remain authorized until the expiration of the associated MDE

authorization, not to exceed three years from the date of the project specific MDSPGP-1 authorization.

Conversely, projects that have received written, project-specific verification under the MDSPGP-1, based on applications made prior to the effective date of the MDSPGP-2, but that have NOT BEEN COMPLETED and that do not meet the terms and conditions of the MDSPGP-2, including the applicable activity-specific impact limits and conditions, have 12 months from the effective date of the MDSPGP-2 to complete the work under the terms and conditions of the MDSPGP-1. If the work cannot be completed within 12 months from the effective date of the MDSPGP-2, the project must receive written reauthorization under the MDSPGP-2 from the Corps or MDE, as appropriate.

17. The Baltimore District has modified Reporting and Evaluation condition VII.D.2 to state that the Corps will evaluate the MDSPGP-2 every two and one-half years, not annually. The Corps has further modified this condition to state that the Corps, with recommendations from the resource agencies, will evaluate the MDSPGP-2, including its terms and conditions, and will determine if: 1) the MDSPGP-2 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 clarifies 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 MDSPGP-2 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

18. The Baltimore District has reorganized the MDSPGP-2 Category List, Table of Contents such that similar activities are grouped together. Therefore, Category I consists of nine activity types (e.g., Category I, Activity a is Agriculture-Related Activities; Category I, Activity b is Scientific Measurement Devices and Survey Activities; Category I, Activity c is Repair and Maintenance Activities; Category I, Activity d is Fill Activities; Category I, Activity e is Fish & Wildlife Harvesting, Enhancement, & Attraction Devices & Activities; Category I, Activity f is Boating/Navigation-Related Activities; Category I, Activity g is Shoreline/Bank Stabilization Activities; Category I, Activity h is Return Water; Category I, Activity I is Cleanup of Oil and Hazardous and Toxic Waste.). Similarly, Category II consists of four activity types (e.g., Category II, Activity a is Activities In or Near Federally Authorized Civil Works Projects; Category II, Activity b is Activities Grandfathered by MDE; Category II, Activity c is Activities Exempt from MDE's Permit Requirements; Category II, Activity d is Denials and Violations.), 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).
19. The Baltimore District has modified Category I by adding an upper impact limit to all Category I activities that involve a discharge of dredged or fill material. Except for activities d(2) (underground and Overhead Utility Lines) and g(3) (Tidal Marsh Creation) described below, 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 d(2) and g(3), 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 activity d(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 less than 10,890 square feet (0.25 acre). For activity g(3), Tidal Marsh Creation, total impact is limited to 500 linear feet of shoreline, with a total impact to unvegetated shallow waters less than 17,500 square feet (0.40 acre).

20. The Baltimore District has added the following new activities to Category I: Scientific Measurement Devices and Survey Activities; Maintenance of Tidal Roadside Ditches; Maintenance of Mosquito Control Ditches; Road Crossings; Dry Fire Hydrants; Special Area Management Plans; Temporary Stream Diversion for Construction; Outfall Structures; State Regulatory Markers; Nontidal Bank Stabilization; and Hazardous and Toxic Waste Cleanup.
21. The Baltimore District has added activity-specific conditions to activities in Category I of the MDSPGP-2, as appropriate.
22. The Baltimore District has modified the General Maintenance Activity in Category I to authorize minor deviations in the configuration of the structure or filled area (total temporary and permanent 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.
23. The Baltimore District has added the following activities to Category II: Activities Exempt from MDE's Permit Requirements; Denials; and Violations.
24. The Baltimore District has modified 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. The Baltimore District Engineer will reevaluate the MDSPGP-2 every 2 1/2 years, to determine if activities have been authorized in accordance with the requirements of the MDSPGP-2 and in compliance with Federal Regulations.

The MDSPGP-2 will protect the aquatic resources of the State of Maryland within the Baltimore District of the U. S. Army Corps of Engineers regulatory boundaries; reduce the administrative burden of the program for both the Corps of Engineers and the State of Maryland through interagency cooperation; improve the Regulatory response time and; add predictability within the specified limits to the permit program for the potential applicant and general public.

The MDSPGP-2 will be applicable for regulated activities in waters of the United States, including jurisdictional wetlands, in the State of Maryland that are located within the geographic regulatory boundaries of the Corps District.

The decision whether to reissue the MDSPGP-1 as MDSPGP-2, with or without modifications, was made after a thorough evaluation of the probable impacts including cumulative impacts of the proposed MDSPGP-2 on the public interest. This decision reflects the national concern for the protection and utilization of important resources. All factors which may be relevant to the MDSPGP-2 were considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, essential fish habitat, 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.

Section 401 Water Quality Certification and Coastal Zone Management Act Consistency:

1. Water quality certification from the Maryland Department of the Environment (MDE) is required for the MDSPGP-2, pursuant to section 401 of the Clean Water Act. Based on coordination with MDE, the Baltimore District expects MDE to issue water quality certification, by the effective date of the MDSPGP-2 as indicated in section III.A.4 of the MDSPGP-2. However, additional information may become available which could modify this preliminary determination. To receive consideration, any written comments concerning the MDSPGP-2 which relate to water quality certification must be received within 20 days from the date of this notice by the Water Management Administration, Maryland Department of the Environment, Building 30, First Floor, 2500 Broening Highway, Baltimore, Maryland 21224.
2. The Baltimore District has determined that the MDSPGP-2 is consistent with Maryland's Coastal Zone Management Program. However, MDE's concurrence with this determination is required. Based on coordination with MDE, the Baltimore District expects MDE to determine that the MDSPGP-2 is consistent with the Maryland Coastal Zone Management Program, by the effective date of the MDSPGP-2 as indicated in section III.A.5 of the MDSPGP-2. However, additional information may become available which could modify this preliminary determination. To receive consideration, any written comments concerning the MDSPGP-2 which relate to consistency must be received within 20 days from the date of this notice by the Coastal Zone Division, Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

Other State or local authorizations, which may be required, on a case-by-case basis, must be obtained by the applicant for the authorization in MDSPGP-2 to be valid. A review of the MDSPGP-2 indicates that 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.

The MDSPGP-2 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 listed as eligible or potentially eligible for inclusion therein, will be given the consideration required by Section 106 of the National Historic Preservation Act. The applicant will 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.

It is requested that you communicate the foregoing information to any persons known by you to be interested and not being known to this office who did not receive a copy of this notice. Questions may be directed to

Ms. Abbie Hopkins or Mrs. Maria Lasek, Baltimore District Corps of Engineers, P.O. Box 1715, Baltimore, Maryland 21203.

If projects that were authorized under the MDSPGP-1 meet the terms and conditions of the MDSPGP-2, including the applicable Category I or II impact limits and activity-specific conditions, the Federal authorization remains valid until the expiration of the associated MDE authorization, not to exceed three years from the date of the project specific MDSPGP-1 authorization. If additional time is needed, the permittee must submit a new request in writing; the project will then be reviewed under the conditions of the MDSPGP-2.

Because the MDSPGP-2 is duplicative of some NWP's and offers a more simplified and streamlined regulatory process, the Corps of Engineers has suspended those NWP's, which are applicable to activities qualifying for MDSPGP-2. On August 15, 1997, the Baltimore District issued Special Public Notice #97-17 announcing suspension of NWP's. On June 25, 2001, the Baltimore District issued Special Public Notice #01-039, further detailing the suspension of the NWP's. The Corps has previously suspended some of its NWP's in the State of Maryland. Those suspensions will remain in effect. They are:

- 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 Area
- 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 Program
- NWP 25 Structural Discharges
- NWP 26 Headwaters & Isolated waters Discharged
- 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 36 Boat Ramps
- NWP 38 Cleanup of Hazardous and Toxic Waste
- NWP 40 Farm Buildings

The Following NWPs are **not** suspended in the State of Maryland:

- NWP 23 Approved Categorical Exclusions
- NWP 27 Wetland & Riparian Restoration Creation Activities
- NWP 30 Moist Soil Management for Wildlife
- NWP 31 Maintenance of Existing Flood Control Facilities
- NWP 32 Completed Enforcement Actions
- NWP 37 Emergency Watershed Protection & Rehabilitation

These Public Notices are available on the District web site at
<http://www.nab.usace.army.mil/Regulatory/PublicNotice/spnotices.htm>.

For the District Engineer:

/s/
Linda A. Morrison
Chief, Regulatory Branch
Baltimore District