



Public Notice

U.S. Army Corps
of Engineers
Baltimore District

Date August 31, 2006

Special Public Notice 06-47

Subject: Re-issuance with modifications of the Maryland State Programmatic General Permit (MDSPGP-2) as the Maryland State Programmatic General Permit-3 (MDSPGP-3) for a five year period and Nationwide Permits (NWP) Suspension in the State of Maryland

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/public_notices.htm

On October 1, 2001 the District Engineer for Baltimore District, issued the Maryland State Programmatic General Permit (MDSPGP-2) for a five-year period. The MDSPGP-2 expires on September 30, 2006.

On May 12, 2006, the District Engineer issued Special Public Notice #06-27 requesting comments on whether to: (1) reissue the MDSPGP-2 with modifications listed (MDSPGP-3), (2) reissue without modifications for a five-year period, or (3) not reissue the MDSPGP-2. Following a thorough review of all comments received in response to the special public notice and the public hearing held on June 14, 2006, the Corps has decided to reissue the MDSPGP-2 with modifications. This new General Permit is entitled the MDSPGP-3.

The purpose of this Public Notice is to inform the public that the MDSPGP-3 has been issued by Colonel Peter W. Mueller, District Engineer for the Baltimore District of the U.S. Army Corps of Engineers. The MDSPGP-3 will be implemented and in full effect within the State of Maryland on October 1, 2006. A copy of the MDSPGP-3 can be viewed on the Baltimore District web site:

<http://www.nab.usace.army.mil/Regulatory/Permit/MDSPGP-3.pdf> Interested persons who do not have access to the Internet, may request a copy of this document by calling Ms. Aida Vasquez at (410) 962-3670.

The people of the State of Maryland are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) to perform work in waters of the United States as described in the MDSPGP-3. The Corps' authority and guidance to develop general permits is contained in 33 U.S.C. 1344(e) and 33 CFR 325.2(e), 33 CFR 325.3(b), and Corps Regulatory Guidance Letter 83-7.

The Maryland State Programmatic General Permit-3 (MDSPGP-3) is applicable for activities in waters of the United States, including wetlands and navigable waters, within the State of Maryland except: Back Creek (of the Chesapeake and Delaware Canal), east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the dam that crosses Herring Creek; and Long Branch to the Boat Yard Road Bridge to the north, including adjacent and contiguous jurisdictional wetlands to these tidal waterways. These listed areas fall within the U.S. Army Corps of Engineers Philadelphia District's regulatory geographic boundaries.

Activities with minimal adverse environmental effects, as specified by the terms, conditions, and limitations of this MDSPGP-3, are either non-reporting to the Corps (Category I), reporting to the Corps with required screening to ensure compliance with Corps interests and concerns (Category II), or will be reviewed by the Corps, Maryland Department of the Environment (MDE), resource agencies, and/or in certain cases the public (Category III). Applicants continue to be responsible for insuring that all required Federal, State, and local licenses, permits, and approvals are obtained for projects authorized under the MDSPGP-3. This MDSPGP-3 does not affect the Corps Individual Permit review process or activities exempt from the Corps permit process.

Projects that have received written, project-specific verification under the MDSPGP-2 based on applications made prior to the effective date of the MDSPGP-3, and have not been completed, but that meet the terms and conditions of the MDSPGP-3, including the applicable activity-specific impact limits and conditions, remain authorized until the expiration of the MDSPGP-3. Conversely, projects that have received written, project-specific verification under the MDSPGP-2, based on applications made prior to the effective date of the MDSPGP-3, but that have not been completed and that do not meet the terms and conditions of the MDSPGP-3, including the applicable activity-specific impact limits and conditions, have 12 months from the effective date of the MDSPGP-3 to complete the work under the terms and conditions of the MDSPGP-2. If the work cannot be completed within 12 months from the effective date of the MDSPGP-3, the project must receive written reauthorization under the MDSPGP-3 from the Corps or MDE, as appropriate. Please contact your Maryland Section Regulatory Branch point of contact at our website for case-specific information: <http://www.nab.usace.army.mil/Regulatory/POCS/md-map.html>

The Standard Operating Procedures (SOP) for this MDSPGP-3 are detailed in a separate document, which is intended to be flexible and subject to change. The SOP document can be revised as needed to improve and refine specific processes and procedures without the need for public notice and review.

The following modifications have been incorporated into the MDSPGP-3:

GENERAL CHANGES/CLARIFICATIONS:

1. Paragraph 2, page 2: A paragraph has been added to discuss minimal adverse environmental effects, purpose of the MDSPGP-3 and the cooperative effort with MDE to improve the regulatory process for applicants, reduce duplicative project evaluations, and promote more effective and efficient use of Corps resources while providing equivalent environmental protection for aquatic resources.
2. I.A 6, page 3, Federal Authorities: Section 404(c) of the Clean Water Act (CWA) has been included in this section.
3. II.A, page 3, Applicability: A paragraph has been added to clarify the term “impacts to Waters of the United States”. This text is now provided in the MDSPGP-3 under the “Applicability” section for all projects rather than being described under each activity description in order to streamline the text and make it clearer. It reads “...the acreage of impacts to waters of the United States, including jurisdictional wetlands, which includes the filled area, both temporary and permanent, plus the area of waters of the United States, including jurisdictional wetlands, which are adversely affected by the project through mechanical land clearing and/or permanent flooding, excavation, or drainage because of the regulated activity. Impacts to stream channels shall be measured along the centerline of the stream and bank to bank at the ordinary high water line or the mean high water line.” This clarification now includes the term “excavation” because excavation activities that result in the redeposit of dredged material into waters of the U.S. other than incidental fallback require a Section 404 permit. For example, excavated material may be temporarily stockpiled in waters of the U.S. before it is removed. Excavation activities that result only in discharges identified by the Corps as “incidental fallback” do not require a Section 404 permit. In addition, all excavation activities in Section 10 navigable waters require Corps permits under Section 10 of the Rivers and Harbors Act of 1899. This clarification does not change the current application of this term. As with any activity in waters of the U.S., a landowner who is uncertain whether their activity needs a permit may contact the Corps.
4. II.B, page 3-4, Activities Authorized by the MDSPGP-3: Clarification of the verification requirements has been added to this section. Several of the Category I activities require an application submittal to the MDE for verification of Corps authorization prior to commencement of the proposed work. All Category II activities must be reviewed by the Corps to ensure compliance with Corps interests or concerns, including Federal projects and navigation issues, and to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act prior to making a determination of eligibility for authorization under the MDSPGP-3. For activities in Category III, the Corps will consult with the resource agencies and the public, as appropriate, to ensure that the project will result in no more than minimal adverse environmental effects, individually and/or cumulatively, before making a decision to verify eligibility of projects for authorization under the MDSPGP-3.
5. II.C, page 4, Activities Not Authorized by the MDSPGP-3: Activities listed in this section have been reordered.

6. III.B, pages 5-9, MDSPGP-3 Verification Procedures: A paragraph has been added within the Category I, II and III Procedures sections that an application will be required when the proposed work may adversely affect essential fish habitat (EFH) and further describes the Corps' individual EFH coordination procedures with National Marine Fisheries Service (NMFS).

7. III.B.2 a, page 6, MDSPGP-3 Verification Procedures-Category II: A reference to a Federal Navigation Channel Map located in the appendices as Appendix A has been added.

8. III.B.2 b & III.B.2.f, page 6, MDSPGP-3 Verification Procedures-Category II: Two new criteria under the Category II screening procedures have been added that require an application submittal for Category I activities proposing permanent impacts of 200 linear feet or greater to stream channels and/or for Category I activities requiring an individual EFH consultation under Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act.

Based on our programmatic EFH consultation with NMFS, those Category I activities that require an individual EFH consultation with NMFS-Chesapeake Bay Office and an application submittal are listed below:

- PIERS (Private, Non-Commercial), Activity 1(a)(3): Piers having segments greater than 100 feet over vegetated tidal wetlands.
- GENERAL MAINTENANCE ACTIVITIES, Activity 1(b)(1): Total tidal wetland and/or tidal waters impact (temporary and permanent) exceeds 10,000 square feet.
- ARMORING BRIDGES, CAUSEWAYS, AND CULVERTS, Activity 1(b)(2): Total areal impact (temporary and permanent) to tidal streams, tidal waters, tidal wetlands, and nontidal streams exceeds 10,000 square feet. Excluded from any required EFH consultation are nontidal streams in the Maryland counties, (1) Garrett, (2) Allegheny, (3) Washington, (4) Frederick, (5) Carroll, and (6) Howard EXCEPT for the Patapsco River mainstem from Elkridge area upstream to the confluence of the North and South Branches of the Patapsco River.
- UNDERGROUND AND OVERHEAD UTILITY LINES, Activity 1(c):
 - An open-cut utility line that does not make a direct crossing of any nontidal stream channel (i.e., near perpendicular to the center line of a stream), and/or
 - An open-cut utility line that parallels any length section of a stream within 100 feet of the stream in jurisdictional wetlands.Excluded from any required EFH consultation are nontidal streams in the Maryland counties, (1) Garrett, (2) Allegheny, (3) Washington, (4) Frederick, (5) Carroll, and (6) Howard EXCEPT for the Patapsco River mainstem from Elkridge area upstream to the confluence of the North and South Branches of the Patapsco River.
- ROAD CROSSINGS, Activity 1(d): Total impacts (temporary and permanent) to nontidal streams exceeding 5,000 square feet and 200 linear feet of stream channel. Excluded from any required EFH consultation are nontidal streams in the Maryland counties, (1) Garrett, (2) Allegheny, (3) Washington, (4) Frederick, (5) Carroll, and (6) Howard EXCEPT for the Patapsco River mainstem from Elkridge area upstream to the confluence of the North and South Branches of the Patapsco River.

9. III.B.3, pages 7-9, MDSPGP-3 Verification Procedures-Category III: Category III will now have only one activity and one process. The revised Category III process will include a coordination process with Federal and State resource agencies for all Category III projects. The resource agency notification timeframe for the Corps' process will be a 15-day comment period. MDE will continue to provide an updated listing of all applications (Category I, II and III) received on their website for public information and will also continue to issue a State public notice to the resource agencies, the Corps, and the public when a Maryland Tidal Wetland License or Permit or a Nontidal Wetlands and Waterways Permit is required. NOTE: For those projects that may adversely affect EFH, the Corps will provide NMFS with a 30-day coordination notice.

10. IV.A, pages 10-11, MDSPGP-3 Category List Index: The MDSPGP-3 Category List Index has been reorganized such that more frequently used activities are located in the beginning of the list. In addition, several Category I activities have been consolidated into one activity. For example, work associated with agricultural

production improvement, building construction, and tide gates have now been consolidated into one Agricultural Activities Category I activity. Category I consists of eight activity types (Boating and Navigation Activities; Repair and Maintenance Activities; Underground and Overhead Utility Lines; Road Crossings; Fill Activities; Shoreline/Bank Stabilization Activities; Return Water; and Oyster Aquaculture). Three new activities have been added (Maintenance Dredging of Previously Authorized Dredge Areas; New Minor Dredging; and Oyster Aquaculture). Several Category I activities have been eliminated (Fish & Wildlife Harvesting, Enhancement, & Attraction Devices & Activities; Oil Spill Cleanup; Removal of Vessels; Structural Discharges; and Cleanup of Hazardous and Toxic Waste). These types of activities will be authorized with NWP's (# 4, 20, 22, 25 & 38), when applicable. Category II coordination procedures now also includes two new criteria for "Activities Proposing 200 Linear Feet or More of Stream Impact" and "Activities Requiring an Individual EFH Consultation". Category III is now a single activity.

CATEGORY I ACTIVITIES:

1. IV.B, pages 11-35, MDSPGP-3 Category List, Category I Activities: Repeated activity-specific conditions (e.g., single and complete project; in-stream work being conducted "in-the-dry"; restoration of temporary impacts; aquatic life movements; and low flow channel being constructed through in-stream armoring, etc.) have been consolidated into the general conditions list to streamline the text and make it more easily understood by the regulated public, regulatory staff, and interested parties. However, new activity-specific conditions and clarifications have been added to several Category I activities, as appropriate. In addition, the acreage impact limits for many Category I activities have increased to ½ acre (21,780 square feet) or 1.0 acre (43,560 square feet) as identified in each Category I activity's impact limits.
2. IV.B.1 a (1), page 11, Channel and Harbor Navigation Aids; and IV.B.1 a (2), page 12, State Regulatory Markers: The applicable waters have been revised to include all navigable waters of the United States, including nontidal navigable waters of the United States, e.g., Potomac and Susquehanna Rivers.
3. IV.B.1 a (3), pages 12-13, Piers: Activity-specific conditions have been added to this Category I activity:
 - This activity does not authorize individual floating piers;
 - Piers with 6-foot wide decking that cross open tidal waters must have their decking constructed a minimum of 4 feet above mean low water to minimize shading of SAV. Alternatively, decking of a pier over open tidal waters may be constructed no lower than 3 feet above mean low water if the deck width does not exceed 5 feet.
 - Floating auxiliary structures authorized by this activity are limited to floating finger piers, including small floating jet-ski piers and platforms; and floating gangways provided the total square footage of these floating structures does not exceed 200 square feet for any one project.
 - It should not be presumed that this pier authorization predetermines, in any way, that future requests to dredge for navigational access would be similarly authorized. Any decision on future dredging proposals adjacent to this property will be based upon existing, historical, physical, and biological characteristics of the waterway, and will include consideration of water depths, submerged aquatic vegetation, consideration of any other aquatic resources present, or other factors that may be relevant.
 - Whenever possible, construction of the pier/platform shall be constructed from uplands, open water, or from the structure itself. Marsh mats shall be used if equipment is placed in vegetated wetlands and must be removed immediately following construction of the pier and the wetland area restored to its preconstruction condition if damaged.
 - The permittee acknowledges the possibility that the structure permitted herein may be subject to damage by wave wash from passing vessels and/or ice flows within the waterway. The issuance of this permit does not relieve the permittee from taking all proper steps to insure the integrity of the structure permitted herein and the safety of vessels moored thereto from damage by wave wash and/or ice flows, and the permittee shall not hold the United States liable for such damage.

Two MDSPGP-2 activity-specific conditions to the Category I Pier Activity have been deleted. There is no longer a restriction to finger piers being constructed on the landward side of the end of a private pier, or a limitation for the construction of a pier or any addition if its most channelward end is in water depths of 2 feet or less below mean low water.

4. IV.B.1 a (4), page 14, Marina/Community Piers Reconfiguration: Community piers have been added to this Category I activity.

5. IV.B.1 a (5), page 14, Boat Ramp Construction, Repair and Expansion: The maximum allowable boat ramp width has been increased from 12 feet to 20 feet in the impact limits and the 50 cubic yard restriction has been eliminated from the activity-specific conditions.
6. IV.B.1 a (6), page 15, Mooring Buoys: This Category I activity also allows for placement in nontidal navigable waters of the United States. The MDSPGP-2 activity-specific conditions have been expanded.
- Commercial mooring buoys are not authorized by this Category I activity. They are subject to a Corps alternative permit review.
 - Mooring Buoy(s) and vessels attached thereto must not be placed in a marked navigation channel, or unmarked channel (area normally traversed by boats or areas of water commonly used for navigation), or within 150 feet of the horizontal limits of a Federal navigation channel, or block ingress to or egress from adjacent properties.
7. IV.B.1 a (8), page 15, Temporary Recreational Structures: The activity-specific condition concerning the removal of temporary recreational structures has been expanded. Buoys, markers and structures must be removed from the water within 30 days after the specific event or season has ended.
8. IV.B.1 a (9), page 16, Maintenance Dredging of Previously Authorized Dredge Areas: This work has been added to Category I activities. The activity impact limits must not exceed one acre (43,560 square feet) and must not exceed the dredging depths and footprint as was previously authorized. Activity-specific conditions are included that require the previous dredging must have been authorized by the Corps no more than 10 years prior to the current proposal; dredging restrictions if submerged aquatic vegetation is present; a post-dredging bathymetric (depth) survey; and an April 1 through June 30 time-of-year restriction from dredging in certain tidal waters for the protection of summer flounder. In addition, a reference to Appendix B, Submerged Aquatic Vegetation Confirmation Protocol, has been added in the activity-specific conditions. See this activity for details of the activity-specific conditions.
9. IV.B.1 a (10), pages 17-18, New Minor Dredging: This work has been added to Category I activities. The activity impact limits require that the dredged area must be 0.034 acre (1,500 square feet) or less and involve the removal of no more than 100 cubic yards of material. This activity does not authorize dredging within sites that support submerged aquatic vegetation (SAV); anadromous fish spawning areas; natural oyster bars (NOBs); or wetlands. This minor dredging proposal must be a single and complete action, and not affiliated with a local/county waterway access dredging project. In addition, activity-specific conditions state there is no dredging for the connection of canals or other artificial waterways to adjacent water bodies; existing depths within the proposed dredge area must exceed 3 feet below mean low water; in most circumstances the landward edge of the dredge cut must be at least 15-foot channelward of the mean high water shoreline; there is no dredging from April 1 through June 30 in certain tidal waters for the protection of summer flounder; and a requirement of a post-dredging bathymetric (depth) survey. In addition, a reference to Appendix B, Submerged Aquatic Vegetation Confirmation Protocol, has been added in the activity-specific conditions. See this activity for details of the activity-specific conditions.
10. IV.B.1 b (1), pages 18-19, General Maintenance: The activity impact limit (temporary and permanent) has been increased not to exceed 1.0 acre (43,560 square feet) of all waters of the United States, including jurisdictional wetlands. The linear foot maximum limit for sediment removal is 200 feet in any direction from the structure. The activity-specific condition has been reworded to read, "For replacement culvert crossings, culverts must be depressed in accordance with the State of Maryland regulations" to allow for exceptions in varying environmental conditions such as bedrock streambeds. The activity-specific condition prohibiting stationing equipment in nontidal streams is now addressed with a general condition requiring that in-stream work be conducted "in-the-dry" whenever practicable. In addition, the District added an activity-specific condition to read, "This activity does not authorize access roads proposed as part of utility maintenance." The activity specific condition for "no application required" has been reworded to read, "No application is required for Corps authorization except when the proposed total impacts (temporary and permanent) to tidal wetlands and/or tidal waters associated with this general maintenance activity exceed 10,000 square feet. An application must then be submitted to MDE for Corps authorization." Finally, the District added an activity-specific condition to read, "Prospective permittees should refer to General Condition VI.C.6 of the MDSPGP-3 (i.e., pertaining to Aquatic Life Movements), for guidance on hydrologic parameters for constructing man-made crossings, to ensure that the activity will not adversely affect migratory fish." See this activity for details of the activity-specific conditions.

11. IV.B.1 b (2), page 20, Armoring Bridges, Causeways and Culverts: The activity impact limit (temporary and permanent) has been increased not to exceed 1.0 acre (43,560 square feet) of all waters of the United States, including jurisdictional wetlands. The District has reworded the activity description and activity-specific condition to revise the distance limit on discharges upstream and downstream from the existing structure to require that the armoring be the minimum necessary to protect the structure or to ensure the safety of the structure. The District added clarification that this activity does not authorize stream channelization or stream relocation projects. The activity-specific condition prohibiting stationing equipment in nontidal streams is now addressed by a general condition requiring that in-stream work be conducted “in-the-dry” whenever practicable. Finally, the District added an activity-specific condition to read, “Prospective permittees should refer to General Condition VI.C.6 of the MDSPGP-3 (i.e., pertaining to Aquatic Life Movements), for guidance on hydrologic parameters for constructing man-made crossings, to ensure that the activity will not adversely affect migratory fish.” See this activity for details of the activity-specific conditions.

12. IV.B.1 b (3), pages 20-21, Bulkhead Repair or Replacement; IV.B.1 b (4), pages 21-22, Maintenance of Tidal Roadside Ditches; and IV.B.1 b (5), page 22, Maintenance of Mosquito Control Ditches: All three of these activities’ impact limit (temporary and permanent) has been increased not to exceed 1.0 acre (43,560 square feet) of waters of the United States, including jurisdictional wetlands. See each Category activity for its applicability to specific waters (tidal and/or nontidal). The activity-specific condition prohibiting stationing equipment in nontidal streams is now addressed with a general condition requiring that in-stream work be conducted “in-the-dry” whenever practicable.

13. IV.B.1 c , page23-24, Underground and Overhead Utility Lines: The activity impact limit (temporary and permanent) to all waters of the United States, including jurisdictional wetlands, has been increased not to exceed 0.5 acre (21,780 square feet). The total maximum distance impact limit to streams, rivers, and other open waters remains the same, not to exceed 500 linear feet. Total temporary and permanent impacts to these same waterways for access roads is also still limited to no more than 200 linear feet in length of the maximum allowable 500 linear feet. Restrictions on utility line diameters have been eliminated. Language has been added to the activity-specific condition regarding access roads to read, “Access roads must be constructed as near as possible to preconstruction contours and elevations (e.g., at grade contour roads or geotextile/gravel roads).” Work associated with a driveway crossing for a single residential lot is no longer included as part of this activity since this activity will be used with multiple Category I activities. The activity-specific condition restricting the use of this activity when the crossing is in the location of a braided channel nontidal system has been removed. The activity-specific condition has been reworded to read, “For permanent culvert crossings, culverts must be depressed in accordance with the State of Maryland regulations” to allow for use of this activity in varying environmental conditions such as bedrock streambeds. The activity-specific condition for specific flow velocity requirements through permanent culverted crossings is now addressed in a general condition regarding Aquatic Life Movements. Several repeated activity-specific conditions related to temporary and permanent water crossings are now addressed in a general condition for Water Crossings for all activities authorized under the MDSPGP-3.

14. IV.B.1 d, pages 24-25, Road Crossings: The activity impact limit (temporary and permanent) to all waters of the United States, including jurisdictional wetlands, has been increased not to exceed 0.5 acre (21,780 square feet) and 500 linear feet with no single crossing to exceed 200 linear feet of impact. The District clarified that written documentation may be required to support the preferred crossing method and that a compensatory mitigation proposal may be required when permanent impacts to streams, rivers, and other open waters are greater than 200 linear feet to assure minimum impact. In addition, the activity-specific condition regarding depressing of permanent culverts has been reworded to read, “For permanent culvert crossings, culverts must be depressed in accordance with the State of Maryland regulations” to allow for use of this activity in varying environmental conditions such as bedrock streambeds. The activity-specific condition for specific flow velocity requirements through permanent culverted crossings is now addressed in a general condition regarding Aquatic Life Movements. Several repeated activity-specific conditions related to temporary and permanent water crossings are now addressed in a general condition for Water Crossings for all activities authorized under the MDSPGP-3.

15. IV.B.1 e (1), pages 25-26, Minor Nontidal Fills: Section 10 statutory authority applicable to nontidal navigable waters of the United States (e.g., Potomac and Susquehanna Rivers) has been added to this Category I activity. The acreage impact limit to nontidal wetlands for this activity has been increased not to exceed 0.5 acre (21,780 square feet) and the total maximum distance impact limit to streams, rivers, and other open waters was reduced from 500 linear feet to 300 linear feet. The District clarified that a compensatory mitigation proposal may be required when permanent impacts to streams, rivers, and other open waters are greater than 200 linear feet to

assure minimum impact. The activity-specific conditions restricting the use of this activity for channelization or placement of pipe and the construction of golf courses or ski areas have been removed. The District has added clarification to say that this activity does not authorize the construction of in-stream stormwater management facilities.

16. IV.B.1 e (2), pages 26-27, Agricultural Activities: The Baltimore District has consolidated three MDSPGP-2 Category I Agricultural Activities (i.e., Agricultural Production Improvement, Building Construction, and Tide Gates) into one MDSPGP-3 Category I activity. The acreage impact limit to waters of the United States for this activity has increased not to exceed to 0.5 acre (21,780 square feet). Included in this areal limit is a maximum distance impact limit to streams and other open waters of no more than 300 linear feet. The District has added clarification to require a compensatory mitigation proposal for non-USDA program participants as well as USDA program participants.

17. IV.B.1 e (3), pages 27-28, Soil Investigations, Scientific Measurement Devices, and Survey Activities: Two MDSPGP-2 Category I activities (i.e., Soil Investigations and Survey Activities and Scientific Measurement Devices) have been consolidated into one MDSPGP-3 Category I activity. No application is required for Corps authorization. The acreage impact limit to waters of the United States for this activity has increased not to exceed 0.5 acre (21,780 square feet). Several repeated activity-specific conditions related to temporary road crossings are now addressed in a general condition for Water Crossings that is applicable to all activities authorized under the MDSPGP-3.

18. IV.B.1 e (4), page 28, Dry Fire Hydrants: The acreage impact limit to waters of the United States for Dry Fire Hydrants has been increased not to exceed 0.5 acre (21,780 square feet) for this MDSPGP-3 Category I activity. Several activity-specific conditions are now addressed in the general conditions that are applicable to all activities authorized under the MDSPGP-3.

19. IV.B.1 e (5), page 29, Clearing Debris and Windfalls: The acreage impact limit to waters of the United States for Clearing Debris and Windfalls has been increased not to exceed 0.5 acre (21,780 square feet). No application is required for Corps authorization. An activity-specific condition has been added that states that this activity does not authorize the construction of access roads. Activity-specific conditions for in-stream work to be conducted “in the dry” is now addressed in the Erosion and Sediment Control general condition that is applicable to all activities authorized under the MDSPGP-3.

20. IV.B.1 e (6), pages 29-30, Special Area Management Plan (SAMP) Study Area Projects: The acreage impact limit to waters of the United States for Special Area Management Plan (SAMP) Study Area Projects has been increased not to exceed 1.0 acre (43,560 square feet). The activity description has added a statement that the affected local government must have officially adopted the SAMP. The activity-specific conditions for specific flow velocity requirements through permanent culverted crossings and in-stream work to be conducted “in-the-dry” are now addressed in general conditions regarding Aquatic Life Movements and Erosion and Sediment Control, respectively.

21. IV.B.1 e (7), page 30, Temporary Construction, Access, Stream Diversions, and Dewatering for Construction: The activity description now includes temporary construction, access, and dewatering work necessary for construction activities or repair, or access fills, or dewatering of construction sites; provided that the associated primary activity is authorized by the Corps or the United States Coast Guard (USCG), or for other construction activities not subject to the Corps or USCG regulations. The Baltimore District has added Section 10 statutory authority to the Temporary Construction, Access, Stream Diversions, and Dewatering for Construction activity. The acreage impact limit to waters of the United States for this activity has been increased not to exceed 0.5 acre (21,780 square feet). An application is required to be submitted to MDE for Corps authorization. Several activity-specific conditions were added, including requirements that appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding and that fill must be of materials and placed in a manner that will not be eroded by expected high flows. In addition, a restoration plan must now be included with the application for authorization under this activity of the MDSPGP-3. The activity-specific condition for aquatic life movement is now addressed in a general permit condition regarding Aquatic Life Movements.

22. IV.B.1 e (8), page 31, Outfall Structures and Associated Intake Structures: This activity has been renamed to clarify that this activity also authorizes associated intake structures. The acreage impact limit to waters of the United States has been increased not to exceed 0.5 acre (21,780 square feet) for this Category I activity. The screen mesh size restriction for intake structures has been revised to say that mesh size must now be no larger than

2 mm. An activity-specific condition that provides clarification that the activity is limited to the construction of intake structures directly associated with an authorized outfall structure is now a part of this activity's description. The activity-specific condition for aquatic life movement is now addressed in a general permit condition regarding Aquatic Life Movements.

23. IV.B.1 f, page 31, Shoreline and Stream Bank Stabilization Activities: Clarification is provided in the text of this Category I activity regarding the order of preference for shoreline stabilization activities and stream bank stabilization activities and identified that written documentation may be required to support the preferred stabilization method.

24. IV.B.1 f (1); page 31-33; Tidal Revetments, Tidal Shoreline Erosion Control Structures (not revetments), Existing Tidal Revetment/Bulkhead Armoring, and Nontidal Stream Bank Stabilization: Four MDSPGP-2 Category I activities (i.e., Revetment/Bulkhead Armoring, New Revetments, Tidal Shoreline Erosion Control Structures (not revetments), and Nontidal Bank Stabilization) have been consolidated into one MDSPGP-3 Category I activity. The applicable waters for this activity now include all waters of the U.S., including jurisdictional wetlands. The acreage impact limit to waters of the United States for new tidal revetments remains the same as in the MDSPGP-2, not to exceed 5,000 square feet. However, the acreage impact limit to waters of the U.S. for new tidal shoreline erosion control structures (not revetments) has increased from 3,000 square feet to not to exceed 5,000 square feet. In addition, the acreage impact limit to waters of the U.S. for existing revetment/bulkhead armoring and nontidal bank stabilization has increased not to exceed 0.5 acre (21,780 square feet). This activity now allows for nontidal in-stream bed structures (e.g., rock cross vanes, j-hooks, vortex rock weirs, etc.) that are constructed for nontidal bank stabilization purposes when the overall project area is limited to 500 feet in total length.

25. IV.B.1 f (2); pages 33-34; Tidal Marsh Creation/Beach Nourishment: Beach nourishment work has been added to the activities that are authorized under this Category I activity. Low profile stone sills are not authorized for use with beach nourishment projects. The acreage impact limit to unvegetated (i.e., no adjacent marsh, wetland, submerged aquatic vegetation) shallow waters for this activity has been changed not to exceed 1.0 acre (43,560 square feet). The time limit for planting the marsh establishment area has been revised from one year to six months following completion of the filling operation to get the marsh established in a shorter time frame after the discharge of fill material occurs. In addition, an activity-specific condition has been added referencing Appendix B, Submerged Aquatic Vegetation Confirmation Protocol and requiring that an assessment of the presence or absence of submerged aquatic vegetation within or near the proposed impact area be conducted.

26. IV.B.1 g, page 34, Return Water: The Return Water activity no longer requires an application for Corps authorization.

27. IV.B.1 h., page 34-35, Oyster Aquaculture: This work has been added to the MDSPGP-3 Category I activities. This activity authorizes the placement of floats in the water by riparian landowners for purposes of conducting oyster aquaculture activities. This new activity is limited to use with the native eastern oyster (*Crassostrea virginica*). The surface area of the floats must not exceed 60 square feet of total coverage of the water column. No application is required for Corps authorization. The floats must be attached to existing structures (e.g., piers, pilings, bulkheads, etc.) that are connected to the riparian owner's fastland. The riparian owner shall not commercially harvest, sell, or market any of the shellfish for human consumption. The riparian owner shall obtain oyster seed from a Maryland vendor or obtain an approved Shellfish Import Permit from the Maryland Department of Natural Resources. See this activity for details of the activity-specific conditions.

CATEGORY II ACTIVITIES:

IV.B.2 b & f, pages 36-37, Category II Activities: The Baltimore District has added "Activities Proposing 200 Linear Feet or More of Stream Impact" and "Activities Requiring an Individual Essential Fish Habitat (EFH) Consultation" to the Category II activities. All Category II activities must be screened by the Corps to ensure compliance with Corps interests or concerns, including Federal projects and navigation issues, and to ensure compliance with the Magnuson-Stevens Fishery Conservation and Management Act prior to making a determination of eligibility for authorization under the MDSPGP-3.

CATEGORY III ACTIVITIES:

IV.B.3, page 37, Category III Activities: Category III activities have been modified to include only one Category III activity process. This activity involves a 15-day coordination process with Federal and State resource agencies

for all Category III projects to ensure that the project will result in no more than minimal adverse environmental effects, individually and/or cumulatively, before making a decision to verify eligibility of projects for authorization under the MDSPGP-3. For those projects that may adversely affect EFH, the Corps will provide NMFS with a 30-day coordination notice. MDE will continue to issue a State public notice to the resource agencies, the Corps, and the public when a Maryland Tidal Wetland License or Permit or a Nontidal Wetlands and Waterways Permit is required.

DEFINITIONS:

1. IV.B.4, pages 37-39, Definitions: The reference to the NWP has been revised to reflect the current 2002 NWPs. In addition, the reference for the 2002 Federal Register final revisions to the Clean Water Act Regulatory Definitions of “Fill Material” and “Discharge of Fill Material” as published in the May 9, 2002 Federal Register was added.

2. IV.B.4, page 38, Definitions, “Fill Material”: The definition of “fill material” has been changed to be consistent with the Final Revisions to the Clean Water Act Regulatory Definitions of “Fill Material” and “Discharge of Fill Material” as published in the May 9, 2002 Federal Register, Vol. 67, No. 90 (67 FR 90). This new definition for “Fill Material” reads, “...any material placed in waters of the United States where the material has the effect of either replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water of the United States.” This term does not include any pollutant discharged into the water primarily to dispose of waste, as that activity is regulated under Section 402 of the Clean Water Act (67 FR 90, p. 31129). See this reference for definition of “discharge of fill material.”

GENERAL PERMIT CONDITIONS:

1. VI.A.6, page 40, Use of Multiple MDSPGP-3 Category I Activities: This general condition has been renamed and changed to allow the use of more than one MDSPGP Category I activity for a single and complete project so long as the project meets the activity-specific requirements and impact limits of each Category I activity and the total extent of project impacts to waters of the United States does not exceed the acreage limit of the Category I activity with the highest specified acreage limit.

2. VI.B.4, page 41, Essential Fish Habitat (EFH): The EFH general condition has been revised to be in accordance with the outcome of the Corps programmatic EFH consultation with the NMFS for the MDSPGP-3. The activity now states that NMFS has determined that many of the MDSPGP-3 Category I activities are eligible for EFH general or programmatic concurrence and require no further EFH consultation. NMFS, in consultation with the District, has determined that individual EFH consultation is needed for some projects potentially eligible for authorization under Category I (includes those projects requiring EFH screening process under Category II) and all Category III projects of the MDSPGP-3 that may adversely affect EFH. The Corps will coordinate with NMFS as part of the Category II and Category III review procedures. EFH conservation recommendations made by NMFS will normally be included as a permit requirement by the Corps. If the EFH coordination and consultation requirements can not be resolved under the MDSPGP-3 process, an alternate Corps permit review is required for the project.

3. VI.C.2 (b), page 42, Mitigation: A mitigation condition has been added to the general conditions requiring compensatory stream mitigation for all permanent impacts of 200 linear feet or greater to stream channels, rivers, and other open waters as appropriate under Federal guidance and to the extent necessary to ensure that the impacts are minimal. The District has also added that a proposed compensatory mitigation proposal may be submitted with the application to expedite the process. The Corps will determine if the project is eligible for authorization under the MDSPGP-3 subject to the applicant’s submittal of a compensatory mitigation proposal for stream impacts. Compensatory mitigation plans for projects in or near streams or other open waters will generally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat impact concerns.

4. VI.C.5, page 42, Erosion and Sediment Control: Additional clarification was added to this general condition to say that in-stream work shall be conducted “in the dry” whenever practicable using stream diversion devices, other

than earthen or stone cofferdams. In addition, work in waters of the United States should be performed during periods of low-flow or no-flow, whenever practicable.

5. VI.C.6, page 43, Aquatic Life Movements: A condition for aquatic life movements has been added that states no activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. In addition, the Baltimore District refers prospective permittees to "Appendix C, Guidance for Constructing Man-Made Stream Crossings and Scour Protection for Man-Made Stream Crossings" for an expanded version of this general condition. Appendix C includes recommended guidance on fish passage and hydrological parameters to ensure that man-made stream crossings do not adversely affect migratory fish.

6. VI.C.7, page 43, Water Crossings: Several activity-specific conditions related to temporary and permanent water crossings have been consolidated and included into this general condition. A new requirement was added to this general condition that states that all water crossings (e.g., utility lines and road crossings) must be constructed roughly perpendicular to waters of the United States, including streams and wetlands. Where a utility line or access road is constructed parallel to a stream corridor, an undisturbed buffer shall be maintained between the utility line/access road and the waterway to avoid or minimize potential future impacts to waters of the United States. These potential impacts would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance.

7. VI.C.9, page 43, Spawning Areas: The spawning areas general condition language has been reworded and updated. This condition now reads, "Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill materials, 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. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized."

8. VI.D.2, page 44, Compliance Certifications: This general condition now requires that a permittee provide the required Compliance Certification Form within 60 days following completion of the authorized work and any required mitigation (but not mitigation monitoring, which requires separate submittals). In addition, language has been added stating that failure to submit a Compliance Certification Form by the permittee could result in the Corps taking appropriate non-compliance/enforcement action against the permit holder.

9. VI.D.3, page 44, Transfer of MDSPGP-3 Verifications: This general condition was added to insure that the permittee transfers the MDSPGP-3 verification to the new owner when a permittee sells a property associated with a MDSPGP-3 verification and provides directions on how to implement the transfer.

DURATION OF AUTHORIZATION AND REPORTING:

1. VII.A.1, page 45, Duration of Authorization: For individual projects verified/authorized by the MDSPGP-3, the construction period has changed so that it expires when the MDSPGP-3 expires, is suspended, or revoked, whichever date occurs sooner.

2. VII.B.2, page 46, Previously Authorized Activities: The duration of authorization has changed for projects that have received written, project-specific verification under the MDSPGP-2 based on applications made prior to the effective date of the MDSPGP-3, and have not been completed, but that meet the terms and conditions of the MDSPGP-3, including the applicable activity-specific impact limits and conditions so that they remain authorized until the expiration of the MDSPGP-3.

3. VII.D., page 46, Reporting and Evaluation: A requirement has been added for review of operational issues by the Corps in consultation with MDE and the resource agencies and that the Corps will conduct a review prior to the expiration of the MDSPGP-3 for consideration in the reevaluation of the MDSPGP-3 for re-issuance. In addition, the Corps will evaluate the MDSPGP-3, including its terms and conditions prior to the expiration of the MDSPGP-3 to determine if: (1) the MDSPGP-3 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. Based on this review and evaluation, the Corps will further determine whether modification, suspension, or revocation of the MDSPGP-3 is appropriate.

Maryland's Tidal Wetlands Protection Act, Nontidal Wetlands Protection Act, and Waterway Construction Act establish a State-wide permit program for protecting Maryland's aquatic resources. Maryland's procedures for the granting of permits and licenses require MDE to apply evaluation criteria consisting of alternatives analyses (for nonwater dependent activities), avoidance techniques, the minimization of impacts, and if a permit is to be granted, compensatory mitigation. The evaluative criteria within Maryland's programs are similar to Federal criteria under Section 404(b)(1) of the Federal Clean Water Act. The Baltimore District Engineer will continue to evaluate the MDSPGP-3 process, to determine if activities have been authorized in accordance with the requirements of the MDSPGP-3 and in compliance with Federal Regulations.

The MDSPGP-3 will protect the aquatic resources of the State of Maryland within the Baltimore District of the U.S. Army Corps of Engineers' regulatory geographic boundaries and jurisdictional authorities; reduce the administrative burden of the program for both the Corps of Engineers and the State of Maryland through interagency cooperation; improve Regulatory response time; and add predictability within specified limits to the permit program for the potential applicant and general public.

The MDSPGP-3 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 regulatory geographic boundaries of the Baltimore District.

The decision to reissue the MDSPGP-2 as MDSPGP-3, with the above modifications, was made after a thorough evaluation of the probable impacts including cumulative impacts of the proposed MDSPGP-3 on the public interest. This decision reflects the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal were considered including the cumulative effects thereof; among those were 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.

Section 401 Water Quality Certification (WQC) and Coastal Zone Management Act Consistency (CZM):

1. Water Quality Certification (WQC) from the MDE is required for the MDSPGP-3 pursuant to Section 401 of the Clean Water Act. As a result of coordination with MDE, WQC was issued by MDE on July 10, 2006, for Category I activities that meet the terms and conditions of the MDSPGP-3. In addition, MDE issued WQC for all Category II and Category III activities, subject to the condition that the applicants obtain all necessary permits and approvals from MDE. This condition assures that the activities authorized by MDSPGP-3 will comply with applicable State water quality standards. Finally, all proposed activities meeting the conditions of the MDSPGP-3 that do not require authorization from MDE were issued WQC, as indicated in Section III.A.4 of the MDSPGP-3.

2. The Baltimore District has determined that the MDSPGP-3 is consistent with Maryland's Coastal Zone Program pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972, as amended. MDE concurred with the Corps' determination on July 10, 2006, that all activities authorized by the MDSPGP-3 will be carried out in a manner consistent with the Maryland Coastal Zone Management Program. In addition, all proposed activities meeting the conditions of the MDSPGP-3 that do not require authorization from MDE are consistent with the State's Coastal Zone Management Plan, as indicated in Section III.A.5 of the MDSPGP-3.

State or local authorizations, may be required, on a case-by-case basis, for the MDSPGP-3 authorization to be valid. A review of the MDSPGP-3 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. Similarly, the MDSPGP-3 indicates that it complies with the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, as amended. The Baltimore District has determined in consultation with NMFS that the adverse effects of this MDSPGP-3 on EFH for Federally managed species are not substantial and an expanded consultation has been conducted with NMFS. A detailed written EFH assessment was submitted to NMFS. Mitigative measures have been incorporated into the MDSPGP-3 to minimize adverse effects on EFH.

Finally, the MDSPGP-3 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.

In addition, on May 7, 2002, the Baltimore District issued Special Public Notice #02-07 announcing suspension of specific NWP's in Maryland that are duplicated by the MDSPGP-3. The MDSPGP-3 is designed to continue to authorize certain activities formerly covered by the NWP program. Therefore, in conjunction with the re-issuance of the MDSPGP-3 with modifications, the following NWP's remain suspended for use in the State of Maryland, except for Back Creek (of the Chesapeake and Delaware Canal), east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the dam that crosses Herring Creek; and Long Branch to the Boat Yard Road Bridge to the north, including adjacent and contiguous jurisdictional wetlands to these tidal waterways. These listed areas fall within the U.S. Army Corps of Engineers Philadelphia District's regulatory geographic boundaries and are not subject to this NWP suspension. The NWP's in the District of Columbia continue to apply in accordance with the terms and conditions of Special Public Notice #02-07 dated May 7, 2002. Special Public Notice #02-07 is available on the District web site at: http://www.nab.usace.army.mil/Regulatory/Permit/nwp_regcond_pa_pn.pdf

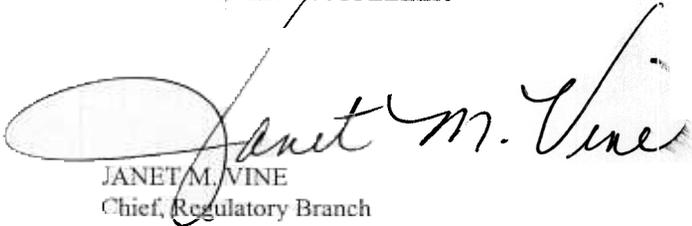
- NWP 1 – Aids to Navigation
- NWP 2 – Structures in Artificial Canals
- NWP 3 – Maintenance (except for repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire, or other discrete events)
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures and Maintenance
- NWP 8 – Oil and Gas Structures
- NWP 9 – Structures in Fleeting & Anchorage Areas
- NWP 10 – Mooring Buoys
- NWP 11 – Temporary Recreational Structures
- NWP 12 – Utility Line Activities
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- 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 21 – Surface Coal Mining Activities
- NWP 24 – State Administered Section 404 Programs
- NWP 26 – (Reserved)
- 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 39 – Residential, Commercial, & Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 44 – Mining Activities

Furthermore, Special Public Notice #02-07 dated May 7, 2002 is modified such that the following NWP's are not suspended in Maryland for the purpose of efficiency and effectively protecting the aquatic environment, while maintaining an acceptable level of responsiveness to the regulated public:

- NWP 4 - Fish & Wildlife Harvesting, Enhancement & Attraction Devices and Activities
- NWP 20 - Oil Spill Cleanup
- NWP 22 - Removal of Vessels
- NWP 23 - Approved Categorical Exclusions
- NWP 25 - Structural Discharges
- NWP 27 - Stream & Wetlands Restoration 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
- NWP 38 - Cleanup of Hazardous & Toxic Waste

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. Point of contact for this action is Ms. Beth E. Bachur, Permit Process Program Manager, U.S. Army Corps of Engineers, Baltimore District, Regulatory Branch, P.O. Box 1715, Baltimore, Maryland 21203.

FOR AND IN BEHALF OF THE DISTRICT ENGINEER: COLONEL PETER W. MUELLER



JANET M. VINE
Chief, Regulatory Branch