

Department of the Army  
Regional General Permit  
For  
Chesapeake Bay Total Maximum Daily Load (TMDL) Activities

Effective: September 1, 2020

Expiration Date: August 31, 2025

Permit Number: NAB-2019-00527

TMDL RGP  
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Executive Summary

The Baltimore District of the U.S. Army Corps of Engineers (Corps) is reissuing this Chesapeake Bay Total Maximum Daily Load Regional General Permit (TMDL RGP) for activities in waters of the U.S. (WOTUS), including jurisdictional wetlands, which are part of an acceptable watershed strategy. These strategies identify implementation activities needed to meet nutrient and sediment load reduction targets in accordance with the Chesapeake Bay TMDL. Activities authorized by this TMDL RGP include the retrofit of existing stormwater management facilities, the retrofit and stabilization of existing outfalls, and the restoration and enhancement of WOTUS.

This 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 supports Chesapeake Bay Executive Order (EO) 13508 strategy goals for restoring clean water and recovering habitat and EO 13563, Improving Regulation and Regulatory Review.

**I. AUTHORITIES:** The authority of the U.S. Army Corps of Engineers to regulate the discharge of dredged and/or fill material is contained within Section 404 of the Clean Water Act (CWA), and regulations promulgated pursuant to this Act. Please be advised that filling and grading work, mechanized land clearing, ditching or other excavation activity, and piling installation constitute or otherwise involve discharges of dredged and/or fill material under the Corps' regulatory authority. Under Section 10 of the Rivers and Harbors Act of 1899 (*33 United States Code [U.S.C.] 401 and 403*), the Corps of Engineers regulates activities conducted waterward of the Ordinary High Water (OHW) elevation of navigable WOTUS. Regulated activities include the placement/removal of structures, work involving dredging, disposal of dredged material, filling, excavation, or any other disturbance of soils/sediments or modification of a navigable waterway. Navigable WOTUS are waters subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently used, or have been used in the past or may be susceptible to use to transport interstate or foreign commerce. In addition, the National Environmental Policy Act (NEPA) is the basic national charter for protection of the environment. The Act declares it a national policy to "encourage productive and enjoyable harmony between man and the environment. To promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and to enrich the understanding of the ecological system and natural resources important to the Nation" (*42 USC 4321*). For NEPA purposes, the scope for this RGP includes the direct, indirect, and cumulative impacts of the TMDL implementation activities authorized by this RGP in nontidal WOTUS within the Chesapeake Bay watershed.

**II. APPLICABLE WATERS:** Applicable waters include nontidal WOTUS in the Chesapeake Bay watershed within the State of Maryland, the District of Columbia, Fort Belvoir, Fort Myer, and the Pentagon in Virginia. *See Appendix 1 (Maps of Applicable Waters and Excluded Waters for the TMDL RGP).*

**III. EXCLUDED WATERS:** Excluded waters not authorized under this RGP are tidal waters, the Coastal Bays in Worcester County, Maryland, and the waters located in the Ohio River drainage in Western Maryland. Additional excluded waters in Maryland include adjacent and contiguous nontidal 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. These areas are within the regulatory geographic boundary of the Philadelphia District.

**IV. SCOPE OF ACTIVITIES:** This TMDL RGP applies to the discharge of dredged or fill material, including all attendant features both temporary or permanent, which will result in impacts to waters regulated by Section 404 of the CWA. Activities authorized by this TMDL RGP include the retrofit of existing stormwater management facilities, the retrofit and stabilization of existing outfalls, and the restoration and enhancement of WOTUS. Impact thresholds are unique to each of the three activities, and also differ between Self-verified activities and activities

verified by the Corps. Some impact thresholds are specific to WOTUS area impacted, while others include both areal and linear thresholds. Additionally, thresholds differ between permanent impact, permanent loss, and conversion. (*Note: Please review definitions of “Conversion,” Permanent Impact,” and “Relocation” in Section IX prior to reading the activity descriptions and thresholds below).*

**A. Retrofits of Existing Stormwater Management Facilities:** Discharges of dredged or fill material into nontidal WOTUS for the retrofit of existing stormwater management facilities. This activity applies only to the retrofit of features originally designed as stormwater management facilities, which are currently serviceable. Activities authorized by this Bay TMDL activity may include, but are not limited to, changing the existing riser structure, creation of forebays (*i.e., pretreatment cells within the existing facilities*), changing pond elevations or creation of wetland benches. In addition to the General Conditions of this permit, all work authorized by this activity must comply with impact limits and requirements listed below.

1. Requirements for this Activity:

- i. This activity does not allow for the expansion of facilities outside the existing as-built footprint.
- ii. Activities that are solely designed for general maintenance activities within existing Stormwater Management Facilities may be reviewed under an alternative permit process such as under the Maryland State Programmatic General Permit, an Individual Permit, or a Nationwide Permit.
- iii. Within 30 days (or the timeframe identified in the Water Quality Certification, whichever is less) from the completion of the authorized work, all temporary impacts within WOTUS, must be restored to preconstruction contours, elevations, and stabilized. Areas that require planting must be planted within the first growing season after completion of the project.
- iv. By December 31 of the project completion year, the permittee must provide the documentation identified in the Year 1 Post Construction Report General Condition (*Section VIII General Condition 5*).

2. Projects Qualifying for Self-Verification: Activities may commence without written verification from the Corps provided:

- i. The activity meets all General Conditions (*Section VIII*), and the requirements for all activities (*IV.A.1.i-vi*) above, and
- ii. Total permanent impacts must not exceed one acre of WOTUS. Of this, no more than 2,000 linear feet of nontidal streams, rivers, and other open waters or a combination thereof may be permanently impacted.

3. Projects Qualifying with Corps Verification: Activities requiring written verification from the Corps must comply with the following requirements:
  - i. The activity must meet all General Conditions (*Section VIII*), all requirements for all activities (*IV.A. 1.i-v*), and
  - ii. Total permanent impacts must not exceed three acres of WOTUS. Of this, no more than 3,000 linear feet of nontidal streams, rivers, and other open waters, or a combination thereof may be permanently impacted.

**B. Retrofit and Stabilization of Outfalls:** Discharges of dredged or fill material into WOTUS for retrofit and stabilization of outfall activities, where the outfall retrofit activities seek to comply with the Chesapeake Bay TMDL by minimizing accelerated channel erosion to reduce pollutant loading. In addition to the General Conditions (*Section VIII*) of this permit, all work authorized by this activity must comply with the following activity-specific impact limits and requirements:

1. Requirements for This Activity:

- i. In addition to the permit application documentation (*Section VI*), the applicant must provide photographic documentation that the existing (pre-construction) outfall is in an unstable condition. (*e.g., exhibiting problematic erosion, vertical instability lateral instability of substrates surrounding outfall structures, etc.*).
- ii. Impact Limits: The total permanent impacts to WOTUS for the overall project must not exceed 5,000 square feet. Of this, no more than 200 linear feet of streams, rivers, open waters or a combination thereof may be permanently impacted.
- iii. Conversion Limits: This Bay TMDL Outfall Retrofit and Stabilization Activity may be used to authorize multiple conversion types for an overall project provided the total extent of all types of conversion does not exceed 5,000 square feet of all WOTUS, including 200 linear feet of streams, rivers, and other open waters. Of the total conversion, the limits for specific conversion types indicated below must not be exceeded. (*See Section IX, "Definitions" of this TMDL RGP for the definition of the term "conversion"*). The TMDL Outfall Activity conversion limits are:
  - a. Conversion to Uplands: The loss or conversion of WOTUS (*i.e., wetlands and/or streams, rivers, and other open waters*) to uplands is not authorized under this Activity.
  - b. Conversion of Wetland Plant Community Types: The conversion from one wetland type to another wetland type must not exceed 5,000 square feet.

- c. Conversion of Streams or Rivers to Open Waters or Wetlands: The conversion of streams or rivers (excluding wetlands) to open water or wetlands must not exceed 5,000 square feet or 200 linear feet of streams and/or rivers.
      - d. Conversion of Wetlands to Other Aquatic Habitat Type: The conversion of wetlands to another aquatic habitat type (*e.g., streams, rivers, open water, etc.*) must not exceed 5,000 square feet.
    - iv. Within 30 days (or the timeframe identified in the Water Quality Certification, whichever is less) from the completion of the authorized work, all temporary impacts within WOTUS must be restored to preconstruction contours, elevations, and stabilized. Planting in required areas must be completed within the first growing season after completion of the project.
    - v. By December 31 of the project completion year, the permittee must provide the documentation identified in the Year 1 Post Construction Report General Condition (*Section VIII General Condition 5*).
  - 2. Projects Qualifying for Self-Verification: Activities may commence without written verification provided the applicant has submitted the appropriate documentation to the Corps that verifies that the proposed work meets all activity-specific impact limits and requirements and the General Conditions (*Section VIII*) of the RGP, and no proposed work in jurisdictional waters will result in an increase/extension of piping of an outfall (*i.e., proposed installation of drop structures*).
  - 3. Projects Qualifying with Corps Verification: For retrofit and stabilization of existing outfall activities that meet the impact and conversion thresholds in *Section IV.B.1*, the applicant must obtain written verification from the Corps prior to commencing work if the proposed activity will result in impacts to WOTUS associated with an increase/extension of piping of an outfall (*i.e., proposed installation of drop structures*).
- C. **Nontidal Streams and Wetland Restoration Activities**: This activity authorizes stream and wetland restoration and enhancement activities in WOTUS, where the activity is part of an acceptable watershed strategy to reduce nutrients and sediment pollution and produces functional lift within the project site. All work authorized by this activity must comply with the General Conditions (*Section VIII*) and the following activity-specific impact limits and requirements:
- 1. Requirements for This Activity:
    - i. The permit application must include the documentation from *Section VIII* and the following additional information:
    - ii. Stream degradation: Documentation that the existing (pre-construction) stream reach is in a degraded condition using a Corps-

approved Functional or Conditional Assessment Methodology (FCAM) or Benthic Index of Biotic Integrity (BIBI) Score in combination with geomorphic evidence of stream quality degradation. The applicant must also provide a rationale for stream site selection and the proposed design approach using applicable evidence, prioritization tools (*i.e., excessive erosion as indicated by BEHI/BANCS, impaired stream conditions and/or functions as documented by a FCAM*), and literature.

- iii. New FCAMs proposed by an applicant must be approved by the Corps on a case-by-case basis.
  - iv. Degradation is determined by the specific FCAM. For example, if using the EPA Rapid Bioassessment Protocol-Habitat Assessment Form, a score of marginal to poor would be degraded.
  - v. Functional lift: Forecast functional stream lift by evaluating existing vs. projected lift as documented using a Corps-approved FCAM in combination with citing applicable research supporting the restoration approach if appropriate.
  - vi. Within 30 days (or the timeframe identified in the Water Quality Certification, whichever is less) from the completion of the authorized work, all temporary impacts within WOTUS must be restored to preconstruction contours, elevations, and stabilized. Areas that require planting must be planted within the first growing season after completion of the project.
  - vii. By December 31 of the project completion year, the permittee must provide the documentation identified in the Year 1 Post Construction Report General Condition (*Section VIII General Condition 5*).
  - viii. For three years following construction completion, the permittee must provide an annual monitoring report including all items outlined in Section VIII General Condition 6. The monitoring reports must be received by December 31 of the respective monitoring year. (*Note: Three year post construction monitoring reports are in addition to Year 1 Post Construction Monitoring Requirements noted in Section VIII General Condition 5*).
2. Projects Qualifying for Self-Verification: Activities may commence without written verification provided the applicant has submitted the appropriate documentation to the Corps that verifies that the proposed work meets all activity specific requirements and the General Conditions (*Section VIII*) of the RGP, and:
- i. The discharge will not result in permanent loss or conversion of any type of WOTUS.

- ii. The total permanent impacts (*e.g., rock placement for riffle-grade control, habitat structure placement, or fills associated with channel realignment*) do not to exceed 0.5 acres of WOTUS. Of this, no more than 1,000 linear feet of nontidal streams, rivers, open waters, or a combination thereof, may be permanently impacted.
- 3. Projects Qualifying for Corps Verification: Activities requiring written verification from the Corps prior to commencing must submit the appropriate documentation to the Corps and meet all the following activity specific requirements and the General Conditions (*Section VIII*) of the RGP:
  - i. Total permanent loss or conversion does not exceed 10,000 square feet of WOTUS. Of this, no more than 200 linear feet of nontidal streams, rivers, open waters, or a combination thereof, may be permanently impacted or converted.
  - ii. Total permanent impacts do not exceed three acres of WOTUS. Of this, no more than 5,000 linear feet of nontidal streams, rivers, and other open waters, or a combination thereof may be permanently impacted.

**V. OTHER APPROVALS:** This TMDL RGP does not obviate the need to obtain all other Federal, state, or local permits required by law.

**VI. HOW TO OBTAIN/APPLY FOR AUTHORIZATION:** All applicants must submit a Joint Permit Application (JPA) with the documentation listed below. (*See Section VIII General Condition 54*).

- A. All applications for regulated activities under this TMDL RGP shall be completed using the established Corps permit application procedures for Maryland, Virginia, and the District of Columbia. Activities may qualify for this TMDL RGP whether or not they are regulated by the State. Please see the Baltimore District website at <https://www.nab.usace.army.mil/Missions/Regulatory/Permit-Types-and-Process/> for more information on permit application procedures by state and locality.
- B. Self-Verification: All terms and conditions of this TMDL RGP apply to self-verified activities. Self-verified activities within WOTUS authorized by this RGP may commence after the applicant has submitted a JPA and documented in the Appendix 2 (*Self-Verification*) the following:

Confirmed the activity will be conducted in compliance with the terms and conditions of this TMDL RGP, including any prior project-specific guidance received from the Corps. Examples of pertinent laws that must be considered include the National Historic Preservation Act, Endangered Species Act, and State regulatory requirements. Applicants are encouraged to contact the Corps with self-verification eligibility questions. Activities not meeting the self-verification criteria require the submittal of

an application using the established Corps permit application procedures:  
<https://www.nab.usace.army.mil/Missions/Regulatory.aspx>

- C. Corps Verification: For activities that do not qualify for self-verification or where otherwise required by the terms of this TMDL RGP, the applicant must obtain written verification from the Corps before starting work in WOTUS. Applicants requesting Corps verification under this TMDL RGP must submit a JPA with a completed Appendix 3 (*Documentation for Corps Verified Activities*). The Corps will review all applications for activities and will coordinate review of the application with the appropriate Federal and state agencies and Federally-recognized tribes. To be eligible and subsequently verified, an activity must result in no more than minimal adverse effects on the aquatic environment as determined by the Corps.

**VII. PERMIT APPLICATION:** A complete permit application must contain the information specified on the application form and the following information. In general, the level of detail needed will be based on the size and complexity of the proposed project:

- A. Watershed Strategy: A statement that describes the acceptable watershed strategy and how it supports selection of the project site. The statement shall include information regarding how the acceptable watershed strategy has incorporated upland best management practices, upland stormwater management retrofits, and Low Impact Development (LID) practices to the maximum extent practicable. An acceptable watershed strategy for identifying nutrient and sediment reduction activities is required to focus retrofit and restoration efforts at locations that will provide the most benefit in terms of sediment and nutrient reduction.
- B. Temporary Impact Restoration Narrative: A restoration narrative identifying how all temporary fills and structures will be removed and the area restored to pre-construction conditions (*i.e., any soil amendments used, remediation for compaction, and/or restoration of previous hydrology levels and duration*).
- C. Historic and Cultural Resources Correspondence: Written documentation must be submitted verifying that the applicant has already contacted and received a response from the State Historic Preservation Office (SHPO) concerning historic properties that may be affected by the proposed activity. Useful information regarding cultural resources may be obtained by using the following websites (*See General Condition 17-Historic Properties*):
  - 1. In Maryland: <https://mht.maryland.gov/>
  - 2. In Virginia: <http://epix.dhr.virginia.gov>
  - 3. In District of Columbia: <http://planning.dc.gov/historicpreservation>
- D. Endangered Species Correspondence: Written documentation must be submitted verifying that the applicant has already contacted and received a

response from the U.S. Fish and Wildlife Service (FWS) concerning any Federally listed or proposed threatened and endangered species and designated or proposed critical habitat that may be affected by the proposed activity. Information on Federally listed or proposed threatened and endangered species and designated or proposed critical habitat can be obtained using the following websites (See *General Condition 21 Endangered Species*):

1. In Maryland and the District of Columbia:

<http://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Index.html>

2. In Virginia:

<http://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html>

*Note: Applicants may need to coordinate with the appropriate State agency to determine if the proposed activity may have an effect on State listed rare, threatened or endangered species. Information regarding State-listed species is not required as part of this application.*

- E. This RGP does not obviate the need to comply with other Federal laws such as the National Historic Preservation Act, the Endangered Species Act, and Section 14 of the Rivers and Harbors Act (Section 408). A Corps verification is required (even if proposed project otherwise is within the self-verification thresholds) if the activity:
1. May affect Federally listed, proposed, threatened or endangered species,
  2. May affect federally-designated or proposed critical habitat,
  3. Has the potential to cause effects to any historic properties listed, determined to be eligible for listing in, or potentially eligible for listing in the National Register of Historic Places, including previously unidentified properties and/or,
  4. Has the potential to alter, temporarily or permanently occupy or use any U.S. Army Corps of Engineers federally authorized Civil Works project, including, but not limited to dams, levees, easements, Federal navigation channel, including Corps-constructed projects administered by local sponsors.
  5. If a cultural resource or endangered species survey has been completed for the project site, reports documenting the results shall be submitted with the application to facilitate the Corps review. In cases where Federally listed species, critical habitat, historic properties, and/or federally authorized Civil Works projects might be affected by the project or are in the vicinity of the project, the prospective permittee may not begin the activity until notified by the Corps in writing that the requirements of the Endangered Species Act, the National Historic Preservation Act, and/or Section 408 have been satisfied and that the activity is authorized.

**VIII. GENERAL CONDITIONS:** Activities do not qualify for this TMDL RGP unless they satisfy all of the general conditions listed below:

1. The applicant must submit the appropriate permit application, plans, and supporting documentation according to the permit application procedure in Section VI and VII before initiating work in WOTUS.
2. Vegetation Protection and Restoration: Riparian and wetland vegetation in the authorized project area shall be protected from unnecessary clearing and disturbance to the maximum extent practicable through:
  - i. Minimization of project and impact footprint;
  - ii. Designation of staging areas and access points in open, upland areas;
  - iii. Fencing or other barriers demarking construction areas; or
  - iv. Use of alternative equipment (*e.g., crane, portable bridges*).
3. Tidal Waters: No activity, fill or discharge shall occur channelward of the high tide line.
4. Self-sustaining Design: The project must be self-sustaining, meaning that a project must be designed in a way which does not require routine work to maintain the as-built integrity.
5. Year 1 Post Construction Report: For all activities, the permittee must electronically provide a post-construction report (*PDF format preferred*) to the Corps ([NAB-Regulatory@usace.army.mil](mailto:NAB-Regulatory@usace.army.mil)) by December 31 of project completion year. The post-construction report shall include:
  - i. The Corps application tracking number & State permit number (*NAB-YYYY-#####*);
  - ii. Location of the completed work (*latitude and longitude in decimal degrees*);
  - iii. Dates during which the work occurred;
  - iv. A point of contact name and contact information (*email and phone*);
  - v. A set of geo-referenced photographs that show the pre-construction and post-construction conditions for the project using consistent photo stations;
  - vi. A narrative describing how the project purpose and objectives were met;
  - vii. Surveyed as-built drawings, to scale, with control (latitude/longitude) depicting the final work including the restoration of the temporary impacts. As-built drawings must be completed within 90 days of completion of work in WOTUS. Additional as-built monitoring is required for Activity C projects (*See VIII.6.xiii*).

6. Three Year Monitoring Requirements: For Activity C) Stream and Wetland Restoration Activities, the permittee must electronically provide an annual monitoring report to the Corps ([NAB-Regulatory@usace.army.mil](mailto:NAB-Regulatory@usace.army.mil)) by December 31 of each respective year. (*Note: Three year post construction monitoring reports are in addition to Year 1 Post Construction Monitoring Requirements noted in Section VIII General Condition 5. Monitoring requirements listed below apply to all three years, unless otherwise specified*). The monitoring reports must include:
- i. The Corps application tracking number & State permit number (NAB-YYYY-#####);
  - ii. Location of the completed work (*latitude and longitude in decimal degrees*);
  - iii. Dates during which the work occurred;
  - iv. A point of contact name and contact information (*email and phone*);
  - v. A set of geo-referenced photographs that show post-construction conditions for the project using consistent photo stations across monitoring years;
  - vi. The permittee must demonstrate functional lift and stability by comparing pre-construction and post-construction functions and conditions using an FCAM. References to scientific literature may be used;
  - vii. Documentation of achievement of design objectives as compared to baseline values;
  - viii. Documentation of at least 85% coverage of the riparian vegetation, including volunteers. Of these, invasive species coverage may not exceed baseline (*Year 3 only*);
  - ix. Documentation of the reestablishment of impacted or relocated wetlands and streams (*Years 1 and 3 only*);
  - x. A waters and wetland delineation of the project site to ensure that there has been no additional loss or conversion. If additional loss or conversion is determined, the applicant may need to provide compensatory mitigation (*Year 3 only*);
  - xi. A detailed description of any necessary corrective measures, including maintenance and repair, or alteration in any way, of the permitted work. (*Note: permittees must notify the Corps of proposed corrective measures at least 15 days prior to performance of such corrective measures for review and approval. In addition, a summary of corrective measures must be included in the monitoring report for the respective year*);
  - xii. The permittee must demonstrate functional lift and stability by comparing pre-construction and post-construction ecological functions

and conditions using an FCAM for three (3) years following construction completion.

xiii. Required Surveying and Figures:

- a. Plan view graphic showing channel alignment and aquatic resources onsite (*Years 1 and 3 only*).
- b. Surveyed cross-sections at a minimum of 300 foot intervals. Cross-sections must be monumented and graphically displayed to compare changes from previous years (*For Self-Verified Activities, Year 1 only, For Corps Verified Activities, Years 1 and 3 only*)
- c. Surveyed longitudinal profile capturing the water surface and bed elevation along the thalweg (*For Self-Verified Activities, Year 1 only, For Corps Verified Activities, Years 1 and 3 only*).
- d. Red-line construction drawings of the As-built condition may substitute for items a, b, and c above if they include the elements described in those respective items.
- e. Surveying specific to Year 1 listed above must reflect the As-built condition, and must be completed within 90 days of completion of project activity in WOTUS;

xiv. If monitoring shows that a project is not trending towards success in meeting the project goals and objectives, monitoring may be extended on a case by case basis. Projects not meeting documented functional lift and stability by year three may result in noncompliance or enforcement actions by the Corps.

7. Compliance Certification: Each permittee must provide a completed and signed Certificate of Compliance documenting completion of the authorized activity. The Corps will provide the permittee the certification document with the TMDL RGP verification letter. Each permittee should retain a copy for their records. The original Certificate of Compliance shall be emailed to: (*NAB-Regulatory@usace.army.mil*).
8. Other Permits: Authorization under the TMDL RGP does not obviate the need to obtain other Federal, state or local authorizations required by law or to comply with all Federal, state, or local laws.
9. Single and Complete Project: This TMDL RGP shall only be applied to single and complete projects. For purposes of this TMDL RGP, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers and which has independent utility. All components of a project, including all attendant features both temporary and permanent, shall be reviewed together as constituting one single and complete project.

10. Use of Multiple TMDL RGP Activities: More than one TMDL RGP activity may be used to authorize a single and complete project. However, the specific requirements, including all activity-specific requirements and impact thresholds, must be met for each TMDL RGP activity and the total extent of project impacts must not exceed the acreage and/or linear foot limit of the TMDL RGP activity with the highest specified acreage and/or linear foot limit.
11. Multiple General Permit Authorizations: An activity can be authorized by more than one general permit (*e.g., TMDL RGP in combination with Maryland Statewide Programmatic General Permit or Nationwide Permit*), if the activity is a single and complete project (*33 CFR 330.2(i)*), that will result in no more than minimal adverse environmental effects, and that will satisfy the terms and conditions of the applicable general permits. However, the project must meet the specific requirements of each general permit and the total extent of project impacts must not exceed the acreage limit of the general permit with the highest specified acreage limit.
12. Water Quality: Permittees must satisfy any conditions imposed by the States and EPA, where applicable, in their Water Quality Certifications (WQC) for this TMDL RGP pursuant to Section 401 of the Clean Water Act. Project-specific WQC must be obtained for activities under the TMDL RGP that have not been given a programmatic WQC by the State. The Corps or State may require additional best management practices to ensure that the authorized activity does not result in degradation of water quality. For information on obtaining an individual water quality certification contact the appropriate state agency:

**Maryland:** A conditional Water Quality Certification has been issued for all permittees applying for the TMDL RGP within the State of Maryland (*Appendix 4*). For additional information contact the Wetlands and Waterways Program below:

MDE/Water and Science Administration  
Wetlands and Waterways Program - ATTN: WQC  
Montgomery Business Center – STE 430  
1800 Washington Blvd  
Baltimore, MD 21230-1708  
<https://mde.maryland.gov/programs/Water/WetlandsandWaterways/Pages/WQC.aspx>

**Virginia:** A general Water Quality Certification has been issued for all permittees applying for the TMDL RGP within the State of Virginia (*Appendix 4*). For additional information contact the Water Quality Division below:

Virginia Department of Environmental Quality  
Water Quality Division  
P.O. Box 1105

Richmond, Virginia 23218

<https://www.deq.virginia.gov/Programs/Water/WetlandsStreams.aspx>

**District of Columbia:** All applicants applying for the TMDL RGP for proposed work within the District of Columbia are required to obtain a 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 Regulatory Review Division:

Electronic Submittal: [Jennifer.Dietzen@dc.gov](mailto:Jennifer.Dietzen@dc.gov) or

Ms. Jennifer Dietzen

Water Resources Plan Review and Flood Control Branch

Regulatory Review Division

1200 First Street NE, 5<sup>th</sup> Floor

Washington, DC 20002

<https://doee.dc.gov/service/environmental-applications-licenses-and-permits>

13. Coastal Zone Management Consistency (CZM): All activities authorized by the TMDL RGP will be carried out in a manner consistent with the Maryland Coastal Zone Management Program or the Virginia Coastal Zone Management Program pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972, as amended. Permittees must satisfy any additional conditions imposed by the States in their CZM consistency concurrences for this TMDL RGP.

Per the letter dated July 10, 2020, the Maryland Department of Environment has concurred that the TMDL RGP is consistent with the Maryland's CZM Program, provided all applicable permits and approval are obtained (*Appendix 4*).

Per the letter dated June 8, 2020, the Virginia Department of Environmental Quality concurred that the TMDL RGP is consistent with the Virginia's CZM Program, provided all applicable permits and approval are obtained (*Appendix 4*).

14. Minimal Effects: Projects authorized shall have no more than minimal individual or cumulative impacts, as determined by the Baltimore District.
15. Discretionary Authority: The Corps retains discretionary authority to require processing of an individual permit for any project based on concerns for the aquatic environment or for any other factor of the public interest (*33 CFR 320.4(a)*). This authority is exercised on a case-by-case basis.
16. Contractor Compliance: The prospective permittee shall ensure that a copy of the TMDL RGP and Corps verification letter or signed self-verification form are available and visible for reference at the project site and that all personnel

with operational control of the site ensure that all appropriate personnel performing work are fully aware of its terms and conditions. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any general permit authorization. No contract or sub-contract shall require or allow unauthorized work in areas of Corps jurisdiction.

#### 17. Historic Properties.

- i. Prior to initiating the work, prospective permittees shall coordinate with and receive written notification/comments (i.e., letter, email, etc.) from the appropriate SHPO:
  - a. Virginia State Historic Preservation Office, Review and Compliance Division, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, Phone: 804-482-6103, Website: <http://www.dhr.virginia.gov/> (utilization of the ePIX – Electronic Project Information Exchange is also recommended: <http://epix.dhr.virginia.gov/>);
  - b. Maryland Historical Trust, 100 Community Place, Crownsville, MD 21032, Phone: 410-514-7600, Website: <https://mht.maryland.gov/>; or
  - c. DC State Historic Preservation Office, Office of Planning, 1100 4th Street, SW, Suite E650, Washington, DC 20024, Phone: 202-442-7600, Website: <http://planning.dc.gov/historicpreservation>.
- ii. Prospective permittees must submit an application to the Corps, regardless of the activity-specific limits, if the authorized activity may have the potential to affect any historic properties listed in, determined to be eligible for listing in, or potentially eligible for listing in the National Register of Historic Places, including previously unidentified properties. For such activities, the application must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties.
- iii. In cases where the Corps determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act have been satisfied.

18. Tribal Rights: No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

19. Discovery of Previously Unknown Artifacts: Upon discovery of any previously unknown historic, cultural, or archeological resources or remains while

accomplishing the activity authorized by this permit, the permittee must immediately notify this office by calling (410)962-3670 and also sending an email notification to the Corps (*NAB-Regulatory@usace.army.mil*) of what has been found, and avoid construction activities that may affect the resources or remains until the required coordination has been completed. The Corps will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

20. National Lands: Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the FWS, U.S. Forest Service, or National Park Service.

21. Endangered Species:

- i. No activity is authorized under this TMDL RGP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the proposed or designated critical habitat of such species. No activity is authorized under this TMDL RGP that “may affect” a proposed or listed species or proposed or designated critical habitat, unless project-specific Section 7 consultation addressing the effects of the proposed activity has been completed.
- ii. Applicants must submit an application if any listed species or designated critical habitat may be affected or is in the vicinity of the project, or if the project is located in designated critical habitat. The application must include the name(s) of the endangered or threatened species that might be affected by the proposed work or that utilizes the designated critical habitat that might be affected by the proposed work. The Corps shall determine if consultation with FWS is required under Section 7 of the ESA. If consultation is required, the prospective permittee shall not begin or continue work until notified by the Corps that the requirements of the ESA have been satisfied and that the activity is eligible for authorization.
- iii. Authorization of an activity by this TMDL RGP does not authorize the “take” of a threatened or endangered species as defined under the ESA. The ESA prohibits any person from taking a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct in the absence of an authorization (e.g., an ESA Section 10 permit, a Biological Opinion with “incidental take” provisions, etc.) from the FWS. FWS regulations extend the definition of “harm” to include significant habitat modification or degradation (*50 CFR 17.3*).
- iv. Information on Federally listed or proposed threatened and endangered species and designated or proposed critical habitat can be

obtained from the FWS. Prior to initiating the work, applicants in Maryland and the District of Columbia must review ESA resources at the Endangered Species Project Review website to determine if listed species and designated or proposed critical habitat may be affected: <http://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Index.html>. applicants in Virginia must review ESA resources at this website: <http://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html>

22. Migratory Birds and Bald and Golden Eagles: The permittee is responsible for obtaining any “take” permits required under the FWS’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the FWS to determine if such “take” permits are required for a particular activity.
23. Essential Fish Habitat (EFH) and Fish and Wildlife Coordination Act: The Corps completed EFH coordination and received a no effect determination. NMFS does not need project-specific coordination under the Fish and Wildlife Coordination Act if the applicant adheres to the terms and conditions of the permit.
24. Coldwater and Tier II Streams: No activity may increase water temperatures in excess of the water quality standard in Code of Maryland Regulations (COMAR 26.08.02.03-3D(3)). To avoid adverse effects to native aquatic species from increased water temperatures, Corps Verification is required for any work proposed in coldwater streams (Use III and Use IV waters, and other cold water resources identified in mapped waterways ( COMAR 26.08.02.02; <https://maryland.maps.arcgis.com/apps/webappviewer/index.html?id=dc5100c0266d4ce89df813f34678944a> ) or work proposed in Tier II watersheds (COMAR 26.08.02.04-1).
25. Wild and Scenic Rivers: No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study River (e.g., *National Park Service, U.S. Forest Service, Bureau of Land Management, and FWS*).
26. Federal Projects: Engineer Circular (EC1165-2-216) provides policy and procedural guidance for processing requests by private, public, tribal, or other federal entities, to make alterations to, or temporarily or permanently occupy or use, any US Army Corps of Engineers (USACE) federally authorized civil works project, pursuant to 33 USC 408 (Section 408). Proposed alterations

- must not be injurious to the public interest or affect the USACE project's ability to meet its authorized purpose. The decision on a Department of the Army permit application pursuant to Section 10/404/103 cannot and will not be rendered prior to the decision on the Section 408 request. An activity that requires Section 408 permission is not authorized by the TMDL RGP until the Corps issues the Section 408 permission to alter, occupy, or use the USACE project, and the Corps issues a written TMDL RGP verification.
27. **Fills Within Floodplains:** The authorized activity must comply with applicable requirements of any Federal Emergency Management Agency-approved state or local floodplain management requirements.
  28. **Safety of Impoundment Structures:** To ensure that all impoundment structures are safely designed, the Corps may require applicants to demonstrate that the structures comply with established State dam safety criteria or have been designed by qualified persons. The Corps may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.
  29. **Federal Liability:** In issuing this TMDL RGP, the Federal government does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; (c) damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this TMDL RGP; (d) design or construction deficiencies associated with the permitted work; or (e) damage claims associated with any future modification, suspension, or revocation of this permit.
  30. **Avoidance and Minimization:** The activity must be designed to avoid and minimize adverse effects, both temporary and permanent, to WOTUS to the maximum extent practicable at the project site.
  31. **Compensatory Mitigation:** All authorized activities under this RGP require avoiding, minimizing, or compensating for resource losses. Compensatory mitigation may be required to ensure the adverse effects to the aquatic environment are minimal. The Corps will perform compliance inspections of projects authorized under the TMDL RGP. If a compliance inspection indicates that an authorized project resulted in a loss or temporary impacts were not restored to pre-construction contours, elevations, and re-vegetated, the Corps may require compensatory mitigation to assure adverse effects to the aquatic environment are minimal.
  32. **Heavy Equipment in Wetlands:** Heavy equipment (*e.g., excavators*) working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance. The use of mats is considered to be a discharge of fill material and must be included in the quantification of impact area authorized by the TMDL RGP.

33. Soil Erosion and Sediment Controls: 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. These devices and methods must be capable of: (a) preventing erosion, (b) collecting sediment and suspended and floating materials, and (c) filtering fine sediment. Erosion and sediment control devices shall be removed when the work is complete and the site has successfully stabilized. The sediment collected by these devices shall be removed and placed at an upland location, in a manner that will prevent its later erosion into a waterway or wetland. All exposed soil or other fills shall be permanently stabilized at the earliest practicable date. In-stream work shall be conducted "in the dry" unless otherwise approved. This should be accomplished using stream diversion devices. The stream length affected by stream diversion devices must be included in the temporary impact area authorized by this TMDL RGP. Stream base flow must be maintained in downstream areas during construction.
34. Temporary Impacts: Temporary fill and the use of mats are both considered to be a discharge of fill material. Temporary fill (*e.g., access roads, cofferdams, etc.*) in WOTUS authorized by this TMDL RGP shall be properly stabilized during use to prevent erosion. Temporary fills in streams shall be removed within 3 days after work is completed. Temporary fill in wetlands shall be placed on geotextile fabric and laid on the existing wetland grade. Upon completion of the work, all temporary fill must be removed in its entirety and the affected areas restored to pre-construction contours and elevations and stabilized within 30 days following completion of the work (or the timeframe identified in the Water Quality Certification, whichever is less). Temporarily disturbed wetlands and stream banks must be re-vegetated with native wetland species by the end of the first growing season following completion of the work. Temporary fills within the impact area must be quantified but do not count toward activity specific limits authorized by the TMDL RGP. Restoration of Temporary impacts shall be documented in the as-built report as outlined in General Condition 5.
35. Aquatic Life Movements: 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, or spawn/nursery within the area (*e.g., anadromous/catadromous fish*). A low-flow channel must be maintained through any discharges placed across the stream channel so as to maintain low flows to sustain the movement of aquatic species, including anadromous and resident fish.
36. Water Crossings: All temporary crossings of waterbodies shall be suitably bridged, culverted, or otherwise designed and constructed to withstand and prevent the restriction of high flows; to maintain low flows; and to sustain the movement of aquatic species indigenous to the waterbody. The permittee shall apply any appropriate time-of-year restrictions to protect aquatic resources present within the project area and downstream of the project site.

37. Suitable material: No activity may use unsuitable material (*e.g., trash, debris, car bodies, asphalt, petroleum products, waste concrete, tires, etc.*). Material used for installation or discharged must be free from toxic pollutants in toxic amounts (*See Section 307 of the Clean Water Act*). If treated wood pilings or other treated wood materials are used for structures, they must be pesticide pressure-treated in a manner consistent with the pesticide's EPA-approved labeling, in accordance with standards established by the American Wood Protection Association or the International Code Council – Evaluation Service Reports.
38. Management of Water Flows: To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or expected high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (*i.e., stream restoration and enhancement activities*).
39. Spawning Areas: Activities, including work in WOTUS, or discharges of fill materials, must be avoided in fish spawning or nursery areas during spawning seasons. 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., through excavation, dredging, fill or downstream smothering by substantial turbidity, etc.*) of an important spawning/nursery habitat (as determined by National Marine Fisheries Service and/or FWS) are not authorized by this permit.
40. Migratory Bird Breeding Areas: Activities in WOTUS that serve as breeding and wintering areas for migratory birds must be avoided to the maximum extent practicable.
41. Water Supply Intakes: No discharge of dredged or fill material may occur in the proximity of a public water supply intake.
42. Adverse Effects from Impoundments: Adverse effects on the aquatic system due to accelerating the passage of water and/or restricting its flow from the construction of an impoundment must be minimized to the maximum extent practicable. This RGP does not authorize impeding flows.
43. Hazardous Wildlife Attractants On or Near Airports: Permittees must consider the activity's effects on aviation safety and design a project so it does not create a wildlife hazard. All authorized activities that may attract hazardous wildlife shall be consistent with the siting criteria and land use practice recommendations stated in Section 1-3 of the Federal Aviation Administration Advisory Circular 150/5200-33. This document can be found at: [http://www.faa.gov/documentLibrary/media/advisory\\_circular/150-5200-33B/150\\_5200\\_33b.pdf](http://www.faa.gov/documentLibrary/media/advisory_circular/150-5200-33B/150_5200_33b.pdf)
44. Inspections: A copy of the Corps verification letter or signed self-verification form must be provided to any contractor and made available at the project

site to any regulatory representative. The permittee shall permit the Corps or authorized representative(s) to make periodic inspections at any time deemed necessary to ensure that the work is being performed in accordance with the terms and conditions of this TMDL RGP. The Corps reserves the right to require post-construction engineering drawings and/or surveys of any work authorized by this TMDL RGP, as deemed necessary on a case-by-case basis.

45. **Maintenance of Project:** The permittee must properly maintain the work authorized herein in good condition and in compliance with the terms and conditions of this permit, including maintenance to ensure public safety and integrity of the authorized work. The permittee must develop necessary contingency/adaptive management plans and implement appropriate remedial actions in consultation with the Corps and other appropriate regulatory agencies prior to any work within areas subject to federal jurisdiction. Changes to the original authorized scope or materials may require a new authorization or modification to the original project authorization under this TMDL RGP.
46. **Property Rights:** This TMDL RGP does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.
47. **Modification, Suspension, and Revocation:** This TMDL RGP may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 *CFR* 325.7. Any such action shall not be the basis for any claim for damages against the United States. The Corps will issue a public notice announcing any changes to the TMDL RGP when they occur; however, it is incumbent upon you to remain informed of any changes to this TMDL RGP.
48. **Special Conditions:** The Corps may impose special conditions on any project authorized under the TMDL RGP that are determined necessary to avoid or minimize adverse navigational and/or environmental effects or based on any other factor of the public interest. Failure to comply with all special and general conditions of this permit, including any additional project specific special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.
49. **False or Incomplete Information:** The Corps has relied upon information and data provided by the permittee in granting authorization pursuant to this permit. A permit verification may be revoked, in whole or in part, if the Corps discovers that it has relied on false, incomplete, or inaccurate information provided by the permittee. In addition, the United States may institute appropriate legal proceedings.
50. **Transfer of Authorization:** If the permittee wants to transfer this authorization, the transferee and permittee must supply the Corps with a written request in

order to transfer authorization under this TMDL RGP. Such transfer is effective upon written approval by the Baltimore District of a transfer document signed by both parties evidencing that the transferee commits to assuming all responsibilities of the original permittee under the permit. The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.

51. Duration of Authorization and Expiration Date: Unless further modified, suspended, or revoked, this general permit will be in effect until five years from the effective date listed at the top of page 1. Upon expiration, it may be considered for renewal. Except as provided in General Condition #52 below, work authorized under this TMDL RGP must be completed before the TMDL RGP expires, is suspended, or revoked, whichever date occurs sooner. The Baltimore District will issue a public notice announcing any changes to the Regional General Permit when they occur; however, it is incumbent upon permittees to remain informed of any changes to this TMDL RGP. If this TMDL RGP is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. The Corps may re-evaluate the terms and conditions of this TMDL RGP at any time it deems necessary to protect the public interest.
52. Grandfather Provision for Expiring TMDL RGP: Activities authorized under this TMDL RGP that have commenced or are under contract to commence the work in reliance upon this authorization, will have twelve months from the date of this TMDL RGP's expiration, modification, or revocation to complete the activity under the terms and conditions of this TMDL RGP. The permittee must be able to document to the Corps' satisfaction that the project was under construction or contract by the appropriate date.
53. Existing or proposed activities associated with an ongoing Corps or EPA enforcement action are not authorized until such time as the enforcement action is resolved or the Corps determines that the activity may proceed independently without compromising the enforcement action.
54. All applicants must submit a Joint Permit Application (JPA) with the documentation listed in Section VI. Proposed activities that qualify for self-verification (see *Section IV*) may proceed without Corps verification once the JPA and required documents are received by the Corps. When Corps verification is required, construction in WOTUS may not begin until the applicant has been notified in writing by the Corps that the activity is eligible for authorization under the TMDL RGP with any special conditions, if applicable.

## IX. DEFINITIONS:

Certain terms that are referenced in the TMDL RGP are defined in this section. Several definitions are excerpted from regulation and/or other sources and are so noted. The terms not defined herein shall have the meaning defined in the Corps' regulations at 33 *CFR Parts 320-332* or in the *Section 404(b) (1)* regulations at 40 *CFR Part 230*.

**Aquatic Habitat:** An area used by aquatic organisms to fulfill their life cycle requirements. Aquatic habitats include saturated materials and spaces, which may include rocks, coral, gravel, interstices, sand, mud, woody debris, riffles, reefs, and burrows. The term can also be used to define an entire ecosystem (*e.g., wetlands, floodplains, streams, estuaries, lakes, etc.*).

**Aquatic Resource Functions:** *See Functions*

**Best Management Practices (BMPs):** Policies, practices, procedures or structures implemented to mitigate adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. (82 *Fed. Reg. 1860, 2005 (Jan. 6, 2017)*)

**Construction Mats:** Construction, swamp, and timber mats (*i.e., "construction mats"*) are generic terms used to describe sheets or mats made from a variety of materials in various sizes that distribute equipment weight to prevent wetland damage while facilitating passage and providing work platforms for workers and equipment. Construction mats are considered as fill whether they are installed temporarily or permanently.

**Conversion:** For the purposes of this TMDL RGP, conversion is defined as a change from one aquatic habitat type to another aquatic or upland habitat type.

The following are examples of activities that are not considered conversion under this TMDL RGP:

- i. Changes in degraded wetland plant communities caused by filling, blocking, or reshaping excavated drainage ditches to restore hydrology determined to have previously existed at the project site would be considered a rehabilitation activity and not conversion, provided the activity results in a gain in aquatic resource function. Historical evidence that the proposed habitat type previously existed at the site is required. Historical evidence collected from aerial photographs, prior delineations, historical maps, forensic soil analysis, and local nearby reference sites may provide details of the former extent and conditions of the aquatic habitat that previously existed on the site.
- ii. Re-establishment of open water habitat and vegetated wetlands in a former aquatic resource where these shallow water habitat and

wetland types can be determined to have previously existed at the project site would not be considered conversion, provided the activity results in a gain in aquatic resource area and functions. See above for appropriate historical evidence that is required to document that the proposed habitat type previously existed at the site.

- iii. Relocation of WOTUS on a project site, including relocation activities that create open water impoundments where existing nontidal wetlands are located and vice versa would generally not be considered conversion, provided there is a net increase in aquatic resource functions and services and the impacted resource is replaced in-kind within the project site.

**Cumulative Impacts:** The impact on the environment which results from the incremental impact of the [proposed] action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. (*40 CFR 1508.7*)

**Direct Effects:** Effects that are caused by the activity and occur at the same time and place (*82 Fed. Reg. 1860, 2006 (January 6, 2017)*)

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource functions, but may also lead to decline in other resource functions. Enhancement does not result in a gain in aquatic resource area. (*33 CFR 332.2*)

**Fill Material:** Material placed in WOTUS where the material has the effect of (i) replacing any portion of a water of the United States with dry land or (ii) changing the bottom elevation of any portion of water. Examples of such 'fill material' include, but are not limited to, rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in WOTUS. The term fill material does not include trash or garbage. (*33 CFR 323.2(e)*)

**Floodplain:** An area on a stream's valley floor which is inundated during stream surges (*e.g., following rainfall or snowmelt events*). Commonly the "floodplain" is referred to as the area of the valley floor which is inundated during flood events.

**Functional or Conditional Assessment Methodology (FCAM):** The term was covered in detail in the 2008 Mitigation Rule (*33 CFR 332.3*). For the purposes of the TMDL RGP, an FCAM is a methodology which assesses a range of functions and conditions of a stream or wetland. The FCAM must be approved by the Corps prior to use.

Functions: The term functions means the physical, chemical, and biological processes that occur in ecosystems. (33 CFR 332.2)

Functional Lift (or “*Functional Gain*”): Measurable improvement of physical, chemical, and biological aquatic resource functions between existing and proposed conditions as a result of a restoration or enhancement activity at the project site.

High-tide line: The line of intersection of the land with the water’s surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm. (33 CFR 328.3(d))

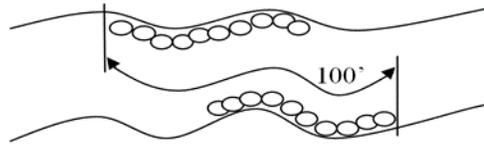
Independent Utility: A test to determine what constitutes a single and complete non-linear project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases are not built can be considered as separate single and complete projects with independent utility (82 Fed. Reg. 1860, 2006). A clear purpose and level of functionality is required for a project to have independent utility. For example, the construction of a single-family home with a driveway that connects to an existing road has independent utility and is considered a valid project. Conversely, construction of an access road with no beginning or end point in the middle of a jurisdictional wetland does not have independent utility because it does not have a clear purpose and is dependent on future development.

Indirect Effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. (82 Fed. Reg. 1860, 2006)

Jurisdictional: Areas regulated by the Corps under authorities granted by Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act.

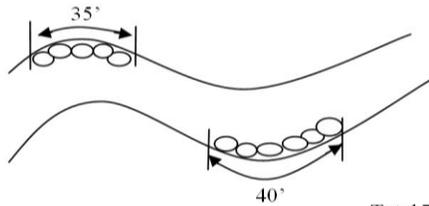
Linear Feet of Stream Impact: For categorical determinations (*e.g., 200 linear feet or 5,000 linear feet*) involving stream impacts in this RGP, the linear footage of stream impact should be measured as shown in the following plan view drawings (*Note: this is not used for calculating impacts to wetlands and open water impoundments which are based on square feet*):

- i. For regulated work on one stream bank, the linear footage of a stream impact should be measured along the bank being impacted. When both stream banks are being impacted at separate locations, the linear footage of stream impact is also measured along the banks being impacted.
- ii. For regulated work proposed along both stream banks, where at least a portion of the work on the opposing stream bank is overlapping, the linear footage of stream impact should be measured along the centerline of the stream.



Total 100 Linear Feet

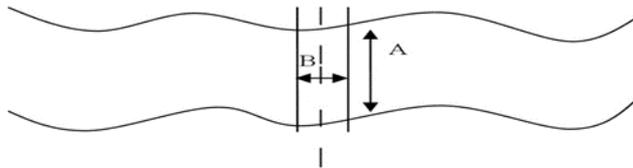
- iii. For traverse impacts (perpendicular to the stream bank), the linear footage of stream impact should be measured from the top of the bank to the top of the opposite bank and from the upstream to downstream



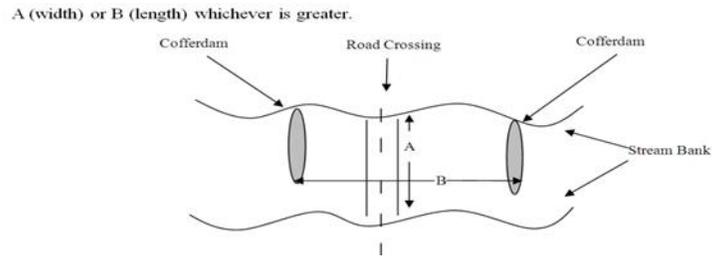
Total 75 Linear Feet

limits of work. The linear footage of stream impact, for categorical determination, is the greater of these two measurements.

Road Crossing



- iv. Dewatering – if work involves dewatering of a stream channel, measure the centerline of the stream channel that is impacted through filling, dewatering, and/or flooding, and measure from top of stream bank to top of stream bank. The linear footage of stream impact, for categorical determination, is the greater of these two measurements.



**Open Water Habitat:** Open water habitats are aquatic systems or bodies of water that lack emergent vegetation, are permanently inundated under normal circumstances, and deeper in nature than an area defined as wetland. Open water habitats are not considered wetlands because they lack one or more of the required parameters as defined in the 1987 Corps of Engineers Wetland Delineation Manual and Regional Supplements. Water depths are often the limiting factor in the presence or absence of emergent vegetation and the underlying substrates are usually interpreted as ‘non-soils.’ (*Environmental Laboratory 1987 and Cowardin et al. 1989*).

**Outfall:** An outfall is defined as an outlet, conveyance, or discharge point of WOTUS, including jurisdictional storm drain networks, and outlets of stormwater management facilities.

**Permanent Impact:** The permanent alteration of an aquatic resource that is expected to remain after a permitted activity’s construction activities are completed. Permanent effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, change the use of the waterbody, or cause the conversion of an aquatic area. The acreage of permanent impacts to WOTUS is not a net threshold that is calculated after considering relocation of an aquatic resource that may be used to move an aquatic resource from one place to another on the project site as part of a restoration project or after considering compensatory mitigation that may be used to offset permanent impacts to aquatic functions and services. For example, permanent impacts to a stream bed would include the linear feet and area of streams that are filled or excavated. Permanent impacts include relocation of aquatic resources from one place to another on the project site. WOTUS that are temporarily filled but restored to pre-construction conditions after construction are considered temporary impacts and are not considered in the measurement of permanent impacts.

**Relocation:** For the purpose of this RGP, relocation is defined as the in-kind replacement of any impacted resource within the project site provided there is a net increase in functions that support or enhance aquatic biological resources. Relocation of impacted resources within existing ecologically important aquatic or upland resources (*e.g., riffle and pool complexes, mature forests*) would not meet the terms of this TMDL RGP when there is not a net gain in functions at the project site as compared to baseline values.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions. (33 CFR 332.2)

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area. (33 CFR 332.2)

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation (33 CFR 332.2)

Stormwater Management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment. (77 Fed. Reg. 10184 (Feb. 21, 2012))

Stormwater Management Facilities: For the purposes of this RGP, stormwater management facilities are those conventional, structural measures including but not limited to, stormwater ponds, infiltration basins, and sand filters which retain water for the purpose of controlling runoff and/or improving the quality (*i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants*) of stormwater runoff.

Stormwater Management Retrofit: For purposes of this RGP, stormwater management retrofit refers to those activities that modify an existing stormwater management facility for the purpose of improving nutrient and sediment removal by the existing structural stormwater management facility that currently has little or no treatment.

Stream Restoration and Enhancement: For purposes of this RGP, stream restoration and enhancement includes any activities for the purpose of restoration and enhancement of stream conditions and functions, which may include improvement of water quality, geomorphology, hydrology, or biology, that support and/or enhance aquatic resources and that support reduction of sediment and/or nutrients at the project site in accordance with an acceptable watershed strategy.

Temporary Impact: The temporary alteration of an aquatic resource that is restored after a permitted activity's construction activities are completed. Temporary impacts include activities in which WOTUS are restored to their preconstruction contours and elevations, and stabilized within 30 days following completion of construction and re-vegetated with native species by the end of the first growing season following completion of the work, such that previous functions and values are restored.

Total Maximum Daily Load (TMDL): A Total Maximum Daily Load, or TMDL, is a “pollution diet” that identifies the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards. See 33 U.S.C. 1313.

TMDL Activity: For the purpose of this RGP, a “TMDL Activity” is an activity that has been proposed to meet the Chesapeake Bay TMDL pollution reductions and includes activities that discharge dredged or fill material into WOTUS. The Chesapeake Bay TMDL is available at <https://www.epa.gov/chesapeake-bay-tmdl-document>.

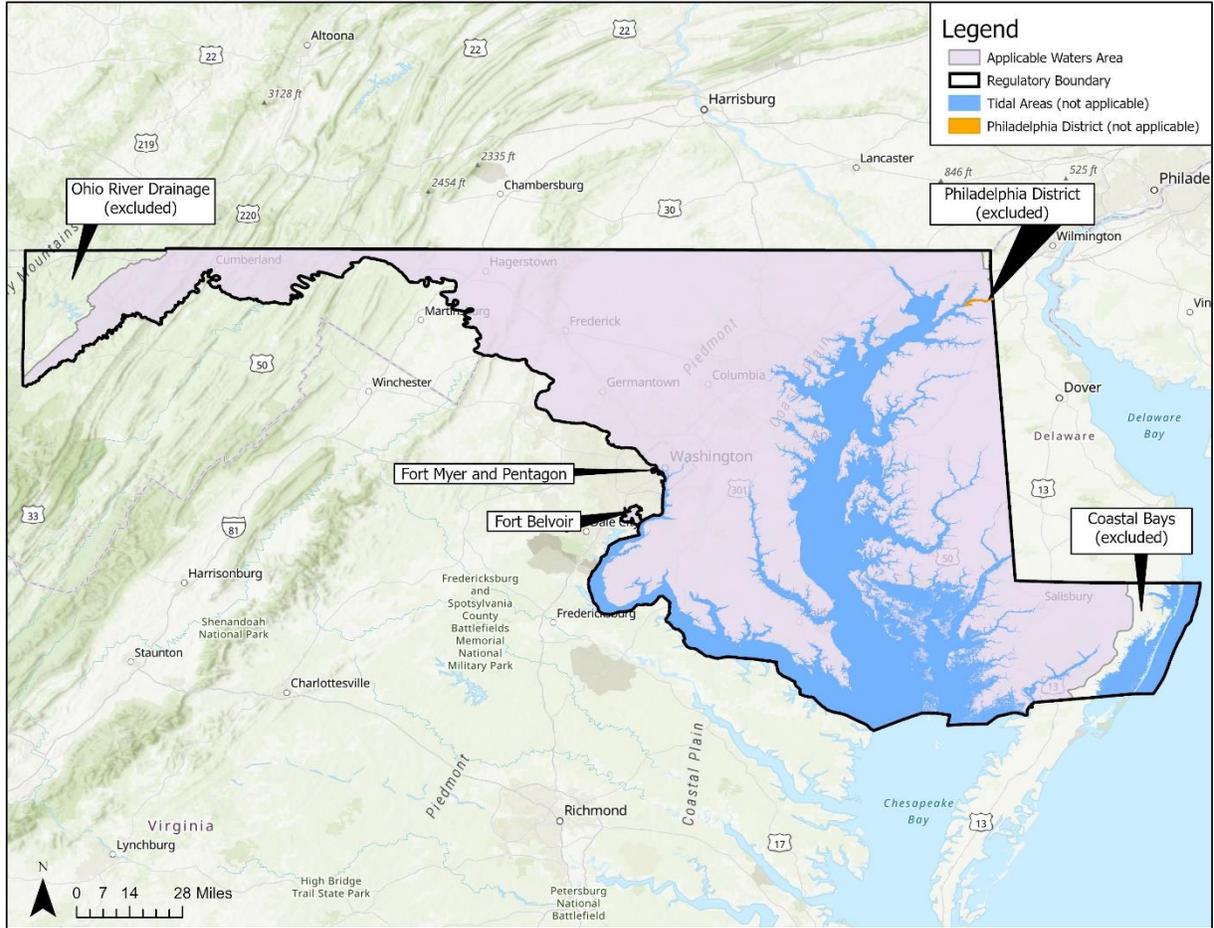
By Authority of the Secretary of the Army:



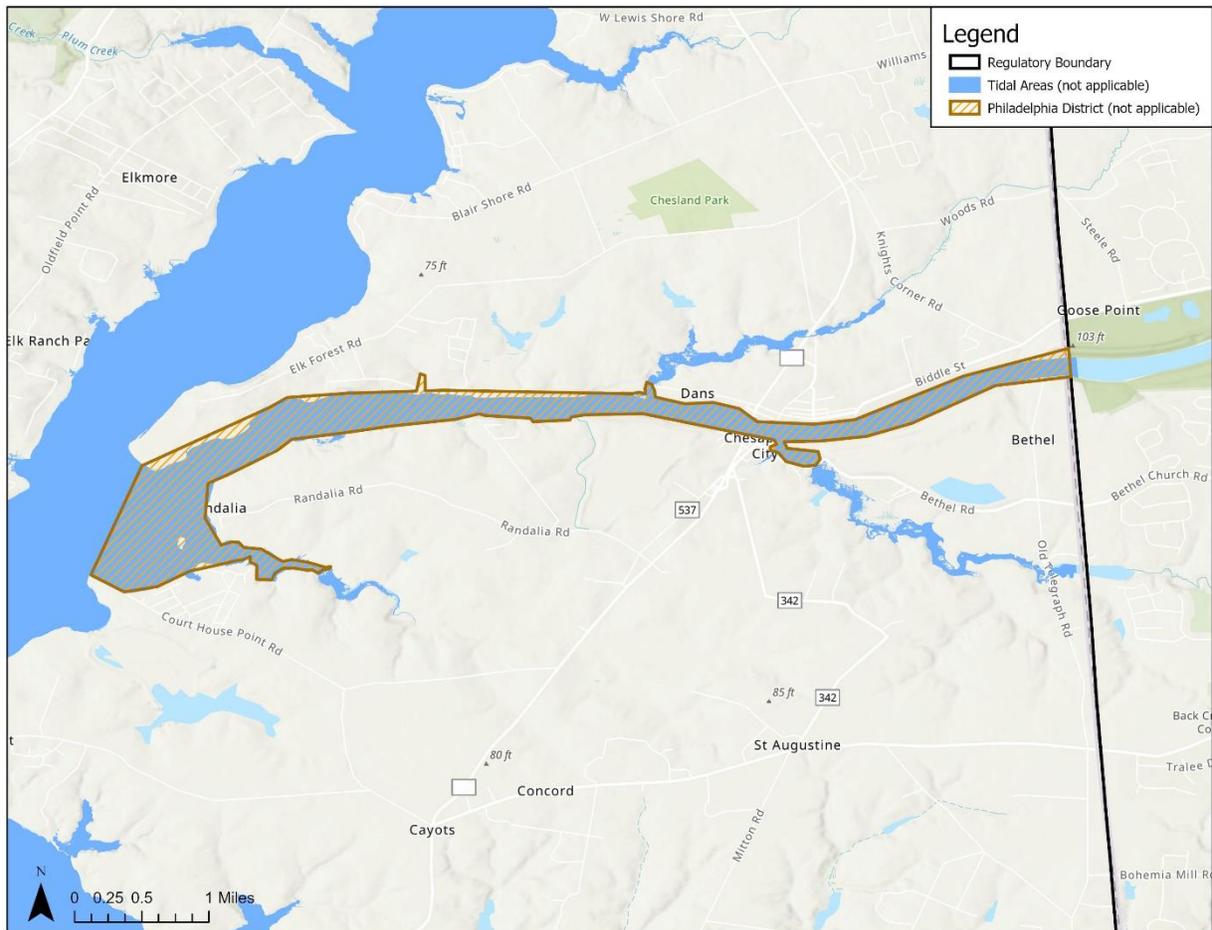
John T. Litz  
Colonel, Corps of Engineers  
District Engineer

## Appendix 1- Maps of Applicable Waters and Excluded Waters

**APPENDIX 1: MAPS OF APPLICABLE WATERS AND EXCLUDED WATERS  
FOR THE TMDL RGP**



**Figure 1** showing *Applicable Waters and Excluded Waters for the TMDL RGP*. See Section II and III of the TMDL RGP for the area description of *Applicable Waters and Excluded Waters* respectively.



**Figure 2** showing Excluded Areas which fall under the jurisdiction of the USACE Philadelphia District. See Section III of the TMDL RGP for the area description of Excluded Waters.

## Appendix 2- Self Verification Checklist

**APPENDIX 2: SELF-VERIFICATION  
FOR ACTIVITIES AUTHORIZED BY THE  
CHESAPEAKE BAY TOTAL MAXIMUM DAILY LOAD REGIONAL GENERAL  
PERMIT**

**GENERAL INFORMATION AND INSTRUCTIONS**

The TMDL Regional General Permit (TMDL RGP) was established to authorize activities in Waters of the U.S. resulting in minimal adverse effects, with the specific purpose of reducing nutrient and sediment pollution in accordance with the Chesapeake Bay TMDL.

As described in Section V of the TMDL RGP, some work may qualify for Self-Verification, where an applicant is allowed to verify they meet the terms and conditions of the permit (a role typically performed by a project manager at the Corps). Activities authorized by the TMDL RGP, which may be Self-Verified include:

*Activity A) The Retrofit of Existing Stormwater Management Facilities*

*Activity B) The Retrofit and Stabilization of Existing Outfalls*

*Activity C) Nontidal Stream and Wetland Restoration*

To qualify for self-verification, a project must meet the General Conditions of the TMDL RGP and fall under the impact and conversion limits of Self-verifying activities (Outlined below and in Section IV of the TMDL RGP). The checklist below will assist in determining whether a proposed activity qualifies for Self-verification under the TMDL RGP. If a project does not meet the conditions for Self-Verification, it may still be eligible for Corps Verification under the TMDL RGP (see TMDL RGP Section IV and Appendix 3-Corps Verification) or authorization using an alternative permit.

**APPLICABLE WATERS**

The Bay TMDL RGP is applicable in nontidal waters and nontidal wetlands in the Chesapeake Bay watershed within the State of Maryland, District of Columbia, and Fort Belvoir, Fort Myer, and the Pentagon in Virginia.

**HOW TO OBTAIN/APPLY FOR AUTHORIZATION**

An applicant pursuing Self-Verification under the TMDL RGP should complete Appendix 2 and attach it to their joint permit application for the respective geographic area. See *Section VII of the TMDL RGP for detailed instructions as necessary.*

Activities authorized by the Bay TMDL RGP that are self-verifying may commence without written notification from the Corps after the permittee has:

- Confirmed that the activity will be conducted in compliance with the terms and conditions of the Bay TMDL RGP, which may include consultation with the Corps and/or outside relevant Federal and State agencies. Prospective permittees must refer to the terms and conditions of the Bay TMDL RGP to determine if the activity may be eligible for authorization under this Bay TMDL RGP. In addition, the applicant must make a determination whether the proposed activity is eligible for self-verification. All terms and conditions of the TMDL RGP still apply to self-verification activities authorized by this TMDL RGP, and
- Submitted this Self-Verification Appendix, correspondence from the SHPO if required (*See General Condition number 17 of the TMDL RGP*), correspondence from USFWS if required (*See General Condition number 21 of the TMDL RGP*), permit application using the established Corps of Engineers permit application procedures.
- Provided supplemental information for any proposed work meeting the description of the two activities below:
 

Activity B) The Retrofit and Stabilization of Existing Outfalls

The applicant must provide photographic documentation that the existing (pre-construction) outfall is in a degraded condition.

Activity C) Nontidal Stream and Wetland Restoration Activities

Documentation that the existing (pre-construction) stream reach is in a degraded condition using a Corps approved Functional or Conditional Assessment Methodology (FCAM) or BIBI Score in combination with geomorphic evidence of stream quality degradation. The applicant must also provide rationale for stream site selection and the proposed design approach using applicable evidence, prioritization tools, and literature.
- Obtained all required State and local authorizations.

#### IMPACT AND CONVERSION LIMITS FOR SELF-VERIFICATION ACTIVITIES

Activity A) Retrofits of Existing Stormwater Management Facilities: Permanent impacts may not exceed 1 Acre of nontidal wetlands and/or nontidal streams, or 2,000 linear feet of nontidal streams, rivers, and other open waters, or a combination thereof

Activity B) Retrofit and Stabilization of Outfalls: Permanent impacts may not exceed 5,000 square feet of nontidal wetlands and/or nontidal streams, or 200 linear feet of nontidal streams, rivers and other open waters, or a combination thereof

Activity C) Nontidal Streams and Wetland Restoration Activities: Permanent impacts may not exceed ½ acre of nontidal wetland and/or nontidal streams, or 1,000 linear feet of nontidal streams.

## SELF VERIFICATION FOR THE TMDL RGP

### 1. BACKGROUND INFORMATION

Self-Verified Activity Summary	
Project Name:	Lat/Long (Dec degrees):
Applicant:	County:
	Proposed Activity:
Project Summary:	

### 2. BASIC REQUIREMENTS FOR USE OF THE BAY TMDL RGP

*If you answer **No** to any of the questions below your project does not qualify for the Bay TMDL RGP, and you must submit an application for processing under another permit type in accordance with the established Corps of Engineers permit application procedures for Maryland, Virginia, and the District of Columbia:*

- a) Are the activities in waters of the U.S. part of an acceptable watershed strategy, such as a Chesapeake Bay Watershed Implementation Plan (WIP), whose purpose is to identify implementation activities needed to meet nutrient and sediment load reduction targets under the Chesapeake Bay TMDL?
- b) Does the project comply with all of the TMDL RGP terms and conditions, including avoidance and minimization, aquatic life movements, endangered species, single and complete project, and cultural resources?

### 3. BASIC REQUIRMENTS FOR SELF-VERIFYING ACTIVITIES UNDER THE TMDL RGP

If you answer **Yes** to any question below, your project **does not** qualify for **Self-Verification** under the TMDL RGP, and you must submit an application for review and processing under another permit type (See *Section V of the TMDL RGP to explore the Corps Verified Activity options*).

- a) Is work proposed in Use III, Use IV, or other cold water resources identified in mapped waterways (Code of Maryland Regulations (COMAR) *Section 26.08.02.02?* <https://maryland.maps.arcgis.com/apps/webappviewer/index.html?id=dc5100c0266d4ce89df813f34678944a>)
- b) Is work proposed in Tier II watersheds (COMAR 26.08.02.04-1)?

- c) Does the U.S. Fish and Wildlife Service documentation indicate that federally listed Threatened or Endangered species may be affected by the proposed activity?
- d) Does the State Historic Preservation Office documentation indicate that historic or cultural resources may be affected by the proposed activity?
- e) Is your project located in or adjacent to a proposed or existing Federally authorized civil works project?

#### 4. ACTIVITY A: RETROFIT OF EXISTING STORMWATER MANAGEMENT FACILITIES *(complete item 4 only if applicable)*

*If you answer **Yes** to any question below, your project **does not** qualify for **Self-Verification** under the TMDL RGP, and you must submit an application for review and processing under another permit type (See also Section IV of the TMDL RGP to explore the Corps Verified Activity options).*

- a) Does proposed work include expansion of stormwater management facilities outside the existing as-built footprint?
- b) Is the sole purpose of the proposed activity general maintenance of a stormwater management facility?
- c) Do total permanent impacts exceed 1 acre of nontidal waters of the U.S. or more than 2,000 linear feet of nontidal streams, rivers, and other open waters or a combination thereof ?

#### 5. ACTIVITY B: RETROFIT AND STABILIZATION OF OUTFALLS *(complete item 5 only if applicable)*

*If you answer **Yes** to any question below, your project **does not** qualify for **Self-Verification** under the TMDL RGP, and you must submit an application for review and processing under another permit type (See also Section VI of the TMDL RGP to explore the Corps Verified Activity options).*

- a) Does work involve increasing or extending piping of an outfall in Waters of the US?
- b) Do the total permanent impacts to nontidal waters of the U.S. (wetlands, streams, etc.) for the overall project exceed 5,000 square feet or 200 linear feet of streams, rivers, open waters, or a combination thereof?
- c) Does the project result in more than 5,000 square feet of resource conversion (i.e. wetlands to streams) or 200 linear feet of streams, rivers and other open waters? See section IX of the TMDL RGP for a definition of “conversion.”

#### 6. ACTIVITY C: NONTIDAL STREAM AND WETLAND RESTORATION ACTIVITIES *(Complete item 6 only if applicable)*

If you answer **Yes** to any question below, your project **does not** qualify for **Self-Verification** under the TMDL RGP, and you must submit an application for review and

processing under another permit type (See also Section IV of the TMDL RGP to explore the Corps Verified Activity options).

a) Do the total permanent impacts exceed ½ acre of nontidal waters and wetlands or 1,000 linear feet of nontidal streams, rivers, open waters, or a combination?

b) Does the discharge of fill result in loss or conversion of any type of waters of the U.S.?

If you answer **No** to any question below, your project **does not** qualify for **Self-Verification** under the TMDL RGP, and you must submit an application for review and processing under another permit type (See also Section IV of the TMDL RGP to explore the Corps Verified Activity options).

c) Are the existing aquatic resources on the site in a degraded condition?

Please describe how degradation was documented for each aquatic resource impacted (See Sections IV.C.1.ii of the TMDL RGP and provide attachments if needed).

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d) Will the project provide “functional lift” as documented using an approved Functional or Conditional Assessment Methodology (FCAM)?

Please list the FCAM used and describe how conditions and/or functions are expected to change for each aquatic resource impacted on the site. Please attach the FCAM, functional lift forecast, resource evaluations, and resource map.

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### TMDL RGP SELF-CERTIFICATION

- *I certify that the information on this form and on the attached plans and specifications is true and accurate to the best of my knowledge and belief.*
- *I certify that I will provide to the Corps an As-built & Post Construction Report in accordance with General Condition 5 and 6 outlined in the TMDL RGP.*
- *I certify that I will provide an electronic written post-construction report to the Corps (NAB-Regulatory@usace.army.mil) by December 31 of project completion year. The post-construction report shall include: a) The application tracking number & State permit number; b) Location of the completed work (latitude and longitude); c) dates during which the work occurred; d) A point of contact name and contact information (email and phone) e) surveyed as-built drawings, to scale, with control (latitude/longitude) depicting the final work including the restoration of the temporary impacts; f) A set of geo-referenced photographs that show the pre-construction and post-construction conditions for the project; g) narrative describing how the project purpose and objectives were met.*
- *The activities proposed in waters of the U.S. are part of an appropriate watershed strategy such as a Chesapeake Bay Watershed Implementation Plan for the purpose of meeting nutrient and sediment load reduction targets in accordance with the Chesapeake Bay TMDL.*
- *The activity complies with the siting criteria and land use practice recommendations stated in Sections 1-3 of the Federal Aviation Administration Advisory Circular 150/5200-33. This document can be found at:[http://www.faa.gov/documentLibrary/media/advisory\\_circular/150-5200-33B/150\\_5200\\_33b.pdf](http://www.faa.gov/documentLibrary/media/advisory_circular/150-5200-33B/150_5200_33b.pdf)*

*Your name and signature below, as permittee, confirms that your project: a) meets the self-verification criteria and b) that you accept and agree to comply with the applicable terms and conditions in the Regional General Permit for Chesapeake Bay TMDL Activities.*

*Permittee Printed*

*Name:* \_\_\_\_\_

*Permittee Signature:* \_\_\_\_\_

*Date:* \_\_\_\_\_

## Appendix 3- Corps Verification Checklist

**APPENDIX 3:  
DOCUMENTATION FOR CORPS VERIFIED ACTIVITIES AUTHORIZED BY THE  
CHESAPEAKE BAY TOTAL MAXIMUM DAILY LOAD REGIONAL GENERAL  
PERMIT**

**GENERAL INFORMATION AND INSTRUCTIONS**

The TMDL Regional General Permit (TMDL RGP) was established to authorize activities in Waters of the U.S. resulting in minimal adverse effects, with the specific purpose of reducing nutrient and sediment pollution in accordance with the Chesapeake Bay TMDL.

As described in Section IV of the TMDL RGP, proposed work may meet the conditions and thresholds for Corps Verification. Corp-verified projects provide a higher threshold for impacts and involves a detailed review for projects in sensitive waterways (Tier 2 or coldwater streams) or where impacts present potential adverse effects to (for example) Activities authorized by the TMDL RGP, which may be Corps-Verified include:

*Activity A) The Retrofit of Existing Stormwater Management Facilities*

*Activity B) The Retrofit and Stabilization of Existing Outfalls*

*Activity C) Nontidal Streams and Wetland Restoration*

To qualify for Corps-verification under the TMDL RGP, a project must meet the General Conditions of the TMDL RGP and fall under the impact and conversion limits of Corps-verifying activities (Outlined below and in Section IV of the TMDL RGP). The checklist below will assist in determining whether a proposed activity qualifies for Corps-verification under the TMDL RGP. If a project does not meet the conditions for Corps-Verification under the TMDL RGP, it may still be authorized using an alternative permit.

**APPLICABLE WATERS**

The Bay TMDL RGP is applicable in nontidal waters and nontidal wetlands in the Chesapeake Bay watershed within the State of Maryland, District of Columbia, and Fort Belvoir, Fort Myer, and the Pentagon in Virginia.

**HOW TO OBTAIN/APPLY FOR AUTHORIZATION**

An applicant pursuing Corps Verification under the TMDL RGP should complete Appendix 3 and attach it to their joint permit application for the respective geographic area. *See Section VI and VII of the TMDL RGP for detailed instructions as necessary.*

Activities authorized by the TMDL RGP that are Corps verified may commence WITH written notification from the Corps after the permittee and Corps have:

- Confirmed that the activity will be conducted in compliance with the terms and conditions of the Bay TMDL RGP, which may include consultation with outside relevant Federal and State agencies. Prospective permittees and Corps reviewers must refer to the terms and conditions of the Bay TMDL RGP to determine if the activity may be eligible for authorization under this Bay TMDL RGP.
- Completed this Pre-Construction Notification Appendix 3, received correspondence from the SHPO if required (see General Condition number 17 of the TMDL RGP), correspondence from USFWS if required (see General Condition number 21 of the TMDL RGP), permit application using the established Corps of Engineers permit application procedures.
- Provided supplemental information for any proposed work meeting the description of the two activities below:
  - Activity B) The Retrofit and Stabilization of Existing Outfalls  
The applicant must provide photographic documentation that the existing (pre-construction) outfall is in a degraded condition.
  - Activity C) The Restoration and Enhancement of Non-tidal Streams and Wetlands  
Documentation that the existing (pre-construction) stream reach is in a degraded condition using a Corps approved Functional or Conditional Assessment Methodology (FCAM) or BIBI Score in combination with geomorphic evidence of stream quality degradation. The applicant must also provide rationale for stream site selection and the proposed design approach using applicable evidence, prioritization tools, and literature.
- Obtained all required State and local authorizations.

#### IMPACT AND CONVERSION LIMITS FOR CORPS-VERIFIED ACTIVITIES

Activity A) Retrofits of Existing Stormwater Management Facilities: Permanent impacts may not exceed 3 acres of nontidal wetlands and/or nontidal streams, or 3,000 linear feet of nontidal streams.

Activity B) Retrofit and Stabilization of Outfalls: Permanent impacts may not exceed 5,000 square feet of nontidal wetlands and/or nontidal streams, or 200 linear feet of nontidal streams.

Activity C) Nontidal Streams and Wetland Restoration: Permanent impacts may not exceed 3 acres of nontidal wetlands and/or nontidal streams, or 5,000 linear feet of nontidal streams. Total resource loss or conversion may not exceed 10,000 square feet of nontidal waters of the U.S., and may not exceed more than 200 linear feet of nontidal streams, rivers, open waters, or a combination thereof.

## INFORMATION REQUIRED FOR CORPS VERIFICATION UNDER THE TMDL RGP

### 1. BACKGROUND INFORMATION

<b>Self-Verified Activity Summary</b>	
Project Name:	Lat/Long (Dec degrees):
Applicant:	County:
	Proposed Activity:
Project Summary:	

### 2. BASIC REQUIREMENTS FOR USE OF THE BAY TMDL RGP

*If you answer **No** to any of the questions below your project does not qualify for the Bay TMDL RGP, and you must submit an application for processing under another permit type in accordance with the established Corps of Engineers permit application procedures for Maryland, Virginia, and the District of Columbia:*

- a) Are the activities in waters of the U.S. part of an acceptable watershed strategy, such as a Chesapeake Bay Watershed Implementation Plan (WIP), whose purpose is to identify implementation activities needed to meet nutrient and sediment load reduction targets under the Chesapeake Bay TMDL?
- b) Does the project comply with all of the TMDL RGP terms and conditions, including avoidance and minimization, aquatic life movements, endangered species, single and complete project, and cultural resources?

### 3. QUESTIONS FOR CORPS-VERIFYING ACTIVITIES UNDER THE TMDL RGP

- a) Is work proposed in Use III, Use IV, or other cold water resources identified in mapped waterways (Code of Maryland Regulations (COMAR) *Section 26.08.02.02?* <https://maryland.maps.arcgis.com/apps/webappviewer/index.html?id=dc5100c0266d4ce89df813f34678944a>
- b) Is work proposed in Tier II watersheds (COMAR 26.08.02.04-1)?
- c) Does the U.S. Fish and Wildlife Service documentation indicate that federally listed Threatened or Endangered species may be affected by the proposed activity?
- d) Does the State Historic Preservation Office documentation indicate that historic and cultural resources may be affected by the proposed activity?

e) Is your project located in or adjacent to a proposed or existing Federally authorized civil works project?

#### 4. ACTIVITY A: RETROFIT OF EXISTING STORMWATER MANAGEMENT FACILITIES *(Complete item 4 only if applicable)*

*If you answer **Yes** to any question below, your project **does not** qualify for **Corps-Verification** under the TMDL RGP, and you must submit an application for review and processing under another permit type for authorization.*

a) Does proposed work include expansion of stormwater management facilities outside the existing as-built footprint?

b) Is the sole purpose of the proposed activity general maintenance of a stormwater management facility?

c) Do total permanent impacts exceed 3 acres of nontidal waters of the U.S. or more than 3,000 linear feet of nontidal streams, rivers, and other open waters or a combination thereof?

#### 5. ACTIVITY B: RETROFIT AND STABILIZATION OF OUTFALLS *(Complete item 5 only if applicable)*

*If you answer **Yes** to any question below, your project **does not** qualify for **Corps-Verification** under the TMDL RGP, and you must submit an application for review and processing under another permit type.*

a) Do the total permanent impacts to nontidal waters of the U.S. (wetlands, streams, etc.) for the overall project exceed 5,000 square feet or 200 linear feet of streams, rivers, open waters, or a combination thereof?

b) Does the project result in more than 5,000 square feet of resource loss or conversion (*i.e. wetlands to streams*) or 200 linear feet of streams, rivers and other open waters? *(See section IX of the TMDL RGP for a definition of "conversion")*

#### 6. ACTIVITY C: NONTIDAL STREAM AND WETLAND RESTORATION ACTIVITIES *(Complete item 6 only if applicable)*

If you answer **Yes** to any question below, your project **does not** qualify for **Corps-Verification** under the TMDL RGP, and you must submit an application for review and processing under another permit type.

a) Do the total permanent impacts exceed 3 acres of nontidal waters and wetlands or 5,000 linear feet of nontidal streams, rivers, open waters, or a combination?

b) Does the discharge of fill result in loss or conversion of any type of waters of the U.S. exceeding 10,000 square feet or 200 linear feet of streams, rivers and other open waters? See section IX of the TMDL RGP for a definition of "conversion."

If you answer **No** to any question below, your project **does not** qualify for **Corps-Verification** under the TMDL RGP, and you must submit an application for review and processing under another permit type.

c) Are the existing aquatic resources on the site in a degraded condition?

Please describe how degradation was documented for each aquatic resource impacted (See Sections IV.C.1.ii of the TMDL RGP and provide attachments if needed).

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d) Will the project provide “functional lift” as documented using an approved Functional or Conditional Assessment Methodology (FCAM)?

Please list the FCAM used and describe how conditions and/or functions are expected to change for each aquatic resource impacted on the site. Please attach the FCAM, functional lift forecast, resource evaluations, and resource map.

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### TMDL RGP CERTIFICATION

- *I certify that the information on this form and on the attached plans and specifications is true and accurate to the best of my knowledge and belief.*
- *I certify that I will provide to the Corps an As-built & Post Construction Report in accordance with General Conditions 5 and 6 and of the TMDL RGP.*
- *I certify that I will provide an electronic written post-construction report to the Corps (NAB-Regulatory@usace.army.mil) by December 31 of project completion year. The post-construction report shall include: a) The application tracking number & State permit number; b) Location of the completed work (latitude and longitude); c) dates during which the work occurred; d) A point of contact name and contact information (email and phone) e) surveyed as-built drawings, to scale, with control (latitude/longitude) depicting the final work including the restoration of the temporary impacts; f) A set of geo-referenced photographs that show the pre-construction and post-construction conditions for the project; g) narrative describing how the project purpose and objectives were met.*
- *The activities proposed in waters of the U.S. are part of an appropriate watershed strategy such as a Chesapeake Bay Watershed Implementation Plan for the purpose of meeting nutrient and sediment load reduction targets in accordance with the Chesapeake Bay TMDL.*
- *The activity complies with the siting criteria and land use practice recommendations stated in Sections 1-3 of the Federal Aviation Administration Advisory Circular 150/5200-33. This document can be found at:  
[http://www.faa.gov/documentLibrary/media/advisory\\_circular/150-5200-33B/150\\_5200\\_33b.pdf](http://www.faa.gov/documentLibrary/media/advisory_circular/150-5200-33B/150_5200_33b.pdf)*

*Your name and signature below, as permittee, confirms that your project: a) meets the self-verification criteria and b) that you accept and agree to comply with the applicable terms and conditions in the Regional General Permit for Chesapeake Bay TMDL Activities.*

*Permittee Printed*

*Name:* \_\_\_\_\_

*Permittee Signature:* \_\_\_\_\_

*Date:* \_\_\_\_\_

## Appendix 4- Water Quality Certifications and Coastal Zone Consistency Determinations



**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.

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

- 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.

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

- 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

Street address: 1111 East Main Street, Suite 1400, Richmond, Virginia  
23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218  
[www.deq.virginia.gov](http://www.deq.virginia.gov)

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

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