



**STATE OF MARYLAND  
DEPARTMENT OF THE ENVIRONMENT  
WATER MANAGEMENT ADMINISTRATION**



**WATER QUALITY CERTIFICATION  
&  
COASTAL ZONE CONSISTENCY DETERMINATION**

Chesapeake Bay Total Maximum Daily Load Regional General Permit (“Bay TMDL RGP”) Reissuance,  
NAB-2019-00527

**CERTIFICATION NUMBER:** 20-WQC-0029

**ISSUED TO:** U.S. Army Corps of Engineers, Baltimore District, Regulatory Branch  
2 Hopkins Plaza, Baltimore, MD 21201

**EFFECTIVE DATE:** July 1, 2020

**EXPIRATION DATE:** June 30, 2025

**Project Location:** Chesapeake Bay, nontidal waters of the United States, including nontidal wetlands in the Chesapeake Bay watershed within the State of Maryland. Excluded waters include the Coastal Bays in Worcester County, Maryland, and the waters located in the Ohio River drainage in Western Maryland. Additional excluded waters of Maryland include adjacent and contiguous jurisdictional wetlands to 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. All these areas above are excluded as they are located within the regulatory geographic boundary of the Corps Philadelphia District.

**WATER QUALITY CERTIFICATION**

**UNDER AUTHORITY OF SECTION 401 OF THE FEDERAL WATER POLLUTION CONTROL ACT AND ITS AMENDMENTS AND IN ACCORDANCE WITH § 9-313 THROUGH § 9-323, INCLUSIVE, OF THE ENVIRONMENT ARTICLE, ANNOTATED CODE OF MARYLAND, THE MARYLAND DEPARTMENT OF THE ENVIRONMENT, WATER AND SCIENCE ADMINISTRATION HAS DETERMINED THAT THE REGULATED ACTIVITIES DESCRIBED IN THE BAY TMDL RGP SUBMITTED JULY 1, 2020, WILL NOT VIOLATE MARYLAND’S WATER QUALITY STANDARDS, IF CONDUCTED IN ACCORDANCE WITH THE CONDITIONS OF THIS CERTIFICATION.**

This Water Quality Certification (“Certification”) is issued under authority of Section 401 of the Federal Clean Water Act and its Amendments, Title 9, Subtitle 3 of the Environment Article, and Code of Maryland Regulations (COMAR) 26.08.02.10. The Maryland Department of the Environment (“MDE” or “the Department”) has determined from a review of the application file that the activities described in the Attachment above will not violate Maryland’s water quality standards, provided that the following conditions are satisfied. This Certification does not relieve any person conducting activities under this Certification and the Bay TMDL RGP (“Certification Holder”) from the responsibility to obtain any other approvals, licenses, or permits in accordance with federal, State, or local requirements.

**Description of Certified Project:**

Reissuance of the Chesapeake Bay Total Maximum Daily Load Regional General Permit (“Bay TMDL RGP”), effective July 1, 2020 and expiring June 30, 2025. The Bay TMDL RGP is for

## **Water Quality Certification Number: 20-WQC-0029**

activities in waters of the U.S., including jurisdictional wetlands, that are part of an acceptable watershed strategy, such as a Chesapeake Bay TMDL Watershed Implementation Plan (“WIP”), whose purpose is to identify implementation activities needed to meet nutrient and sediment load reduction targets in accordance with the Chesapeake Bay TMDL. Activities authorized by this Bay TMDL RGP include the retrofit of existing stormwater management facilities, the retrofit and stabilization of existing outfalls, and the restoration and enhancement of nontidal streams and nontidal wetlands. This Bay TMDL RGP provides a streamlined form of Department of the Army (“DA”) authorization for activities that provide nutrient and sediment reductions. The development of permit streamlining measures under Section 404 of the Clean Water Act (“CWA”) for TMDL implementation activities, including stream restoration activities, supports Chesapeake Bay Executive Order (“EO”) 13508 strategy goals for restoring clean water and recovering habitat and EO 13563, Improving Regulation and Regulatory Review. The substantive proposed modifications consist of inclusion of activity-specific limits and requirements for stormwater management facilities, outfall structures, and stream and wetland restoration projects to reduce confusion over threshold and reporting requirements; minor changes to thresholds for individual activities and elimination of thresholds for temporary impacts; clarification of activities requiring U.S Army Corps of Engineers verification with agency coordination; and a requirement for post-construction reporting for all activities.

The Certification Holder subject to this Certification shall comply with the following conditions:

### **SPECIAL CONDITIONS**

- 1) The Department may require issuance of an individual water quality certification for an activity otherwise included in this Certification when the Department determines that additional review and conditions may be necessary to ensure that any discharge will not violate water quality standards of waters of this State under COMAR 26.08.02 or other appropriate requirements of state law or regulation. Notwithstanding compliance with the terms and conditions of this Certification, the Department retains discretionary authority to require an individual certification for any project based on concerns for water quality impacts in unique circumstances not previously considered in issuance of the Certification. Circumstances in which this authority may be invoked include but are not limited to: when, on a case-by-case basis, the Department determines that the potential consequences of the proposal warrant individual review; for projects with cumulative environmental impacts that are more than minimal; or where there is a special resource or concern associated with a particular project, which is not addressed with conditions of this Certification and warrants greater review.
- 2) The Certificate Holder shall meet all performance standards and conditions required by the Department for activities in nontidal waterways, their 100-year floodplains, wetlands, buffers, or expanded buffers to ensure that any discharges which may enter waters of this State will not result in a failure to comply with water quality standards in COMAR 26.08.02. or other water quality requirements of state law or regulation.
- 3) Temporary impacts to nontidal wetlands shall be restored to pre-existing contours and elevations and previous conditions with at least the same nontidal wetland acreage and equivalent function as indicated by a return to the same wetland type.
- 4) The project shall result in a net positive or overall uplift to ensure that existing designated uses of waters of this State are maintained or enhanced, based on all qualifying pre-and post-construction assessment requirements and criteria as specified by the Department for waters of this State.

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- 5) The Certification Holder shall comply with monitoring required by any Department authorization to ensure that water quality standards for waters of this State are met, in addition to monitoring required in the Bay TMDL RGP.
- 6) The Certification Holder shall follow remedial measures required by the Department to ensure that the project is in compliance with water quality standards when:
  - a) Conditions or performance standards required under this Certification or any Departmental authorizations are not met; or
  - b) The Department determines that water quality standards may not be met at the project site.
- 7) The Corps of Engineers shall notify MDE at least 90 days prior to any proposed modifications of this Bay TMDL RGP that could result in activities that may impact the quantity or quality of any discharges affecting compliance with the conditions of this Certification or Maryland water quality standards.
- 8) If the Department determines that State water quality standards or other water quality requirements of state law or regulation are not being met, or that State or federal law is being violated, or that further conditions are necessary to assure compliance with such standards, requirements, or laws, the Department may reevaluate and modify this Certification to include conditions appropriate to assure compliance with such standards, requirements, and laws.

### **GENERAL CONDITIONS**

- 1) Activities which result in an earth disturbance subject to the requirements in Annotated Code of Maryland, Environment Article, Title 4 and COMAR 26.17.01 shall have an erosion and sediment control plan approved by the appropriate approval authority, including following the stabilization requirements set forth in COMAR 26.17.01.07 and “2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control,” as may be amended.
- 2) The disturbance of the bottom of the water and sediment transport into adjacent State waters shall be minimized. The Certification Holder shall obtain and certify compliance with a grading and sediment control plan, which has been approved by the approving authority. The approved plans shall be available at the project site during all phases of construction.
- 3) Instream Construction Prohibition: To protect important aquatic species, activities within stream channels are prohibited as determined by the classification of the stream (COMAR 26.08.02.08). Instream work may not be conducted from: for Use III waters October 1 through April 30, inclusive; for Use IV waters March 1 through May 31; inclusive; for all other waters from March 1 through June 15, inclusive, of any year or as stipulated in the Department’s authorization.
- 4) The regulated activity shall be conducted so as not to restrict or impede the:
  - (a) Movement of wildlife indigenous to the nontidal wetlands or adjacent water, or
  - (b) Passage of normal or expected high water flows;
- 5) The Certification Holder shall obtain any and all additional authorizations or approvals, including self-certifying General Permits issued by MDE, and shall comply with all conditions of such authorizations.
- 6) This Certification does not obviate the need to obtain required authorizations or approvals from other State, federal or local agencies as required by law.

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- 7) The proposed project shall be constructed in accordance with the approved final plan and its approved revisions.
- 8) All fill and construction materials not used in the project shall be removed and disposed of in a manner which will prevent their entry into waters of this State.
- 9) This Certification does not authorize any injury to private property, any invasion of rights, or any infringement of federal, state, or local laws or regulations.
- 10) The Certification Holder shall allow authorized representatives of the Department access to the site of authorized activities during normal business hours to conduct inspections and evaluations of the operations and records necessary to assure compliance with this Certification.

Failure to comply with these conditions shall constitute reason for MDE to suspend or revoke the Certification Holder's authorization to conduct activities under this Certification may subject the Certification Holder to criminal and/or civil penalties or other enforcement action in accordance with applicable law.

**COASTAL ZONE CONSISTENCY**

**BASED ON THE AFOREMENTIONED CONDITIONS, THE DEPARTMENT HAS DETERMINED THAT THE ACTIVITIES IN THE BAY TMDL RGP, SUBMITTED JULY 1, 2020, IS CONSISTENT WITH THE STATE'S FEDERALLY APPROVED COASTAL ZONE MANAGEMENT PROGRAM, AS REQUIRED BY SECTION 307 OF THE FEDERAL COASTAL ZONE MANAGEMENT ACT OF 1972, AS AMENDED.**

CERTIFICATION APPROVED:

DATE:



7/10/2020

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D. Lee Currey  
Director  
Water and Science Administration



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Matthew J. Strickler  
Secretary of Natural Resources

David K. Paylor  
Director

(804) 698-4000  
1-800-592-5482

June 29, 2020

Mr. Daniel P. Swenson  
Chief, Regulatory Branch  
Baltimore District, U.S. Army Corps of Engineers  
2 Hopkins Plaza  
Baltimore, MD 21201-2930

**RE: Final Section 401 Certification of 2020 Chesapeake Bay Total Maximum Daily Load Regional General Permit (TMDL RGP)**

Dear Mr. Swenson,

Provided herein is the Commonwealth of Virginia's decision with regard to Section 401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (the Corps) Chesapeake Bay Total Maximum Daily Load Regional General Permit (TMDL RGP) including conditions, as public noticed by the Corps, Baltimore District on December 9, 2019.

Pursuant to 40 CFR 121.2 (a)(2) and (3), the Virginia Department of Environmental Quality (DEQ) on behalf of the State Water Control Board (the Board) has examined (i) this RP and its conditions and (ii) other decision documents provided by the Corps to base its certification. Accordingly, the Board finds that there is a reasonable assurance that the activities permitted under this Corps' regional permit, including its conditions, will be conducted in a manner that will not violate applicable water quality standards, provided permittees comply with all applicable requirements of the TMDL RGP.

Further, pursuant to Virginia Water Protection (VWP) Permit Regulation 9VAC25-210-130 H, the Board is issuing this final §401 Water Quality Certification as meeting the requirements of the VWP regulation after having advertised and accepted public comment for 30 days on our intent to provide this certification. The public comment period began on May 13, 2020 and ended on June 12, 2020. No comments were received.

The final review for consistency with Virginia's Coastal Zone Management (CZM) Program pursuant to the federal Coastal Zone Management Act of 1972, as amended, was

Mr. Daniel P. Swenson  
June 29, 2020

completed on June 8, 2020. A map depicting those localities within the coastal zone can be found at:

<https://www.deq.virginia.gov/Programs/CoastalZoneManagement/DescriptionBoundary.aspx>.

Questions regarding federal consistency with CZM should be directed to Bettina Rayfield at (804) 698-4204 or [bettina.rayfield@deq.virginia.gov](mailto:bettina.rayfield@deq.virginia.gov).

Please do not hesitate to contact Dave Davis (804) 698-4105 or [dave.davis@deq.virginia.gov](mailto:dave.davis@deq.virginia.gov) if you have any questions regarding this Section 401 Water Quality Certification.

Sincerely,



Melanie D. Davenport  
Director, Water Permitting Division

CC: Ms. Bettina Sullivan, DEQ Office of Environmental Impact Review  
Ms. Erica Schmidt, Baltimore District Army Corps of Engineers  
Mr. Tom Walker, Norfolk District Army Corps of Engineers  
Mr. Tony Watkinson; Chief, Habitat Division, Virginia Marine Resources Commission  
DEQ Regional VWPPP Managers



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Matthew J. Strickler  
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June 8, 2020

Ms. Erica Schmidt  
U.S. Army Corps of Engineers  
Regulatory, Maryland Section Southern  
Email: [Erica.Schmidt@usace.army.mil](mailto:Erica.Schmidt@usace.army.mil)

RE: Federal Consistency Determination: Regional General Permit for Chesapeake Bay  
Total Maximum Daily Load (TMDL) Activities (DEQ 20-050F).

Dear Ms. Schmidt:

The Commonwealth of Virginia has completed its review of the Draft Regional General Permit for Chesapeake Bay Total Maximum Daily Load Activities submitted by the U.S. Army Corps of Engineers (Corps) Baltimore District for the Commonwealth's review and concurrence under the federal consistency regulations of the Coastal Zone Management Act (CZMA). The Department of Environmental Quality (DEQ) is responsible for coordinating Virginia's review of consistency determinations and responding on behalf of the Commonwealth. This letter is in response to the draft regional general permit (effective date July 1, 2020) that was received by DEQ on April 14, 2020. The following agencies and localities participated in this review:

Department of Environmental Quality  
Department of Conservation and Recreation  
Department of Game and Inland Fisheries  
Department of Health  
Department of Historic Resources  
Virginia Institute of Marine Science  
Fairfax County

Arlington County, Virginia Marine Resources Commission, Northern Virginia Regional Commission also were invited to comment.

## PROJECT DESCRIPTION

The Baltimore District of the U.S. Army Corps of Engineers (Corps) is reissuing the Chesapeake Bay Total Maximum Daily Load Regional General Permit (Bay TMDL RGP) for activities in waters of the U.S., including jurisdictional wetlands that are part of an acceptable watershed strategy, such as a Chesapeake Bay TMDL Watershed Implementation Plan (WIP). The purpose of the Chesapeake Bay TMDL WIP is to identify implementation activities needed to meet nutrient and sediment load reduction targets in accordance with the Chesapeake Bay TMDL. Activities authorized by this Bay TMDL RGP include the retrofit of existing stormwater management facilities, the retrofit and stabilization of existing outfalls, and the restoration and enhancement of nontidal streams and nontidal wetlands. The Bay TMDL RGP provides a streamlined form of Corps activities that provide nutrient and sediment reductions. Applicable waters include nontidal waters and nontidal wetlands in the Chesapeake Bay watershed within the State of Maryland, the District of Columbia, Fort Belvoir, Fort Myer, and the Pentagon in Virginia.

## **FEDERAL CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT**

Pursuant to the Coastal Zone Management Act of 1972, as amended, activities both within and outside of the Commonwealth's designated coastal zone with reasonably foreseeable effects on any coastal uses or resources resulting from a Federal agency activity (15 CFR Part 930, Subpart C) must be consistent to the maximum extent practicable with Virginia's Coastal Zone Management (CZM) Program. The Virginia CZM Program consists of a network of programs administered by several agencies. DEQ coordinates the review of FCDs with agencies administering the enforceable policies of the Virginia CZM Program.

## **PUBLIC PARTICIPATION**

In accordance with 15 CFR §930.2, a public notice of this proposed action was published in the DEQ Office of Environmental Impact Review Program Newsletter and on the DEQ website from April 21, 2020 to May 18, 2020. No public comments were received in response to the notice.

## **FEDERAL CONSISTENCY CONCURRENCE**

The FCD states that the project is consistent to the maximum extent practicable with the enforceable policies of the Virginia CZM Program. The reviewing agencies that are responsible for the administration of the enforceable policies generally agree with the FCD. Based on the review of the FCD and the comments submitted by agencies administering the enforceable policies of the Virginia CZM Program, DEQ concurs that



the proposed project is consistent with the Virginia CZM Program, provided all applicable permits and approvals are obtained as described below. However, other state approvals which may apply to this project are not included in this FCD. Therefore, the Corps must also ensure that this project is constructed and operated in accordance with all applicable federal, state and local laws and regulations.

## **ANALYSIS OF ENFORCEABLE POLICIES**

The analysis which follows responds to the discussion of the enforceable policies of the Virginia CZM Program that apply to this project and review comments submitted by agencies that administer these enforceable policies.

**1. Air Pollution Control.** The TMDL RGP does not address air quality impacts.

**1(a) Agency Jurisdiction.** The DEQ air program implements the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the attainment and maintenance of the National Ambient Air Quality Standards. This program is administered by the State Air Pollution Control Board at DEQ (Virginia Code §10-1.1300 through §10.1-1320).

**1(b) Ozone Status.** According to the DEQ Air Division, the project site is located in an ozone nonattainment area and an emission control area for volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>), which are contributors to ozone pollution.

**1(c) Requirements.**

**1(c)(i) Fugitive Dust.** During land-disturbing activities, fugitive dust must be kept to a minimum by using control methods outlined in 9VAC5-50-60 *et seq.* of the Regulations for the Control and Abatement of Air Pollution. These precautions include, but are not limited to, the following:

- Use, where possible, of water or suitable chemicals for dust control during the proposed demolition and construction operations and from material stockpiles;
- Installation and use of hoods, fans and fabric filters to enclose and vent the handling of dusty materials;
- Covering of open equipment for conveying materials; and
- Prompt removal of spilled or tracked dirt or other materials from paved streets and removal of dried sediments resulting from soil erosion.

**1(c)(ii) Asphalt Paving.** In accordance with 9VAC5-45-760 *et seq.*, there are limitations on the use of “cut-back” (liquefied asphalt cement, blended with petroleum solvents)

that may apply to paving activities associated with the project. The asphalt must be “emulsified” (predominantly cement and water with a small amount of emulsifying agent) except when specified circumstances apply. Moreover, there are time-of-year restrictions on its use during the months of April through October in VOC emission control areas.

**1(c)(iii) Open Burning.** If project activities change to include the burning of vegetative debris, this activity must meet the requirements under 9VAC5-130 *et seq.* of the regulations for open burning, and it may require a permit. The regulations provide for, but do not require, the local adoption of a model ordinance concerning open burning. Contact officials with the locality to determine what local requirements, if any, exist.

**1(c)(iv) Fuel-Burning Equipment.** Fuel-burning equipment (boilers, generators, compressors, etc.) or any other air-pollution-emitting equipment may be subject to registration or permitting requirements.

**1(d) Agency Recommendation.** DEQ recommends that the responsible agent use all necessary precautions to restrict the emissions of VOCs and NO<sub>x</sub> during construction.

**1(e) Conclusion.** Provided the RGP complies with applicable requirements, it would be consistent to the maximum extent practicable with the air pollution control enforceable policy of the Virginia CZM Program.

**2. Coastal Lands Management.** The TMDL RGP does not address impacts Chesapeake Bay Preservation Areas.

**2(a) Agency Jurisdiction.** The DEQ Local Government Assistance Program (LGAP) administers the coastal lands management enforceable policy through the Chesapeake Bay Preservation Act (Bay Act) (Virginia Code §62.1-44.15 *et seq.*) and Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations) (9VAC 25-830-10 *et seq.*).

**2(b) Chesapeake Bay Preservation Areas.** In Arlington and Fairfax Counties, the areas protected by the Chesapeake Bay Preservation Act (CBPA), as locally implemented, require conformance with performance criteria. These areas include Resource Protection Areas (RPAs) and Resource Management Areas (RMAs) as designated by the local governments. RPAs include tidal wetlands, certain non-tidal wetlands, and tidal shores. RPAs also include a 100-foot vegetated buffer area located adjacent to and landward of these features and along both sides of any water body with perennial flow. RMAs in Arlington and Fairfax Counties, which require less stringent

performance criteria than RPAs, are jurisdiction-wide and include all lands outside of RPAs.

**2(c) Requirements.** Under the Federal Consistency Regulations of the Coastal Zone Management Act of 1972, federal actions in Virginia must be conducted in a manner “consistent to the maximum extent practicable” with the enforceable policies of the Virginia Coastal Management Program. The Coastal Lands Management enforceable policy is administered through the Chesapeake Bay Preservation Act and Regulations.

Federal actions on installations located within Tidewater Virginia are required to be consistent with the performance criteria of the Regulations on lands analogous to locally designated RPAs and RMAs, as provided in 9VAC25-830-130 and 140 of the Regulations, including compliance with the requirements of the Virginia Erosion and Sediment Control Handbook, and stormwater management criteria consistent with water quality protection provisions of the Virginia Stormwater Management Regulations. For land disturbance over 2,500 square feet, the project must comply with the requirements of the Virginia Erosion and Sediment Control Handbook. 9VAC25-830-130 of the Regulations specifically requires all proposed land development activities to meet the following three specific performance criteria: 1) no more land shall be disturbed than is necessary to provide for the proposed use or development; 2) indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development proposed; and 3) land development shall minimize impervious cover consistent with the proposed use or development.

**2(d) Conclusion.** Provided the above-referenced requirements are satisfied, the RGP would be consistent to the maximum extent practicable with the coastal lands management enforceable policy of the Virginia CZM Program.

**3. Non-point Source Pollution Control.** The TMDL RGP (page 20) states that appropriate soil erosion and sediment control measures, practices, and devices must be used and maintained in effective operating condition during construction, to reduce erosion and retain sediment on-site during and after construction.

**3(a) Agency Jurisdiction.** The DEQ Office of Stormwater Management (OSM) administers the Virginia Erosion and Sediment Control Law and Regulations (VESCL&R) and the Virginia Stormwater Management Law and Regulations (VSWML&R). Also, DEQ is responsible for the issuance, denial, revocation, termination and enforcement of the Virginia Stormwater Management Program (VSMP) General Permit for Stormwater Discharges from Construction Activities related to municipal separate storm sewer systems (MS4s) and construction activities for the control of

stormwater discharges from MS4s and land-disturbing activities under the Virginia Stormwater Management Program.

### **3(b) Requirements.**

**3(b)(i) Erosion and Sediment Control and Stormwater Management Plans.** The applicant and its authorized agents conducting regulated land-disturbing activities on private and public lands in the state must comply with VESCL&R and VSWML&R, including coverage under the general permit for stormwater discharge from construction activities, and other applicable federal nonpoint source pollution mandates (e.g. Clean Water Act-Section 313, federal consistency under the Coastal Zone Management Act). Clearing and grading activities, installation of staging areas, parking lots, roads, buildings, utilities, borrow areas, soil stockpiles, and related land-disturbing activities that result in the total land disturbance of equal to or greater than 1 acre or 2,500 square feet in Chesapeake Bay Preservation Area would be regulated by VESCL&R. Accordingly, the applicant must prepare and implement an erosion and sediment control (ESC) plan to ensure compliance with state law and regulations. Land-disturbing activities that result in the total land disturbance of equal to or greater than 2,500 square feet in Chesapeake Bay Preservation Area would be regulated by VSWML and regulations. Accordingly, the applicant must prepare and implement a Stormwater Management (SWM) plan to ensure compliance with state law and regulations. The ESC/SWM plan is submitted to the DEQ regional office that serves the area where the project is located for review for compliance. The applicant is ultimately responsible for achieving project compliance through oversight of on-site contractors, regular field inspection, prompt action against non-compliant sites, and other mechanisms consistent with agency policy (VESCL 62.1-44.15 *et seq.*).

**3(b)(ii) General Permit for Stormwater Discharges from Construction Activities (VAR10).** The operator or owner of a construction project involving land-disturbing activities equal to or greater than one acre is required to register for coverage under the General Permit for Discharges of Stormwater from Construction Activities and develop a project-specific SWPPP. The SWPPP must be prepared prior to submission of the registration statement for coverage under the general permit and the SWPPP must address water quality and quantity in accordance with the VSMP Permit Regulations. General information and registration forms for the General Permit are available on DEQ's website at <http://www.deq.virginia.gov/Programs/Water/StormwaterManagement/VSMPPPermits/ConstructionGeneralPermit.aspx> (Reference: VSWML 62.1-44.15 *et seq.*; VSMP Permit Regulations 9VAC 25-880 *et seq.*).

**3(c) Conclusion.** Provided the RGP adheres to the applicable requirements, it would be consistent to the maximum extent practicable with the nonpoint pollution control policy of the Virginia CZM Program.

**4. Fisheries Management.** The TMDL RGP (page 18) states that the Corps completed Essential Fish Habitat (EFH) and Fish and Wildlife Coordination Act coordination and received a no effect determination.

**4(a) Agency Jurisdiction.** The fisheries management enforceable policy is administered by the Virginia Marine Resources Commission (VMRC) (Virginia Code § 28.2-200 to § 28.2-713) and the Department of Game and Inland Fisheries (DGIF) (Virginia Code § 29.1-100 to § 29.1-570). In addition, the Virginia Department of Health (VDH) Division of Shellfish Sanitation (DSS) is responsible for protecting the health of the consumers of molluscan shellfish and crustacea by ensuring that shellfish growing waters are properly classified for harvesting, and that molluscan shellfish and crustacea processing facilities meet sanitation standards.

**4(b) Agency Recommendations.** DGIF recommends that in the spirit of the Fish and Wildlife Coordination Act, the following sections be updated as depicted below:

- VIII. Permit Application, D. Endangered Species Correspondence: Include the following contact information for DGIF and a link to DGIF's information system be provided similarly to the way it is provided for U.S. Fish and Wildlife Service (FWS):

Virginia Department of Game and Inland Fisheries  
Environmental Services Section  
Frances Greenway, 804-367-4335  
Virginia Fish and Wildlife Information Service ([VAFWIS](#))

- IX. General Conditions, 21. Endangered Species: Add a general condition requiring applicants or the Corps project manager adhere to the attached guidance (Resource Protection Recommendations) and coordinate with DGIF as indicated. DGIF's Environmental Services Section, in lieu of the Nongame Taxonomic Expert, may be contacted by the Corps if a listed species is documented from within the project area.

**4(c) Conclusion.** Assuming the Corps reviews DGIF's data and coordinates with DGIF per the attached Resource Protection Recommendations and the recommendations above, the RGP would be consistent with the fisheries management enforceable policy of the Virginia CZM Program.

**5. Wetlands Management.** The TMDL RGP (page 18) states that the listed activities authorize the discharge of dredged or fill material into waters of the U.S., including jurisdictional wetlands, where the activity is part of an acceptable watershed strategy, such as a Chesapeake Bay TMDL Watershed Implementation Plan (WIP), whose purpose is to identify implementation activities needed to meet nutrient and sediment load reduction targets.

**5(a) Agency Jurisdiction.** The wetlands management enforceable policy is administered by the Virginia Marine Resources Commission (tidal wetlands) (Virginia Code §28.2-1301 through 28.2-1320) and the Department of Environmental Quality through the Virginia Water Protection (VWP) Permit Program (tidal and non-tidal wetlands) (Virginia Code §62.1-44.15:20 and Water Quality Certification pursuant to Section 401 of the Clean Water Act).

**5(b) Agency Findings.** The DEQ Office of Wetlands and Stream Protection (OWSP) states that the Virginia Water Protection Permit Program (VWPPP) is proposing an unconditional certification but will not have a final decision until after evaluating any comments received. Once DEQ has issued its final Section 401 Certification, compliance with the certification will constitute consistency for the wetlands management enforceable policy.

**5(c) Requirements.** The Corps must obtain Section 401 Certification for the TMDL RGP.

**5(d) Conclusion.** Provided that the Corps administers the TMDL RGP in accordance with DEQ's final Section 401 CWA certification, the RGP would be consistent to the maximum extent practicable with the wetlands management enforceable policy of the Virginia CZM Program.

**6. Subaqueous Lands.** The TMDL RGP (pages 3-9) authorizes self-verification and Corps-verified activities in nontidal waters within Virginia.

**6(a) Agency Jurisdiction.** The VMRC regulates encroachments in, on or over state-owned subaqueous beds as well as tidal wetlands pursuant to Virginia Code §28.2-1200 through 1400. For nontidal waterways, VMRC states that it has been the policy of the Habitat Management Division to exert jurisdiction only over the beds of perennial streams where the upstream drainage area is 5 square miles or greater. The beds of such waterways are considered public below the ordinary high water line.

**6(b) Agency Findings.** VMRC did not respond to DEQ's request for comments. VIMS states that it has no comments.

**6(c) Requirements.** A permit from VMRC may be required pursuant to Code of Virginia Section 28.2-1200 *et seq.* Pursuant to Chapter 12, 13 and 14 of Title 28.2 of the Code of Virginia, VMRC administers permits required for submerged lands, tidal wetlands, and beaches and dunes.

**6(d) Conclusion.** Provided adherence to any applicable requirements, the project would be consistent to the maximum extent practicable with the subaqueous lands management enforceable policy of the Virginia CZM Program.

## **ADDITIONAL ENVIRONMENTAL CONSIDERATIONS**

In addition to the enforceable policies of the Virginia CZM Program, comments also were provided with respect to applicable requirements and recommendations of the following programs:

### **1. Solid and Hazardous Waste Management.**

**1(a) Agency Jurisdiction.** On behalf of the Virginia Waste Management Board, the DEQ Division of Land Protection and Revitalization is responsible for carrying out the mandates of the Virginia Waste Management Act (Virginia Code §10.1-1400 *et seq.*), as well as meeting Virginia's federal obligations under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response Compensation Liability Act (CERLA), commonly known as Superfund. The DEQ Division of Land Protection and Revitalization also administers those laws and regulations on behalf of the State Water Control Board that governs Petroleum Storage Tanks (Virginia Code §62.1-44.34:8 *et seq.*), including Aboveground Storage Tanks (9VAC25-91 *et seq.*) and Underground Storage Tanks (9VAC25-580 *et seq.* and 9VAC25-580-370 *et seq.*), also known as Virginia Tank Regulations, and § 62.1-44.34:14 *et seq.* which covers oil spills.

Virginia:

- Virginia Waste Management Act, Virginia Code § 10.1-1400 *et seq.*
- Virginia Solid Waste Management Regulations, 9VAC20-81
  - (9VAC20-81-620 applies to asbestos-containing materials)
- Virginia Hazardous Waste Management Regulations, 9VAC20-60
  - (9VAC20-60-261 applies to lead-based paints)
- Virginia Regulations for the Transportation of Hazardous Materials, 9VAC20-110.

Federal:

- Resource Conservation and Recovery Act (RCRA), 42 U.S. Code sections 6901 *et seq.*
- U.S. Department of Transportation Rules for Transportation of Hazardous Materials, 49 Code of Federal Regulations, Part 107
- Applicable rules contained in Title 40, Code of Federal Regulations.

**1(b) Agency Recommendations.** The DEQ Division of Land Protection and Revitalization (DLPR) recommends a search (at least 200-foot radius) of any land-based project areas using the following solid and hazardous waste databases to identify waste sites (including petroleum releases) in close proximity to the project area:

- Environmental Protection Agency (EPA) Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) Database: Superfund Information Systems Information on hazardous waste sites, potentially hazardous waste sites and remedial activities across the nation, including sites that are on the National Priorities List (NPL) or being considered for the NPL:
  - [www.epa.gov/superfund/sites/cursites/index.htm](http://www.epa.gov/superfund/sites/cursites/index.htm)
- DEQ Online Database: Virginia Environmental Geographic Information Systems Information on Permitted Solid Waste Management Facilities, Impaired Waters, Petroleum Releases, Registered Petroleum Facilities, Permitted Discharge (Virginia Pollution Discharge Elimination System Permits) Facilities, Resource Conservation and Recovery Act (RCRA) Sites, Water Monitoring Stations, National Wetlands Inventory:
  - [www.deq.virginia.gov/ConnectWithDEQ/VEGIS.aspx](http://www.deq.virginia.gov/ConnectWithDEQ/VEGIS.aspx)

DEQ encourages all projects, including installation activities, to implement pollution prevention principles, including:

- the reduction, reuse and recycling of all solid wastes generated; and
- the minimization and proper handling of generated hazardous wastes.

**1(c) Requirements.** Test and dispose of any soil/sediment that is suspected of contamination or wastes that are generated during construction-related activities in accordance with applicable federal, state, and local laws and regulations.



## **2. Historic Structures and Architectural Resources.**

**2(a) Agency Jurisdiction.** The Virginia Department of Historic Resources (DHR) conducts reviews of both federal and state projects to determine their effect on historic properties. Under the federal process, DHR is the State Historic Preservation Office, and ensures that federal undertakings – including licenses, permits, or funding – comply with Section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulation at 36 CFR Part 800. Section 106 requires federal agencies to consider the effects of federal projects on properties that are listed or eligible for listing on the National Register of Historic Places. For state projects or activities on state lands, DHR is afforded an opportunity to review and comment on (1) the demolition of state property; (2) major state projects requiring an EIR; (3) archaeological investigations on state-controlled land; (4) projects that involve a landmark listed in the Virginia Landmarks Register; (5) the sale or lease of surplus state property; (6) exploration and recovery of underwater historic properties; and (7) excavation or removal of archaeological or historic features from caves. See DHR’s website for more information about applicable state and federal laws and how to submit an application for review: <http://www.dhr.virginia.gov/StateStewardship/Index.htm>.

**2(b) Requirement.** Coordinate at applicable with DHR pursuant to Section 106 of the National Historic Preservation Act.

**3. Pollution Prevention.** DEQ advocates that principles of pollution prevention and sustainability be used in all construction projects as well as in facility operations. Effective siting, planning, and on-site Best Management Practices (BMPs) will help to ensure that environmental impacts are minimized. However, pollution prevention and sustainability techniques also include decisions related to construction materials, design, and operational procedures that will facilitate the reduction of wastes at the source.

**3(a) Recommendations.** We have several pollution prevention recommendations that may be helpful in constructing or operating this facility:

- Consider development of an effective Environmental Management System (EMS). An effective EMS will ensure that the proposed facility is committed to complying with environmental regulations, reducing risk, minimizing environmental impacts, setting environmental goals, and achieving improvements in its environmental performance. DEQ offers EMS development assistance and recognizes facilities with effective Environmental Management Systems through its Virginia Environmental Excellence Program

(VEEP). VEEP provides recognition, annual permit fee discounts, and the possibility for alternative compliance methods.

- Consider environmental attributes when purchasing materials. For example, the extent of recycled material content, toxicity level, and amount of packaging should be considered and can be specified in purchasing contracts.
- Consider energy efficiency when choosing materials and products, like insulation, fixtures, and HVAC systems.
- Consider contractors' commitment to the environment when choosing contractors. Specifications regarding raw materials and construction practices can be included in contract documents and requests for proposals.
- Choose sustainable materials and practices for building construction and design.
- Integrate pollution prevention techniques into the facility maintenance and operation, to include inventory control for centralized storage of hazardous materials. Maintenance facilities should have sufficient and suitable space to allow for effective inventory control and preventive maintenance.

DEQ's Office of Pollution Prevention provides information and technical assistance relating to pollution prevention techniques and EMS. If interested, please contact DEQ (Meghann Quinn at 804-698-4021).

**4. Pesticides and Herbicides.** In general, when pesticides or herbicides must be used, their use should be strictly in accordance with manufacturers' recommendations. In addition, DEQ recommends that the responsible agent use the least toxic pesticides or herbicides effective in controlling the target species. For more information on pesticide or herbicide use, please contact the Virginia Department of Agriculture and Consumer Services (804- 371-6560).

## **5. Natural Heritage Resources.**

### **5(a) Agency Jurisdiction.**

**5(a)(i) The Virginia Department of Conservation and Recreation's (DCR) Division of Natural Heritage (DNH):** DNH's mission is conserving Virginia's biodiversity through inventory, protection and stewardship. The Virginia Natural Area Preserves Act (Virginia Code §10.1-209 through 217), authorized DCR to maintain a statewide database for conservation planning and project review, protect land for the conservation of biodiversity, and to protect and ecologically manage the natural heritage resources of

Virginia (the habitats of rare, threatened and endangered species, significant natural communities, geologic sites, and other natural features).

**5(a)(ii) The Virginia Department of Agriculture and Consumer Services (VDACS):** The Endangered Plant and Insect Species Act of 1979 (Virginia Code Chapter 39 §3.1-1020 through 1030) authorizes VDACS to conserve, protect and manage endangered and threatened species of plants and insects. Under a Memorandum of Agreement established between VDACS and the DCR, DCR represents VDACS in comments regarding potential impacts on state-listed threatened and endangered plant and insect species.

**5(b) Agency Findings – Natural Heritage Resources.** DCR documents natural heritage resources within military bases in Northern Virginia including Fort Belvoir for which the Corps TMDL RGP may be applied. DCR has reviewed the TMDL RGP and offers the following comments:

- DCR supports activities that reduce nutrient and sediment loading into waters of the U.S, including jurisdictional wetlands as part of the Chesapeake Bay TMDL mandates.
- DCR supports the required coordination with the U.S. Fish and Wildlife Service in regards to impacts to federally endangered and threatened species as a part of the application process including coordinating with state agencies for impacts to Rare, Threatened and Endangered species as stated on Page 12: Applicants must coordinate with the appropriate State agency to determine if the proposed activity may have an effect on State listed rare, threatened, or endangered species, this information is not required as part of this application.”
- DCR supports revegetation of the project area with native plant species including pollinator species when possible. The following two resources may be helpful in identifying native plants appropriate for restoration: the DCR Native Plant Finder <https://www.dcr.virginia.gov/natural-heritage/native-plants-finder> and the DCR Solar Site Native Plant Finder <https://www.dcr.virginia.gov/natural-heritage/pollinator-smart>. In addition, Virginia native species alternatives to the non-native species listed in the Virginia Erosion and Sediment Control Handbook (Third Edition 1992), can be found in the 2017 addendum titled “Native versus Invasive Plant Species”: <https://www.deq.virginia.gov/Portals/0/DEQ/Water/Publications/NativeInvasiveFAQ.pdf>. Page 3 of the addendum provides a list of native alternatives for non-natives commonly used for site stabilization including native cover crop species (i.e. Virginia wildrye). DCR also supports the development and implementation

of an invasive species monitoring plan.

**5(c) Agency Recommendations.** DCR has the following recommendations:

- DCR recommends that self-verified activities or Corps-verified activities with potential to impact natural heritage resources including significant natural communities as defined by “The Classification of Ecological Groups and Community Types” document <https://www.dcr.virginia.gov/natural-heritage/natural-communities/document/comlist04-17.pdf> not be authorized by this regional permit.
- On Page 5 under Conversion Limits, DCR recommends the definition for “Conversion” (the changing of a wetland plant type community to another wetland plant type community) be revised to “the changing of an ecological wetland community group to another ecological wetland community group”. Examples of wetland ecological groups include Coastal Plain Depression Swamps and Ponds and Coastal Plain/Piedmont Seepage Swamps as identified in the Table of Contents of “The Classification of Ecological Groups and Community Types” document (<https://www.dcr.virginia.gov/natural-heritage/natural-communities/document/comlist04-17.pdf> ). These ecological community wetland groups are also referenced in the Norfolk District Wetland Attribute Form currently available for public comment (see Appendix B of Procedures Manual). The classification of ecological community groups is easier than the community type classification, which is based on species composition and vegetation structure. Classifying communities to “type” would require a higher level of scientific expertise. DCR supports the inclusion of this wetland conversion category as part of the overall conversion threshold for authorization under the TMDL RGP.

**6. Floodplain Management.**

**6(a) Agency Jurisdiction.** DCR is the lead coordinating agency for the Commonwealth’s floodplain management program and the National Flood Insurance Program (Executive Memorandum 2-97). Pursuant to §10.1-603 of the Virginia Code and in accordance with 44 CFR section 60.12 of the National Flood Insurance Program Regulations for Floodplain Management and Flood Hazard Identification, all construction or land-disturbing activities initiated by an agency of the Commonwealth, or by its contractor, in floodplains shall be submitted to the locality and comply with the locally adopted floodplain management ordinance. New state-owned buildings shall not

be constructed within a 100-year floodplain unless a variance is granted by the director of the Division of Engineering and Buildings at the Department of General Services as Building Official for state-owned buildings (Virginia Code, §36-98.1). If a locality is not participating in the National Flood Insurance Program, the project does not need to be reviewed by the locality.

**6(b) Agency Recommendation.** For federal projects, DCR encourages the applicant/developer to reach out to the local floodplain administrator and comply with the community's local floodplain ordinance. If the project is located in the Special Flood Hazard Area (SFHA), DCR recommends that this project comply with the community's local floodplain ordinance. To find flood zone information, use the Virginia Flood Risk Information System (VFRIS): [www.dcr.virginia.gov/vfris](http://www.dcr.virginia.gov/vfris).

**6(c) Requirement.** Projects conducted by federal agencies within the SFHA must comply with Executive Order 11988: Floodplain Management. All development within a Special Flood Hazard Area (SFHA), as shown on the locality's Flood Insurance Rate Map (FIRM), must be permitted and comply with the requirements of the local floodplain ordinance.

## 7. Water Supply.

**7(a) Agency Jurisdiction.** The Virginia Department of Health (VDH) Office of Drinking Water (ODW) reviews projects for the potential to impact public drinking water sources (groundwater wells, springs and surface water intakes). The VDH ODW administers both federal and state laws governing waterworks operation.

**7(b) Agency Finding.** VDH has no comments.

**8. Local Coordination.** As customary, DEQ invited the affected locality and planning district commission to comment.

**8(a) Agency Jurisdiction.** In accordance with CFR 930, Subpart A, § 930.6(b) of the *Federal Consistency Regulations*, DEQ, on behalf of the state, is responsible for securing necessary review and comment from other state agencies, the public, regional government agencies, and local government agencies, in determining the Commonwealth's concurrence or objection to a federal consistency certification.

**8(b) Agency Recommendations.** Fairfax County states that as a federal entity, the Corps is not subject to the provisions of the Fairfax County Chesapeake Bay Preservation Ordinance (CBPO) or the associated RPA generated by the county. As a

result, the Corps does not use the RPA maps produced by Fairfax County and, instead, delineates RPAs on its individual installations.

While recognizing that the Corps is not subject to the provisions of the Fairfax County CBPO, staff offers the following recommendations:

- Fairfax County requests that the Corps follow the floodplain management requirements contained in Fairfax County Zoning Ordinance, Article 2, Part 9, Floodplain Regulations and notify the county of any floodplain changes that might impact FEMA Flood Insurance Rate Maps.
- Fairfax County asks that the Corps meet the county's CBPO as described in Chapter 118 of the County Code, including conformance with the requirements for areas designated as RPAs and RMAs.
- Fairfax County welcomes opportunities to partner on implementation activities, such as stream restorations, that may help achieve mutual Chesapeake Bay TMDL goals and local TMDL objectives. Staff notes that the Fort Belvoir installation is spread across three watersheds, including Pohick Creek, Accotink Creek, and Dogue Creek, all of which are listed as impaired by DEQ.
- For individual projects undertaken in accordance with the proposed RGP, staff recommends that project staff consult and coordinate with the Northern Virginia Soil and Water Conservation District and the county Department of Public Works and Environmental Services regarding mitigation procedures. Additionally, staff recommends that the Corps schedule briefings before the Fairfax County Wetlands Board regarding any proposed actions affecting tidal wetlands, freshwater wetlands, and floodplains, to include project impacts and remediation measures.

## **REGULATORY AND COORDINATION NEEDS**

**1. Air Quality Regulations.** The following regulations may apply during construction:

- asphalt-paving (9VAC5-45-780 *et seq.*);
- fugitive dust and emissions control (9VAC5-50-60 *et seq.*);
- permits for fuel-burning equipment (9VAC5-80-110 *et seq.*); and
- open burning restrictions (9VAC5-130 *et seq.*).

Contact officials with the appropriate locality for information on any local requirements pertaining to open burning if necessary. Contact DEQ NRO (Justin Wilkinson at [Justin.Wilkinson@deq.virginia.gov](mailto:Justin.Wilkinson@deq.virginia.gov)) for additional information on air regulations if necessary.

**2. Coastal Lands Management.** The project must be conducted in a manner that is consistent with the coastal lands management enforceable policy of the Virginia CZM Program as administered by DEQ pursuant to the Chesapeake Bay Preservation Act (Virginia Code 62.1-44.15 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830 *et. seq.*). Coordinate with the locality for project-specific questions. For additional information about DEQ's comments, contact DEQ LGAP (Daniel Moore at [Daniel.Moore@deq.virginia.gov](mailto:Daniel.Moore@deq.virginia.gov)).

### **3. Nonpoint Source Pollution Control.**

**3(a) Erosion and Sediment Control and Stormwater Management.** This project must comply with Virginia's Erosion and Sediment Control Law (Virginia Code § 62.1-44.15:61) and Regulations (9VAC25-840-30 *et seq.*) and Stormwater Management Law (Virginia Code § 62.1-44.15:31) and Regulations (9VAC25-870-210 *et seq.*) as administered by DEQ. Erosion and sediment control, and stormwater management requirements should be coordinated with the DEQ NRO (Kelly Vanover at [Kelly.Vanover@deq.virginia.gov](mailto:Kelly.Vanover@deq.virginia.gov)).

**3(b) General Permit for Stormwater Discharges from Construction Activities (VAR10).** The operator or owner of a construction activity involving land disturbance of equal to or greater than 1 acre is required to register for coverage under the General Permit for Discharges of Stormwater from Construction Activities and develop a project specific stormwater pollution prevention plan (SWPPP). Specific questions regarding the Stormwater Management Program requirements should be directed to DEQ (Holly Sepety at 804-698-4039) (Reference: VSML §62.1-44.15 *et seq.*).

**4. Subaqueous Lands.** Contact VMRC (Mark Eversole [Mark.Eversole@mrc.virginia.gov](mailto:Mark.Eversole@mrc.virginia.gov)) regarding any requirements for potential subaqueous lands impacts.

**5. Solid and Hazardous Wastes.** Contact DEQ NRO (Richard Doucette at 703-583-3813 or [Richard.Doucette@deq.virginia.gov](mailto:Richard.Doucette@deq.virginia.gov)) for additional information about waste management if necessary.

**6. Natural Heritage Resources.** Contact the DCR DNH (804-371-2708) for additional information about its comments and recommendations.

**7. Floodplain Management.** The applicant should ensure compliance with applicable floodplain requirements. To find flood zone information, use the Virginia Flood Risk Information System (VFRIS): [www.dcr.virginia.gov/vfris](http://www.dcr.virginia.gov/vfris). To find community NFIP participation and local floodplain administrator contact information, use DCR's Local Floodplain Management Directory: [www.dcr.virginia.gov/dam-safety-and-floodplains/floodplain-directory](http://www.dcr.virginia.gov/dam-safety-and-floodplains/floodplain-directory).

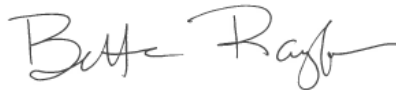
**8. Fisheries Management.** Contact DGIF (Amy Ewing at [Amy.Ewing@dgif.virginia.gov](mailto:Amy.Ewing@dgif.virginia.gov)) for additional information about its comments and recommendations as necessary.

**9. Historic Resources.** Coordinate with DHR (Roger Kirchen at [Roger.Kirchen@dhr.virginia.gov](mailto:Roger.Kirchen@dhr.virginia.gov)) as necessary pursuant to Section 106 of the National Historic Preservation Act.

**10. Local Coordination.** Contact Fairfax County (Joseph Gorney at 703-324-1380 or [joseph.gorney@fairfaxcounty.gov](mailto:joseph.gorney@fairfaxcounty.gov)) for additional information about its comments.

Thank you for the opportunity to comment. The detailed comments of reviewers are attached. If you have questions, please do not hesitate to call me at (804) 698-4204 or Julia Wellman at (804) 698-4326.

Sincerely,



Bettina Rayfield, Manager  
Environmental Impact Review and Long Range  
Priorities Program

Enclosures

ec: Robbie Rhur, DCR  
Amy Ewing, DGIF  
Arlene Warren, VDH  
Roger Kirchen, DHR  
Mark Eversole, VMRC  
Emily Hein, VIMS  
Joseph Gorney, Fairfax County



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Energy and Environment

June 11, 2020

Mr. Daniel P. Swenson, Chief  
Department of the Army  
Baltimore District, U.S. Army Corps of Engineers  
ATTN: Regulatory Branch  
2 Hopkins Plaza  
Baltimore, MD 21201

Project: Water Quality Certification # DC-020-006  
Chesapeake Bay Total Maximum Daily Load Regional General Permit

Dear Mr. Swenson:

The Regulatory Review Division (RRD) of the District Department of Energy and Environment (DOEE) has evaluated the Department of the Army application for a water quality certification (WQC) under Section 401 of the Clean Water Act for the Chesapeake Bay Total Maximum Daily Load Regional General Permit (TMDL RGP) dated April 13, 2020. The proposed, modified TMDL RGP would authorize activities in waters of the United States, including jurisdictional wetlands, which are part of an overall watershed strategy (e.g. Chesapeake Bay TMDL Watershed Implementation Plan (WIP)) for an additional five year period.

RRD has reviewed the TMDL RGP and determined that the public interest in the activities authorized under the proposed TMDL RGP in the District of Columbia, requires an individual comprehensive review process and evaluation through the Section 401 water quality certification (WQC) by DOEE. The District is a small, highly urbanized area, and has a small relative amount of wetlands and streams that serve important functions. RRD is required to manage and adequately protect the District's limited natural resources. The substantive standards found in the Environmental Protection Agency Clean Water Act §404(b)(1) guidelines, the USACE's public interest review regulations, and policy memoranda of the two agencies provide for this public interest review by both the USACE and DOEE.

Therefore, DOEE denies a water quality certification under Section 401 of the Clean Water Act, for the TMDL RGP. Any activity requiring a TMDL RGP within the District of Columbia must first obtain an activity-specific WQC or waiver from DOEE before proceeding under the TMDL RGP.

All applicants applying for a TMDL RGP for proposed work within the District of Columbia are required to obtain permit-specific WQC's from DOEE. The joint permit application form for proposed work in the District of Columbia should indicate that the application form and all supporting documents must also be submitted to RDD by:

- Electronic submittal to [Jennifer.dietzen@dc.gov](mailto:Jennifer.dietzen@dc.gov); or
- Mail to: Jennifer Dietzen  
Water Resources Plan Review and Flood Control Branch  
Regulatory Review Division

Department of Energy and Environment  
1200 First Street, N.E., 5<sup>th</sup> Floor  
Washington, DC 20002

If we can be of further assistance, please contact Jennifer Dietzen of the RRD at (202) 481-3942 or [jennifer.dietzen@dc.gov](mailto:jennifer.dietzen@dc.gov).

Sincerely,

Jennifer Dietzen  
Environmental Protection Specialist, Regulatory Review Division

Cc: Nicholas Bonard, Branch Chief, Water Resources Plan Review and Flood Control, DOEE  
Jeff Seltzer, Deputy Director, Natural Resources Administration, DOEE