



DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, CORPS OF ENGINEERS
REGULATORY BRANCH
2 HOPKINS PLAZA
BALTIMORE, MD 21201

RECEIVED
COMMONWEALTH OF VIRGINIA

JAN 21 2020

DEQ
WATER PLANNING DIVISION

Operations Division

Virginia Department of Environmental Quality
Attn: Ms. Kelly Meadows
P.O. Box 1105
Richmond, Virginia 23218

Dear Ms. Meadows:

I am writing in regard to the bay Total Maximum Total Load Regional General Permit (Bay TMDL RGP), which is due to expire on June 30, 2020. The Baltimore District is planning to re-issue the Bay TMDL RGP with modifications.

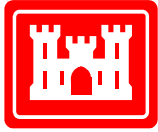
The Secretary of the Army in carrying out his functions relating to the discharge of dredged or fill material under Section 404(e) of the Clean Water Act (CWA), may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. The original Bay TMDL RGP was developed after consideration of comments received from the public, non-governmental organizations, and federal, state, and local agencies.

Your agency has been identified as a stakeholder in this process. As such, we are requesting your early input regarding the development of a modified Bay TMDL, including suggestions or ideas you may have to improve upon the current Bay TMDL permit and process. Please submit your suggestions and ideas to: U.S. Army Corps of Engineers, Baltimore District, Attn: Erica Schmidt, 2 Hopkins Plaza, Baltimore, Maryland 21201, or to: erica.schmidt@usace.army.mil, within 30 days of the date of this letter. If we do not hear from you within 30 days of the date of this letter, we will assume you have no substantial changes or recommendations to be incorporated into the development of the bay TMDL RGP at this time.

If you have any questions regarding this matter, please contact Ms. Erica Schmidt at (410) 962-6029 or erica.schmidt@usace.army.mil.

Sincerely,

Daniel P. Swenson
Chief, Regulatory Branch



U.S. Army Corps
of Engineers
Baltimore District
PN 19-80

Public Notice

Special Public Notice
NAB-2019-00527 (BAY TMDL RGP-REISSUANCE)

Comment Period: December 9, 2019 to January 18, 2020

The purpose of this notice is to inform interested parties of the proposed reissuance of the Bay Total Maximum Daily Load Regional General Permit (TMDL RGP) and to solicit comments on the proposed modifications that would be incorporated into a new Bay TMDL RGP. This Bay TMDL RGP is proposed to provide a streamlined form of Department of the Army authorization for certain recurring activities that are similar in nature, have minimal individual and cumulative adverse effects on the aquatic environment, and stratify other public interest review factors. Regional general permits are authorized for a five year period at which time they must be re-evaluated for their impacts on the aquatic environment. A copy of the proposed Bay TMDL RGP is attached and can be viewed on our web page at <https://www.nab.usace.army.mil/Missions/Regulatory/Public-Notices/>.

In accordance with 33 CFR 325.5(c), the Bay TMDL RGP would authorize the various proposed activities described herein, pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). The Bay TMDL RGP went into effect on July 1, 2015 and will expire on June 30, 2020, unless a decision is made to suspend or revoke it by or before that date. A copy of the current version of the Bay TMDL RGP can be viewed on our web page at <https://www.nab.usace.army.mil/Missions/Regulatory/Bay-TMDL/>

LOCATION OF AUTHORIZED ACTIVITIES:

The Bay TMDL RGP applies to activities in nontidal waters of the United States, including nontidal wetlands in the Chesapeake Bay watershed within the State of Maryland, District of Columbia, and Fort Meyer, the Pentagon, and Fort Belvoir in Virginia.

EXCLUDED WATERS: 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.

PROPOSED NOTIABLE MODIFICATIONS:

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 Corps verification with agency coordination; and a requirement for post construction reporting for all activities.

The specific proposed modifications are as follows:

1. Stormwater management Facilities
 - a. Clarifies the activity specific limits for stormwater management facilities.
 - b. Proposes overall threshold limits increases to 1 acres and/or 1,000 linear feet of streams for Self Verifying activities and 3 acres and/or 2,000 linear feet of stream for Corps Verifying activities.
2. Retrofit and Stabilization of Outfalls:
 - a. Overall threshold limit has decreased to 5,000 square feet and/or 200 linear feet.
 - b. Provides clarification of the limits of an outfall project.
 - c. Proposes inclusion of the use of piping/drop structures in certain areas.
 - d. Proposes to eliminate the conversion of resources to uplands.
3. Restoration Activities in Nontidal Streams and Wetlands:
 - a. Proposes overall threshold limit increases to ½ acre and/or 1,000 linear feet of stream for Self Verifying activities and 3 acres and/or 5,000 linear feet of streams for Corps Verifying activities. No changes to the conversion thresholds for the overall activity are proposed.
 - b. Provides functional assessment options to be completed as part of the pre and post site evaluation criteria to document degradation and function lift potential.

CORPS EVALUATION REQUIREMENTS:

The establishment of this RGP will be evaluated pursuant to Corps Regulatory Program Regulations (33 CFR Parts 320-332). The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonable may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economic, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, and consideration of property ownership and in general, the needs and welfare of the people. The evaluation of the impact of this RGP will also include application of the Clean Water Act Section 404(b)(1) Guidelines promulgated by the Administrator, U.S. Environmental Protection Agency.

ENDANGERED SPECIES: As the lead federal agency , and if appropriate, the Corps may initiate consultation under the Endangered Species Act on this programmatic general permit and any conditions from that consultation may be inserted into the Bay TMDL RGP. A preliminary review indicates that the proposed work will have no effect on Federally listed threatened or endangered species or their critical habitat, pursuant to Section 7 of the Endangered Species Act, as amended. As the evaluation of this application continues, additional information may become available which could modify this preliminary determination.

ESSENTIAL FISH HABITAT: The lead federal agency is responsible for Essential Fish Habitat coordination. The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended by the Sustainable Fisheries Act of 1996 (Public Law 04-267), requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency that may adversely affect Essential Fish Habitat (EFH), including species of concern, life cycle habitat, or Habitat Areas of Particular Concern. The project site does not lie in or adjacent to EFH as described under MSFCMA for managed species under the MSFCMA. The Corps has made a preliminary determination that the project is not within EFH. This determination may be modified if additional information indicates otherwise. If appropriate, the Corps will be initiating consultation under these authorities on this regional general permit and any conditions from that consultation will be inserted into this Bay TMDL RGP.

HISTORIC RESOURCES:

The lead federal agency is responsible for historic resources coordination. Pursuant to Section 106 of the National Historic Preservation Act (NHPA) of 1966 and applicable guidance, Historic properties include prehistoric and historic archeological sites, and areas or structures of cultural interest. The locations of activities that might be authorized by the proposed Bay TMDL RGP are not known and, therefore, the Corps cannot determine at this time whether any of the activities that would be authorized by the proposed Bay TMDL RGP may affect an historic property listed, or eligible for listing, in the National Register of Historic Places (NRHP). However, if issued, the proposed bay TMDL RGP would not authorize any activity that may affect historic properties listed, or eligible for listing, in the NRHP until the requirements of Section 106 of the NHPA have been satisfied. The Corps will be coordinating with the State Historic Preservation Office on this regional general permit and any conditions from that consultation to protect historic properties will be inserted into the Bay TMDL RGP. Currently unknown archeological, scientific, prehistoric, or historical data may be lost or destroyed by the work to be accomplished under the request permit.

TRIBAL RESOURCES: Section 106 of the NHPA also requires federal agencies to consult with federally-recognized American Indian tribes that attach religious and cultural significance to historic properties that may be affected by the agency's undertaking. The lead federal agency is responsible for tribal coordination. Corps Tribal Consultation Policy mandates an open, timely, meaningful, collaborative, and effective deliberative communication process that emphasizes trust, respect, and shared responsibility. The policy further emphasizes that, to the extent practicable and permitted by law, consultation works toward mutual consensus and begins at the earliest planning stages, before decisions are made and actions taken. The Corps final eligibility and effect determination will be based on coordination with interested tribes, in accordance with the Corps current tribal standard operating procedures as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on tribal resources.

MODIFICATION OF CIVIL WORKS PROJECTS: 33 USC 408 (SECTION 408): All Section 408 proposals will be coordinated internally at the Corps. The Section 408 decision will be issued along with the Section 404 decision. Please see the following link for more information regarding Section 408: <https://www.nab.usace.army.mil/section408/>.

WATER QUALITY CERTIFICATION: The Corps is required to obtain a water quality

certification (WQC) in accordance with Section 401 of the Clean Water Act from Maryland Department of the Environment, District Department of the Environment and Energy, and Virginia Department of Environmental Quality prior to issuance of the Bay TMDL RGP. By this public notice, the Corps is requesting the Maryland Department of the Environment, District Department of the Environment and Energy, and Virginia Department of Environmental Quality to determine whether to issue, deny, to waive water quality Water Quality Verification for this regional general permit. Any written comments concerning the proposed Bay TMDL RGP which relate to WQC must be received by the appropriate agencies within the comment period as specified as above. In Maryland certification must be received by the Wetlands and Waterways Program, Maryland Department of the Environment, Montgomery Park Business Center, 1800 Washington Boulevard, Suite 430, Baltimore, Maryland 21230-1708. In the District of Columbia water quality certification must be received by the District Department of the Environment and Energy, 1200 First Street N.E. 5th Floor, Washington, DC 20002. In Virginia the WQC must be sent to the Department of Environmental Quality P.O. Box 1105, Richmond, Virginia 23218. The Section 401 certifying agency has a statutory limit of sixty (60) days to make its decision.

COASTAL ZONE MANAGEMENT PROGRAMS: Where applicable, the Corps has certified in this application that the proposed activity complies with and will be conducted in a manner consistent with the approved Coastal Zone Management (CZM) Program. By this public notice, we are requesting the State concurrence or objection to the applicant's consistency statement. Any written comments concerning the proposed Bay TMDL RGP which relate to CZM must be received by the appropriate agencies within the comment period as specified as above. In Maryland certification must be received by the Wetlands and Waterways Program, Maryland Department of the Environment, Montgomery Park Business Center, 1800 Washington Boulevard, Suite 430, Baltimore, Maryland 21230-1708. In Virginia the CZM must be sent to the Coastal Zone Management Program, Department of Environmental Quality P.O. Box 1105, Richmond, Virginia 23218.

SUBMISSION OF COMMENTS: The Corps is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments provided will become part of the public record for this action and are subject to release to the public through the Freedom of Information Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Written comments concerning the work described above related to the factors listed above or other pertinent factors must be received by the U.S. Army Corps of Engineers, Baltimore District within the comment period specified above through postal mail at the address below or electronic submission to the project manager email address below. Written comments should reference the Application Number 2019-00527.

PUBLIC HEARING REQUESTS: Any person who has an interest which may be

adversely affected by the issuance of this permit may request a public hearing. The request, which must be in writing, must be received within the comment period as specified above to receive consideration. Also it must clearly set forth the interest which may be adversely affected by this activity and the manner in which the interest may be adversely affected. The public hearing request may be submitted by electronic mail or mailed to the following address:

Erica Schmidt
(Erica.Schmidt@usace.army.mil)
U.S. Army Corps of Engineers, Baltimore District
Regulatory Branch
2 Hopkins Plaza
Baltimore, Maryland 21201

It is requested that you communicate this information concerning the proposed work to any persons known by you to be interested, who did not receive a copy of this notice.

General information regarding the Corps' permitting process can be found on our website at <https://www.nab.usace.army.mil/Missions/Regulatory.aspx>. This public notice has been prepared in accordance with Corps implementing regulations at 33 CFR 325.3. If you have any questions concerning this specific project, or would like to request a paper copy of this public notice, please contact (Ms. Erica Schmidt, (410) 962-6029; Erica.Schmidt@usace.army.mil). This public notice is issued by the Chief, Regulatory Branch.

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

Effective: July 1, 2020

Expiration Date: June 30, 2025

The Baltimore District of the U.S. Army Corps of Engineers (Corps) is reissuing this 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), 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 non-tidal streams and non-tidal 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.

Bay TMDL RGP
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- I. **AUTHORITIES:** Section 404 of the Clean Water Act (CWA) for the discharge of dredged or fill material into waters of the U.S.
- II. **APPLICABLE WATERS:** 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.
- III. **EXCLUDED WATERS:** Excluded waters are locations that this permit is not applicable. 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. These areas are within the regulatory geographic boundary of the Philadelphia District.
- IV. **SCOPE OF ACTIVITIES:** This Bay TMDL RGP applies to the discharge of dredged or fill material, including all attendant features both temporary or permanent, which individually and cumulatively result in direct or indirect impacts to waters regulated by Section 404 of the CWA. The term “impacts to waters of the United States” as used herein for the purpose of determining Bay TMDL RGP eligibility means the acreage of impacts to waters of the United States, including wetlands which are adversely affected by the project through mechanical land clearing and/or permanent flooding, excavating, or draining because of the regulated activity. Acreage of impacts to stream channels shall be measured along the centerline of the stream and bank to bank at the ordinary high water mark line. Authorization under the Bay TMDL RGP requires compliance with all of the terms and conditions of the Bay TMDL RGP, including activity specific acreages and linear foot impact threshold. The activities authorized must have only minimal individual and cumulative adverse effects on the environment. The cumulative total of all impact areas associated with a single and complete project is the basis for determining whether the project is eligible for authorization under the Bay TMDL RGP.
 - A. Self-Verified Activities: Discharges of dredged or fill material as described in the Self Verifying Activities description of activities in Section VIII that comply with the terms and conditions contained in the Bay TMDL RGP and have only minimal individual and cumulative adverse impacts on the environment are authorized by the Corps..
 - B. Corp Verified Activities: Discharges of dredged or fill material, as described in the Corps Verifying Activities description in Section VIII of the Bay TMDL RGP, will be reviewed and verified on a project-specific

basis by the Corps and appropriate resource agencies to determine whether such activities may be authorized under this Bay TMDL RGP.

V. STATE AND LOCAL APPROVALS: This Bay 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 required activity(ies) specific documentation. Proposed activities that qualify for self-verification in accordance with the activity specific terms and conditions of this Bay TMDL RGP may proceed without written verification by the Corps once all required documents are received by the Corps and provided that all required State and local authorizations are obtained. For those activities requiring Corps Verification, the application will be reviewed by the Corps. When a Corps Verification is required, construction of the activity may not begin until the applicant has been notified in writing by the Corps that the activity is eligible for authorization under the Bay TMDL RGP with any special conditions, if applicable, and all State and local authorizations have been obtained.

A. All applications for regulated activities under this Bay 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 Bay 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 Bay TMDL RGP still apply to self-verified activities. Self-verified activities authorized by this RGP may commence after the applicant has documented in the self-verification form the following:

1. Confirmed that the activity will be conducted in compliance with the terms and conditions of this Bay TMDL RGP, which may include consultation with the Corps and/or outside relevant Federal and State agencies. 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 (see <https://www.nab.usace.army.mil/Missions/Regulatory.aspx>).

2. Obtained all required State and local authorizations.

C. Corps Verification: For activities that do not qualify for self-verification or where otherwise required by the terms of this Bay TMDL RGP, the

applicant must obtain written verification from the Corps before starting work in waters of the U.S., including wetlands. 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.

- D. To avoid and minimize adverse impacts to waters of the United States, the Bay TMDL RGP verification may include site-specific special conditions.
- E. Alternative Permit Type: Projects that are not authorized by this Bay TMDL RGP require authorization under an alternative permit type (e.g., State Programmatic General Permit, Nationwide Permit, or Individual Permit). Applicants must submit an application in accordance with the established Corps permit application procedures for that locality. This Bay TMDL RGP does not affect the Corps Individual Permit review process or activities exempt from Corps regulation. For general information and application forms, see the Baltimore District website at: <https://www.nab.usace.army.mil/Missions/Regulatory/Permit-Types-and-Process/>
- F. Notwithstanding compliance with the terms and conditions of the Bay TMDL RGP, the Corps retains discretionary authority to require a Corps Individual Permit review for any project based on concerns for the aquatic environment or for any other public interest factor. This authority is invoked, on a case-by-case basis, whenever the Corps determines that the potential consequences of the proposal warrant individual review, based on concerns stated above. This authority may be invoked for projects with cumulative environmental impacts that are more than minimal or if there is a special resource or concern associated with a particular project, which is not addressed with stipulations of the Bay TMDL RGP and warrants greater review.

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.
- C. Historic and Cultural Resources Correspondence: Evidence (i.e., correspondence) 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. (Refer to General Condition 16-Historic Properties for further information).
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: Evidence (i.e., correspondence) 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. (Refer to General Condition 20-Endangered Species for further information):
1. In Maryland and the District of Columbia:
<http://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Ind ex.html>
 2. In Virginia:
<http://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html>
- E. Prospective permittees are not relieved of the obligation 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 is within the self-verification thresholds) if the activity:
1. May affect Federally listed or proposed threatened or endangered species or designated or proposed critical habitat,
 2. 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,
 3. Has the potential to alter, or temporarily or permanently occupy or use any U.S. Army Corps of Engineers federally authorized Civil Works project or dams, Levees, Easements, Federal Navigation

Channel, including Corps-constructed projects administered by Local Sponsors.

4. If a cultural resource or endangered species survey has been completed for the project site, reports documenting the results of the survey shall be submitted with the application to facilitate the Corps review. In cases where the prospective permittee has notified the Corps that Federally listed species, critical habitat, historic properties, and/ or federally authorized Civil Works projects might be affected by the project or is 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. BAY TMDL RGP ACTIVITIES

- A. **Retrofits of Existing Stormwater Management Facilities:** This activity authorizes 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. Discharges of dredged or fill material into nontidal waters of the United States for the retrofit of existing, currently serviceable stormwater management facilities, which were originally designed and are currently being used for the treatment of stormwater. Activities authorized by this Bay TMDL activity may include, but are not limited to, changing the existing riser structure, creation of forebays, changing pond elevations, or creation of wetland benches. In addition to the general conditions of this permit, all work authorized by this activity, including discharges, must comply with all activity specific impact limits and requirements listed below. (Section 404)

1. Requirements for All Activities:
 - i. The applicant must submit the appropriate permit applicant, plans, supporting documentation according to the permit submittal procedure in Section VII.
 - ii. This activity does not allow for the expansion of facilities outside the existing as-built footprint.
 - iii. Minimum downstream flows must be maintained during work.
 - iv. Activities that are solely designed for general maintenance activities within existing Stormwater Management Facilities must be reviewed under an alternative permit process (e.g. MDSPGP-5).

- v. Within 30 days of completion of the authorized work all temporary work within the waters of the U.S., including nontidal wetlands must be restored to preconstruction contours and stabilized. Areas that require planting must be planted within first year growing season of completion of the project.
 - vi. Within 90 days of completion of the authorized work surveyed as-built drawings, to scale, with control (latitude/longitude) depicting the final work including the restoration of the temporary impacts (Section IX).
 - vii. By December 31 of the project completion year the permittee must provide the documentation identified in the Year 1 Post Construction Report (Section IX).
2. Projects Qualifying for Self-Verification Limits and Requirements. Activities may commence without written verification from the Corps after the applicant has submitted the appropriate documentation, met the requirements, General Conditions (Section IX), and limits outlined below:
- i. This activity only authorizes permanent impacts not to exceed 1 acres of nontidal waters and wetlands, including 1,000 linear feet of stream channel.
3. Projects Qualifying for Corps Verification Limits and Requirements: Applicants must obtain written verification from the Corps after the submittal of the appropriate documentation, met the requirements, General Conditions (Section IX), and limits outlined below:
- i. This activity authorizes permanent impacts no greater than 3 acres of nontidal waters and wetlands, including 2,000 linear feet of stream channel.
 - ii. Work proposed in Use III or Use IV (cold water fisheries) waterways (Code of Maryland Regulations (COMAR) Section 26.08.02.02);
 - iii. Work proposed in Tier II watersheds (COMAR 26.08.02.04-1).
- B. **Retrofit and Stabilization of Outfalls:** This activity authorizes 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. Discharges of dredged or fill material into nontidal waters of the United States for retrofit and stabilization of outfall activities in waters of the U.S., including jurisdictional wetlands, where the outfall retrofit activities seek to comply with the Bay TMDLs by minimizing accelerated channel erosion to

reduce pollutant loading. In addition to the general conditions of this permit, all work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below.

1. Impact Limits and Requirements for All Activities:

- i. Photo document that the existing (pre-construction) outfall is in a degraded condition must be included in the JPA.
- ii. Impact Limits: The total permanent impacts to nontidal waters of the U.S. (wetlands, streams, etc.) for the overall project must not exceed 5,000 square feet of nontidal waters and wetlands, including 200 linear feet of stream channel.

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 waters of the U.S. (i.e., waters and wetlands), including 200 linear feet of streams, rivers, and other open waters. Of the total conversion, the thresholds for specific conversion types indicated below must also not be exceeded. See Section X, "Definitions" of this Bay TMDL RGP for the definition of the term "conversion". The Bay TMDL Outfall Activity conversion thresholds are:

- a. Conversion to Uplands: The loss or conversion of waters of the U.S. (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 of one wetland type to another 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.

2. Projects Qualifying for Self Verification: Activities may commence without written verification from the Corps after the applicant has submitted the appropriate documentation that the proposed work

meets the activity specific impact limits and requirements and the General Conditions (Section IX) of the RGP.

3. Projects Qualifying for Corps Verification: For retrofit and stabilization of existing outfall activities that meet the impact and conversion thresholds in Section VIII.B.1 above the applicant must obtain written verification from the Corps prior to commencing work if/when:
 - a. Work is proposed in Use III or Use IV (cold water fisheries) waterways (COMAR Section 26.08.02.02);
 - b. Work is proposed in Tier II watersheds (COMAR 26.08.02.04-1);
 - c. Work is proposed with impacts to waters of the U.S. associated with an increase/extension of piping of an outfall (e.g., proposed installation of drop structures);

C. **Restoration Activities in Nontidal Streams and Wetlands**: This activity authorizes stream and wetland restoration and enhancement activities in waters of the U.S., including jurisdictional wetlands, where the activity is part of an acceptable watershed strategy to reduce nutrients and sediments and produces ecological lift within the project site. An example of an acceptable watershed strategy is the Chesapeake Bay TMDL Watershed Implementation Plan (WIP), whose purpose is to identify implementation activities needed to meet nutrient and sediment load reduction targets. In addition to the general conditions of this permit, all work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below.

1. Requirements for All Activities:

- i. For this activity the permit application must include the documentation from Section VII and the following additional information:
 - a. Document 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.
 - (1) New FCAMS may be approved by the Corps on a case-by-case basis and but must measure parameters in at least two of the following five categories: Hydrology,

Hydraulics, Geomorphology, Water Chemistry, and Biology.

- (1) Degradation is determined by the specific is FCAMS chosen. For example, if using the EPA Rapid Bioassessment Protocol-Habitat Assessment Form a score of marginal to poor would be degraded.
 - b. Forecast ecological uplift by: evaluating existing vs projected ecological lift using a Corps approved FCAM in combination with citing applicable research supporting the restoration approach if appropriate.
 - c. Activity must result in functional gain (ecological lift) as documented in Existing vs Projected FCAM and Geomorphological/Hydraulic Function-Based parameter.
- ii. The Year 1 Post Construction Report must include:
 - a. Surveyed cross-sections at a minimum of 300 foot intervals.
 - b. Surveyed longitudinal profile capturing the water surface and bed elevation along the thalweg.
 - c. Plan view graphic showing channel alignment and aquatic resources onsite.
2. Activities Qualifying for Self-Verification: Activities may commence without written verification from the Corps after the applicant has submitted the appropriate documentation, met the requirements, General Conditions (Section IX), and limits:
 - i. Activities with total permanent impacts not to exceed ½ acre of nontidal waters and wetlands, including 1,000 linear feet of stream channel.
 - ii. Activities which result in no loss or conversion of waters of the U.S.
3. Activities Qualifying for Corps Verification: Applicants must obtain written verification from the Corps after the submittal of the appropriate documentation, meeting requirements, General Conditions (Section IX), and limits outlined below:
 - i. Activities with total permanent impacts no greater than 3 acres of nontidal waters and wetlands, including 5,000 linear feet of stream channel.
 - ii. Activities which result in no more than 200 linear feet and/or 10,000 square feet of loss or conversion of waters of the U.S.

- iii. Work in proposed in Use III or Use IV (cold water fisheries) waterways (COMAR Section 26.08.02.02);
- iv. Work in proposed in Tier II watersheds (COMAR 26.08.02.04-1);
- v. Work proposed that could have the potential to cause effects to any historic property listed, determined to be eligible for listing, or potential eligible for listing on the National Register of Historic places, including previously unidentified properties; and
- vi. Work proposed that may have effects on any Federal listed threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the designated critical habitat of such species
- vii. The permittee must demonstrate ecological uplift and stability by comparing pre-construction and post-construction ecological functions and conditions using an FCAM for three (3) years following construction completion. Post-construction monitoring must document:
 - a. Performance in regards to design objectives as compared to baseline values
 - b. Vertical stability
 - c. Photographs
 - d. Documentation of ecological lift (which may include scientific literature in combination with a FCAM)
 - e. Performance of riparian vegetation
 - f. Re-establishment of impacted or relocated wetlands.
 - g. The permittee must provide a waters and wetland delineation with the final report 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.

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

1. 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).
2. Tidal Waters: No activity, fill, or discharge shall occur channelward of the high tide line.
 3. Self-sustaining Design: The project must be planned and designed to be self-sustaining.
 4. Year 1 Post Construction Report: For all activities, the permittee must 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.
 5. Geographic Applicability: This regional general permit will authorize work undertaken within the geographical limits of the State of Maryland, the District of Columbia, and military installations of northern Virginia under the regulatory jurisdiction of the U.S. Army Corps of Engineers, Baltimore District.
 6. 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 Bay TMDL RGP verification letter. Each permittee should retain a copy for their records. The original Certificate of Compliance shall be mailed to: U.S. Army Corps of Engineers, Regulatory Branch, 2 Hopkins Plaza, Baltimore, Maryland 21201 within 30 calendar days of project installation.
 7. Applicability: Applicability of the Bay TMDL RGP shall be reviewed with reference to the Corps definition of waters of the U.S., including wetlands. Applicants are responsible for delineating boundaries of all waters of the U.S., including wetland boundaries. The identification and delineation of jurisdictional waters of the U.S., including wetlands, must be performed using a multi-parameter approach defined in Technical Report Y-87-1, Corps of Engineers Wetlands Delineation Manual, dated January 1987, and applicable supplemental guidance.
 8. Other Permits: Authorization under the Bay 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. Water Quality: Permittees must satisfy any conditions imposed by the States and EPA, where applicable, in their Water Quality Certifications (WQC) for this Bay TMDL RGP pursuant to Section 401 of the Clean Water Act. Where a State

has not previously certified compliance of this Bay TMDL RGP with Clean Water Act 401, individual WQC must be obtained or waived. The Corps or State may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

10. Coastal Zone Management Consistency (CZM): The Corps determined that all activities authorized by the TMDL RGP will be carried out in a manner consistent with the Maryland Coastal Zone Management Program and the Virginia Coastal Zone Management Program pursuant to Section 307 of the Federal Coastal Zone Management Act of 1972, as amended. Projects located within the Commonwealth of Virginia and the State of Maryland must comply with the applicable conditions of the concurrence letters for this Bay TMDL RGP. Permittees must satisfy any additional conditions imposed by the States in their CZM consistency concurrences for this Bay TMDL RGP.
11. Minimal Effects: Projects authorized shall have no more than minimal individual or cumulative adverse environmental effects, as determined by the Baltimore District.
12. 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.
13. Single and Complete Project: This Bay TMDL RGP shall only be applied to single and complete projects. For purposes of this Bay 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. This Bay TMDL RGP cannot be used more than once for the same single and complete project.
14. Multiple General Permit Authorizations: An activity can be authorized by more than one general 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.
15. Contractor Compliance: The prospective permittee shall ensure that a copy of the Bay 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.

16. Historic Properties.

- i) Any activity authorized by the Bay TMDL RGP shall comply with Section 106 of the National Historic Preservation Act. Assistance regarding information on the location of or potential for presence of historic resources shall be sought from the SHPO, as appropriate, and the National Register of Historic Places. Prior to initiating the work, prospective permittees shall coordinate with and receive written notification/comments (i.e., letter, email, etc.) from the appropriate SHPO:
 - (1) 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/>);
 - (2) Maryland Historical Trust, 100 Community Place, Crownsville, MD 21032, Phone: 410-514-7600, Website: <https://mht.maryland.gov/>; or
 - (3) 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 cause effects to 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. When reviewing applications, the Corps will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The Corps shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey of archaeological and historical resources in the project area. The Corps shall determine whether National Historic Preservation Act Section 106 consultation is required.
- 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.
- iv) If the permittee discovers any previously unknown archaeological or other cultural resource while accomplishing the work authorized by the Bay TMDL RGP, the permittee shall immediately notify the Corps of what has been found

and stop work in the permit area until the required coordination has been completed. The permittee shall not begin or continue work until notified by the Corps that the requirements of the National Historic Preservation Act have been satisfied and that the activity may proceed.

17. 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.
18. 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 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.
19. 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.
20. Endangered Species:
 - i) No activity is authorized under this Bay 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 Bay 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) Prospective permittees 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 Bay TMDL RGP does not authorize the “take” of a threatened or endangered species as defined under the ESA. The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take 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, prospective permittees in Maryland and the District of Columbia must review ESA resources at the Endangered Species Project Review website:

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

Prospective permittees in Virginia must review ESA resources at this website:

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

- 21. 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.
- 22. Essential Fish Habitat (EFH) and Fish and Wildlife Coordination Act: The Corps completed EFH coordination and received a no effect determination; however, proposed projects may impact prey species and their habitat and NMFS reserves the right to include site specific conditions during agency review under the Fish and Wildlife Coordination Act.
- 23. Coldwater Streams: To the maximum extent practicable, no activity may increase water temperatures in coldwater streams (Use III and Use IV) that adversely affects aquatic species indigenous to the waterbody (COMAR) Section 26.08.02.02].
- 24. 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, FWS).
- 25. Federal Projects: Authorized activities may not interfere with any existing or proposed Federal projects.
- 26. Navigation: (a) No activity may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee’s expense on facilities in navigable waters of the U.S. (c) The permittee understands and agrees that, if future operations by the United States require the

removal, relocation, or other alteration, of the structure or work herein authorized, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. (d) If, in the opinion of the Secretary of the Army, or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration. (e) Prospective permittees must submit an application and a PCN form if the activity will occur along and/or within 150 feet of the horizontal limits of a Federal navigation project.

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. Environmental Justice: Activities authorized under this Bay TMDL RGP must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".
30. Federal Liability: In issuing this Bay 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 Bay 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.
31. Avoidance and Minimization: The activity must be designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the U.S. to the maximum extent practicable at the project site.
32. Mitigation: All authorized activities under this RGP require avoiding, minimizing, or compensating for resource losses. Mitigation may be required to ensure that the adverse effects to the aquatic environment are minimal. Temporary impacts not restored to pre-construction contours may be determined to be permanent impacts and compensatory mitigation may be required to assure adverse effects to the aquatic environment are minimal.

33. Heavy Equipment in Wetlands: Heavy equipment 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 Bay TMDL RGP.
34. 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" whenever practicable. This should be accomplished using stream diversion devices. Permittees are encouraged to perform work within waters of the U.S. during periods of low flow or no flow. The stream length affected by stream diversion devices must be included in the quantification of impact area authorized by this Bay TMDL RGP.
35. Temporary Fills: 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 waters and wetlands authorized by this Bay TMDL RGP shall be properly stabilized during use to prevent erosion. 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. 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 Bay TMDL RGP.
36. 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.
37. 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.

38. Suitable material: No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, treated wood, 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).
39. Management of Water Flows: To the maximum extent practicable, the pre-construction course, condition, capacity, and location of waterbodies 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 waterbodies if it benefits the aquatic environment (i.e., stream restoration and enhancement activities).
40. Spawning Areas: Activities, including work in waters of the U.S., 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.
41. Migratory Bird Breeding Areas: Activities in waters of the U.S. that serve as breeding and wintering areas for migratory birds must be avoided to the maximum extent practicable.
42. Water Supply Intakes: No discharge of dredged or fill material may occur in the proximity of a public water supply intake.
43. 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.
44. 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
45. 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 Bay TMDL RGP. The Corps reserves the right to require post-

construction engineering drawings and/or surveys of any work authorized by this Bay TMDL RGP, as deemed necessary on a case-by-case basis.

46. 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 Bay TMDL RGP.
47. Property Rights: This Bay 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.
48. Modification, Suspension, and Revocation: This Bay 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 Bay TMDL RGP when they occur; however, it is incumbent upon you to remain informed of any changes to this Bay TMDL RGP.
49. Special Conditions: The Corps may impose special conditions on any project authorized under the Bay 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.
50. 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.
51. Transfer of Authorization: The transferee and permittee must supply the Corps with a written request in order to transfer authorization under this Bay 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.

52. Changes to State Statutes, Regulations, or General Permits: The Corps will review proposed changes to the State program statutes and regulations, including the development of State general permits, to determine whether, and to what extent, the proposed changes will affect this Bay TMDL RGP. The Corps will determine whether or not to continue use of the Bay TMDL RGP under the modified State statutes, regulations, or general permits based on considerations outlined in 33 CFR 325.7(a). The Corps review may result in immediate suspension or revocation of this Bay TMDL RGP, in accordance with Department of the Army regulations.
53. 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 #54 below, work authorized under this Bay TMDL RGP must be completed before the Bay 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 Bay TMDL RGP. If this Bay 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 Bay TMDL RGP at any time it deems necessary to protect the public interest.
54. Grandfather Provision for Expiring Bay TMDL RGP: Activities authorized under this Bay 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 Bay TMDL RGP's expiration, modification, or revocation to complete the activity under the terms and conditions of this Bay 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.
55. Existing or proposed activities associated with an ongoing Corps or EPA enforcement action until such time as the enforcement action is resolved or the Corps determines that the activity may proceed independently without compromising the enforcement action.

X. DEFINITIONS:

Certain terms that are referenced in the Bay 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

Bankfull Discharge: The flow that is most effective at moving sediment, forming or removing bars, forming or changing bends and meanders, and doing work that results in the average morphologic characteristics of stream channels (Dunne and Leopold 1978). The bankfull stage is the point at which water begins to overflow onto a floodplain (may not coincide with the top of the visible bank in incised streams).

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. [77 Fed. Reg. 10184 (February 21, 2012)]

Construction Mats: Construction, swamp, and timber mats (herein referred to as “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 Bay 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 Bay TMDL RGP:

- 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.
- 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.

- Relocation of non-tidal waters and wetlands on a project site, including relocation activities that create open water impoundments where existing non-tidal 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 Effects: see Cumulative Impacts

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 [77 Fed. Reg. 10184 (February 21, 2012)]

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)

Ephemeral Stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow. [77 Fed. Reg. 10184 (February 21, 2012)]

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions. (33 CFR 332.2)

Fill Material: Material placed in waters of the U.S. 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 waters of the U.S. 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 (such as following rainfall or snowmelt events). Commonly the "floodplain" is referred to as the area of the valley floor which is inundated during flood events.

Floodplain Disconnection: For purposes of this Bay TMDL RGP, floodplain disconnection is present when all flows greater than or equal to a 2 year storm event return interval do not access or spread onto the adjacent floodplain. The channel forming flow (i.e., bankfull) may be used in place of the minimum 2 year storm event return interval and must be identified and validated using appropriate regional curves for this region (e.g., U.S. Fish and Wildlife, U.S. Geological Survey, Baltimore County).

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 Bay TMDL RGP, an FCAM is a Methodology which assesses a range of functions and conditions of a stream or wetland. For the purposes of this Bay TMDL RGP, an FCAM must include at least two of five parameters from the below five categories: Hydrology, Hydraulics, Geomorphology, Water Chemistry, Biology. 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))

Impact: See “Temporary Impact,” “Permanent Impact,” and “Cumulative Impact”

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 (77 FR 34, pg 10289). 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.

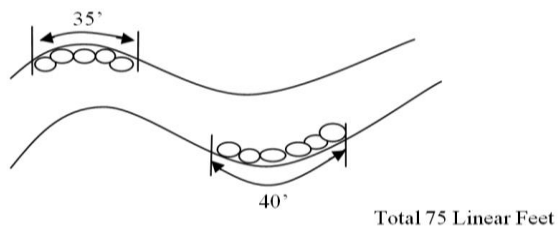
Indirect Effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. [77 Fed. Reg. 10184 (February 21, 2012)]

Intermittent Stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow. [77 Fed. Reg. 10184 (February 21, 2012)]

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.

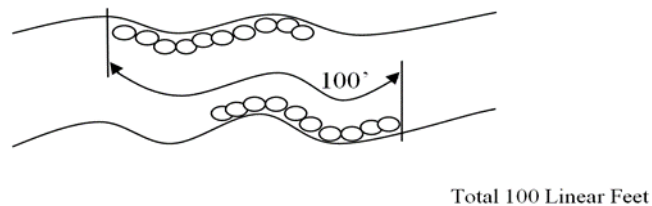
Linear Feet of Stream Impact: For categorical determinations (e.g., 200 linear feet or 500 linear feet) involving stream impacts in this RGP, the linear footage of stream impact should be measured as shown in the following plan view drawings (this is not used for calculating impacts to wetlands and open water impoundments which are based on square feet):

- a. *For regulated work on one stream bank, the linear footage of a stream*

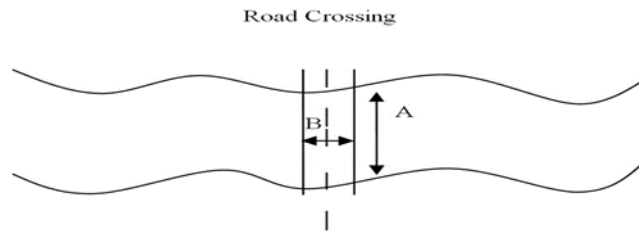


impact should be measured along the bank being impacted. When both stream banks are being impacted at separate locations, the linear footage of stream impact is also measured along the banks being impacted.

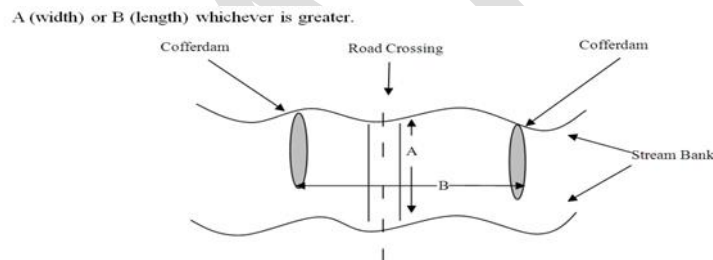
- b. *For regulated work proposed along both stream banks, where at least a portion of the work on the opposing stream bank is overlapping, the linear footage of stream impact should be measured along the centerline of the stream.*



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



d. 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 outlets, conveyance, discharge points of waters of the U.S. including jurisdiction storm drain networks, and outlets of stormwater management facilities.

Perennial Stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow. [77 Fed. Reg. 10184 (February 21, 2012)]

Permanent Impact: The permanent alteration of an aquatic resource that is expected to remain after a permitted activity's construction activities are completed. For purposes of this Bay TMDL RGP, permanent impacts include those permanent effects from filling, flooding, excavation, or drainage because of the regulated activity. 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 waters of the U.S. 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. When a discharge of dredged or fill material is placed to construct an in-stream weir, the permanent impact includes the footprint of the weir and the waters of the U.S. permanently flooded behind the weir. Permanent impacts include relocation of aquatic resources from one place to another on the project site. Waters of the U.S. that are temporarily filled, flooded, excavated, or drained 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 Bay TMDL RGP when there is not a net gain in functions at the project site as compared to baseline values.

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)

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)

Riparian Areas: Riparian areas are lands adjacent to streams, rivers, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. [77 Fed. Reg. 10184 (Feb. 21, 2012)]

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 activity for the purpose of restoration and enhance of stream conditions and functions that may include improvement of water quality, hydrology, 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 waters of the U.S. are restored to their preconstruction contours, 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.

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 waters of the U.S.



DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, CORPS OF ENGINEERS
REGULATORY BRANCH
2 HOPKINS PLAZA
BALTIMORE, MD 21201-2930

April 13, 2020

Operations Division

Virginia Department of Environmental Quality
Coastal Zone Management Program
Attn: Ms. Laura McKay
1111 East Main Street
Suite 1400
Richmond, Virginia 23219

Dear Ms. McKay:

I am writing in regard to the Chesapeake Bay Total Maximum Daily Load Regional General Permit (TMDL RGP), which is due to expire on June 30, 2020. On December 9, 2019, the U.S. Army Corps of Engineers issued Special Public Notice# 19-80, proposing to re-issue the TMDL RGP with modifications. 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.

This letter serves as the Corps a determination of Coastal Zone Management Act (CZMA) consistency, pursuant to Section 307(c)(1) of the CZMA for TMDL RGP activities within or affecting the coastal zone of the Commonwealth of Virginia. Applicable waters under the Baltimore Districts Corps' jurisdiction in Virginia include the following military installations in Northern Virginia, Fort Meter, Fort Belvoir, and the Pentagon. A copy of the current draft of the TMDL RGP is enclosed.

I ask for your final determination regarding CZMA consistency. The TMDL RGP with modifications will have no effect on your enforceable policies in regards to dunes management, point source pollution control, shoreline sanitation, air pollution, and coastal lands management. I believe that the general conditions of the TMDL RGP are consistent with the following enforcement policies; fisheries management, subaqueous lands management, nonpoint source pollution control, air pollution control, and coastal lands management. I am also seeking 401 Water Quality Certification through the Water Quality Division.

As provided by applicable regulations at 15 CFR Part 930, your final determination on CZMA consistency for the TMDL RGP must be submitted within 90 days of this request. If you do not concur or object to CZMA consistency within 90 days, I will

presume you agree with our CZMA consistency determination. As discussed in our public notice, the Corps does not believe actions undertaken under the TMDL RGP would have negative effects on the Coastal Zone. To the contrary, the TMDL RGP would help protect and preserve the State's coastal resources.

Please note the Corps will generally defer to the state regarding CZMA conditions. Any conditions of the CZMA become conditions of issued TMDL RGP authorizations. However, if the Corps believes conditions do not meet our permit conditioning policy at 33 CFR 325.4, the Corps may use its enforcement discretion regarding those conditions. Moreover, if a CZMA condition would impose an unacceptable level of additional work by the Corps, we will view the conditions as a denial without prejudice.

Thank you for your attention regarding this matter. I remain available to discuss issues or proposed conditions you may be considering for the TMDL RGP. I look forward to working with you in the near future. If you have any questions regarding this matter, please contact me at (410) 962-4562 or daniel.p.swenson@usace.army.mil or you may contact Ms. Erica Schmidt of my staff at (410) 962-6029 or erica.schmidt@usace.army.mil.

Sincerely,

Daniel P. Swenson, D. Env.
Chief, Regulatory Branch

Enclosure

To identify how we can better serve you, we need your help. Please take the time to fill out our customer service survey at:
http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:8845707609835

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

Effective: July 1, 2020

Expiration Date: June 30, 2025

The Baltimore District of the U.S. Army Corps of Engineers (Corps) is reissuing this 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), 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 non-tidal streams and non-tidal 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.

Bay TMDL RGP
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- I. **AUTHORITIES:** Section 404 of the Clean Water Act (CWA) for the discharge of dredged or fill material into waters of the U.S.
- II. **APPLICABLE WATERS:** 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.
- III. **EXCLUDED WATERS:** Excluded waters are locations that this permit is not applicable. 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. These areas are within the regulatory geographic boundary of the Philadelphia District.
- IV. **SCOPE OF ACTIVITIES:** This Bay TMDL RGP applies to the discharge of dredged or fill material, including all attendant features both temporary or permanent, which individually and cumulatively result in direct or indirect impacts to waters regulated by Section 404 of the CWA. The term “impacts to waters of the United States” as used herein for the purpose of determining Bay TMDL RGP eligibility means the acreage of impacts to waters of the United States, including wetlands which are adversely affected by the project though mechanical land clearing and/or permanent flooding, excavating, or draining because of the regulated activity. Acreage of impacts to stream channels shall be measured along the centerline of the stream and bank to bank at the ordinary high water mark line. Authorization under the Bay TMDL RGP requires compliance with all of the terms and conditions of the Bay TMDL RGP, including activity specific acreages and linear foot impact threshold. The activities authorized must have only minimal individual and cumulative adverse effects on the environment. The cumulative total of all impact areas associated with a single and complete project is the basis for determining whether the project is eligible for authorization under the Bay TMDL RGP.
 - A. Self-Verified Activities: Discharges of dredged or fill material as described in the Self Verifying Activities description of activities in Section V that comply with the terms and conditions contained in the Bay TMDL RGP and have only minimal individual and cumulative adverse impacts on the environment are authorized by the Corps.
 - B. Corps Verified Activities: Discharges of dredged or fill material, as described in the Corps Verifying Activities description in Section V of the Bay TMDL RGP, will be reviewed and verified on a project-specific

basis by the Corps and appropriate resource agencies to determine whether such activities may be authorized under this Bay TMDL RGP.

V. BAY TMDL RGP ACTIVITIES: These 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 WIP, whose purpose is to identify implementation activities needed to meet nutrient and sediment load reduction targets.

A. Retrofits of Existing Stormwater Management Facilities: Discharges of dredged or fill material into nontidal waters of the United States for the retrofit of existing, currently serviceable stormwater management facilities, which were originally designed and are currently being used for the treatment of stormwater. Activities authorized by this Bay TMDL activity may include, but are not limited to, changing the existing riser structure, creation of forebays, changing pond elevations, or creation of wetland benches. In addition to the General Conditions of this permit, all work authorized by this activity, including discharges, must comply with impact limits and requirements listed below (Section 404).

1. Requirements for All Activities:

- i. Corps Verification is required (Section V.A.3) for work proposed in Use III, Use IV, and 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>) or work proposed in Tier II watersheds (COMAR 26.08.02.04-1).
- ii. The applicant must submit the appropriate permit application, plans, supporting documentation according to the permit application procedure in Section VII.
- iii. This activity does not allow for the expansion of facilities outside the existing as-built footprint.
- iv. Minimum downstream flows must be maintained during work.
- v. Activities that are solely designed for general maintenance activities within existing Stormwater Management Facilities must be reviewed under an alternative permit process (e.g. MDSPGP-5).
- vi. Within 30 days of completion of the authorized work all temporary work within the waters of the U.S., including nontidal wetlands must be restored to preconstruction contours and stabilized. Areas that require planting must be

planted within first year growing season of completion of the project.

vii. Within 90 days of completion of the authorized work surveyed as-built drawings, to scale, with control (latitude/longitude) depicting the final work including the restoration of the temporary impacts (Section IX).

viii. By December 31 of the project completion year, the permittee must provide the documentation identified in the Year 1 Post Construction Report (Section IX).

2. Projects Qualifying for Self-Verification: Activities may commence without written verification from the Corps provided the applicant has submitted the appropriate documentation to the Corps. In addition, the activity must meet all General Conditions (Section IX), requirements for all activities (V.A.1.i-viii) above, and the following impact limits:

i. Total permanent impacts must not exceed 1 acre of nontidal waters of the U.S. 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 for Corps Verification: Applicants must obtain written verification from the Corps prior to commencing the activity. Applicants must submit the appropriate documentation to the Corps and the activity must meet all General Conditions (Section IX), requirements for all activities (V.A.1.i-viii), and the following impact limits:

i. Total permanent impacts must not exceed 3 acres of nontidal waters of the U.S. 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 nontidal waters of the United States for retrofit and stabilization of outfall activities in waters of the U.S., including jurisdictional wetlands, where the outfall retrofit activities seek to comply with the Bay TMDLs by minimizing accelerated channel erosion to reduce pollutant loading. In addition to the General Conditions (Section IX) of this permit, all work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below.

1. Impact Limits and Requirements for All Activities:

i. Corps Verification is required (Section V.B.3) for work proposed in Use III, Use IV, and other cold water resources identified in mapped waterways (COMAR Section 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).

- ii. In addition to the permit application documentation (Section VII), the applicant must provide photographic documentation that the existing (pre-construction) outfall is in a degraded condition.
- iii. Impact Limits: The total permanent impacts to nontidal waters of the U.S. (wetlands, streams, etc.) 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.
- iv. 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 waters of the U.S. (i.e., streams and wetlands), including 200 linear feet of streams, rivers, and other open waters. Of the total conversion, the thresholds for specific conversion types indicated below must also not be exceeded. See Section X, "Definitions" of this Bay TMDL RGP for the definition of the term "conversion." The Bay TMDL Outfall Activity conversion thresholds are:
 - a. Conversion to Uplands: The loss or conversion of waters of the U.S. (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 of 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.
- v. Within 30 days of completion of the authorized work, all temporary work within the waters of the U.S., including nontidal wetlands must be restored to preconstruction

contours and stabilized. Areas that require planting must be planted within first year growing season of completion of the project.

- vi. Within 90 days of completion of the authorized work, surveyed as-built drawings, to scale, with control (latitude/longitude) depicting the final work including the restoration of the temporary impacts (Section IX).
 - vii. By December 31 of the project completion year, the permittee must provide the documentation identified in the Year 1 Post Construction Report (Section IX).
- 2. Projects Qualifying for Self Verification: Activities may commence without written verification from the Corps 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 IX) of the RGP.
 - 3. Projects Qualifying for Corps Verification: For retrofit and stabilization of existing outfall activities that meet the impact and conversion thresholds in Section V.B.1 above, the applicant must obtain written verification from the Corps prior to commencing work if:
 - i. Work is proposed with impacts to waters of the U.S. associated with an increase/extension of piping of an outfall (e.g., proposed installation of drop structures);

C. **Nontidal Streams and Wetland Restoration Activities**: This activity authorizes stream and wetland restoration and enhancement activities in waters of the U.S., including jurisdictional wetlands, where the activity is part of an acceptable watershed strategy to reduce nutrients and sediments and produces functional lift within the project site. In addition to the general conditions of this permit, all work authorized by this activity, including discharges, must comply with all activity-specific impact limits and requirements listed below.

- 1. Requirements for All Activities:
 - i. Corps Verification is required (Section V.C.3) for work proposed in Use III, Use IV, and other cold water resources identified in mapped waterways (COMAR Section 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).

- ii. For this activity the permit application must include the documentation from Section VIII and the following additional information:
 - a. 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.
 - 1. New FCAMs proposed by an applicant must be approved by the Corps on a case-by-case basis and must measure parameters in at least two of the following five categories: Hydrology, Hydraulics, Geomorphology, Water Chemistry, and Biology.
 - 2. Degradation is determined by the specific FCAM chosen. For example, if using the EPA Rapid Bioassessment Protocol-Habitat Assessment Form, a score of marginal to poor would be degraded.
 - b. Forecast functional lift by: evaluating existing vs projected lift as documented using a Corps approved FCAM (which includes geomorphological/hydraulic function-based parameters) in combination with citing applicable research supporting the restoration approach if appropriate .
- iii. Within 30 days of completion of the authorized work, all temporary work within the waters of the U.S., including nontidal wetlands must be restored to preconstruction contours and stabilized. Areas that require planting must be planted within first year growing season of completion of the project.
- iv. Within 90 days of completion of the authorized work, surveyed as-built drawings, to scale, with control (latitude/longitude) depicting the final work including the restoration of the temporary impacts (Section IX).
- v. By December 31 of the project completion year, the permittee must provide the documentation identified in the Year 1 Post Construction Report (Section IX).

- vi. The permittee must demonstrate functional lift and stability by comparing pre-construction and post-construction functions and conditions using an FCAM for three (3) years following construction completion. Post-construction monitoring submitted to the Corps must include:
 - a. Documentation of achievement of performance standards in regards to design objectives as compared to baseline values
 - b. Photographic documentation of structural stability and channel stability.
 - 1. Documentation of functional lift (which may include scientific literature in combination with a FCAM)
 - 2. Documentation of at least 85% coverage of the riparian vegetation, including volunteers. Of these invasive species coverage may not exceed baseline.
 - 3. Documentation of the reestablishment of impacted or relocated wetlands.
 - 4. 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.
 - 5. A detailed description of any necessary corrective measures, including maintenance and repair, or alteration in any way, of the permitted work no later than 15 days prior to performance of such corrective measures for review and approval.
 - vii. If it determined by the monitoring 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 performance standards by year three may result in noncompliance or enforcement actions by the Corps.
2. Projects Qualifying for Self-Verification: Activities may commence without written verification from the Corps after the applicant has submitted the appropriate documentation, met the requirements, General Conditions (Section IX), and limits:
- i. The total permanent impacts do not to exceed ½ acre of nontidal waters and wetlands. Of this, no more than, 1,000

linear feet of nontidal streams, rivers, open waters, or a combination thereof may be permanently impacted.

- ii. The discharge will not result in loss or conversion of any type of waters of the U.S.

3. **Projects Qualifying for Corps Verification:** Applicants must obtain written verification from the Corps prior commencing the activity. The applicant must submit the appropriate documentation to the Corps and the activity must meet requirements for all activities (Section V.C.1), General Conditions (Section IX), impact limits and criteria below:

- i. Total permanent impacts do not exceed 3 acres of nontidal waters of the U.S.. 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
- ii. Total permanent impacts or conversion does not exceed 10,000 square feet of nontidal waters of the U.S., Of this, no more than 200 linear feet of nontidal streams, rivers, open waters, or a combination thereof, may be permanently impacted or converted.
- iii. 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. Post Construction Reports must include:
 - a. Surveyed cross-sections at a minimum of 300 foot intervals.
 - b. Surveyed longitudinal profile capturing the water surface and bed elevation along the thalweg.
 - c. Plan view graphic showing channel alignment and aquatic resources onsite

VI. STATE AND LOCAL APPROVALS: This Bay TMDL RGP does not obviate the need to obtain all other Federal, state, or local permits required by law.

VII. HOW TO OBTAIN/APPLY FOR AUTHORIZATION: All applicants must submit a Joint Permit Application (JPA) with the required activity(ies) specific documentation. Proposed activities that qualify for self-verification in accordance with the activity specific terms and conditions of this Bay TMDL RGP may proceed without written verification by the Corps once all required documents are received by the Corps and provided that all required State and local authorizations are obtained. For those activities requiring Corps Verification, the application will be reviewed by the Corps. When a Corps Verification is required, construction of the activity may not begin until the applicant has been notified in writing by the Corps that the activity is eligible

for authorization under the Bay TMDL RGP with any special conditions, if applicable, and all State and local authorizations have been obtained.

- A. All applications for regulated activities under this Bay 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 Bay 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 Bay TMDL RGP still apply to self-verified activities. Self-verified activities authorized by this RGP may commence after the applicant has documented in the self-verification form the following:
 - 1. Confirmed that the activity will be conducted in compliance with the terms and conditions of this Bay TMDL RGP, which may include consultation with the Corps and/or outside relevant Federal and State agencies. 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 (see <https://www.nab.usace.army.mil/Missions/Regulatory.aspx>).
 - 2. Obtained all required State and local authorizations.
- C. Corps Verification: For activities that do not qualify for self-verification or where otherwise required by the terms of this Bay TMDL RGP, the applicant must obtain written verification from the Corps before starting work in waters of the U.S., including wetlands. 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.
- D. To avoid and minimize adverse impacts to waters of the United States, the Bay TMDL RGP verification may include site-specific special conditions.
- E. Alternative Permit Type: Projects that are not authorized by this Bay TMDL RGP require authorization under an alternative permit type (e.g., State Programmatic General Permit, Nationwide Permit, or Individual Permit). Applicants must submit an application in accordance with the established Corps permit application procedures for that locality. This Bay

TMDL RGP does not affect the Corps Individual Permit review process or activities exempt from Corps regulation. For general information and application forms, see the Baltimore District website at:

<https://www.nab.usace.army.mil/Missions/Regulatory/Permit-Types-and-Process/>

- F. Notwithstanding compliance with the terms and conditions of the Bay TMDL RGP, the Corps retains discretionary authority to require a Corps Individual Permit review for any project based on concerns for the aquatic environment or for any other public interest factor. This authority is invoked, on a case-by-case basis, whenever the Corps determines that the potential consequences of the proposal warrant individual review, based on concerns stated above. This authority may be invoked for projects with cumulative environmental impacts that are more than minimal or if there is a special resource or concern associated with a particular project, which is not addressed with stipulations of the Bay TMDL RGP and warrants greater review.

VIII. 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: Evidence (i.e., correspondence) 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. (Refer to General Condition 17-Historic Properties for further information).

- 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: Evidence (i.e., correspondence) 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. (Refer to General Condition 21-Endangered Species for further information):
1. In Maryland and the District of Columbia:
<http://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Ind ex.html>
 2. In Virginia:
<http://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html>

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.

- E. Applicants are not relieved of the obligation 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 or proposed threatened or endangered species or designated or proposed critical habitat,
 2. 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,
 3. Has the potential to alter, or temporarily or permanently occupy or use any U.S. Army Corps of Engineers federally authorized Civil Works project or dams, Levees, Easements, Federal Navigation Channel, including Corps-constructed projects administered by Local Sponsors.
 4. If a cultural resource or endangered species survey has been completed for the project site, reports documenting the results of the survey shall be submitted with the application to facilitate the Corps review. In cases where the prospective permittee has

notified the Corps that Federally listed species, critical habitat, historic properties, and/ or federally authorized Civil Works projects might be affected by the project or is 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.

- IX. **GENERAL CONDITIONS:** Activities do not qualify for this Bay TMDL RGP unless they satisfy ALL of the general conditions listed below:
1. 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).
 2. Tidal Waters: No activity, fill, or discharge shall occur channelward of the high tide line.
 3. Self-sustaining Design: The project must be planned and designed to be self-sustaining.
 4. Year 1 Post Construction Report: For all activities, the permittee must 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.
 5. Geographic Applicability: This regional general permit will authorize work undertaken within the Chesapeake Bay watershed within geographical limits of the State of Maryland, the District of Columbia, and military installations of northern Virginia under the regulatory jurisdiction of the U.S. Army Corps of Engineers, Baltimore District.
 6. 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 Bay TMDL RGP verification letter. Each permittee should retain a copy for their records. The original Certificate of Compliance shall be mailed to: U.S. Army Corps of

Engineers, Regulatory Branch, 2 Hopkins Plaza, Baltimore, Maryland 21201-2930 within 30 calendar days of project installation.

7. Applicability: Applicability of the Bay TMDL RGP shall be reviewed with reference to the Corps definition of waters of the U.S., including wetlands. Applicants are responsible for delineating boundaries of all waters of the U.S., including wetland boundaries. The identification and delineation of jurisdictional waters of the U.S., including wetlands, must be performed using a multi-parameter approach defined in Technical Report Y-87-1, Corps of Engineers Wetlands Delineation Manual, dated January 1987, and applicable supplemental guidance.
8. Other Permits: Authorization under the Bay 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. Use of Multiple Bay TMDL RGP Activities: More than one Bay 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 Bay TMDL RGP activity and the total extent of project impacts must not exceed the acreage and/or linear foot limit of the Bay TMDL RGP activity with the highest specified acreage and/or linear foot limit.
10. Water Quality: Permittees must satisfy any conditions imposed by the States and EPA, where applicable, in their Water Quality Certifications (WQC) for this Bay TMDL RGP pursuant to Section 401 of the Clean Water Act. Where a State has not previously certified compliance of this Bay TMDL RGP with Clean Water Act 401, individual WQC must be obtained or waived. The Corps or State may require additional best management practices to ensure that the authorized activity does not result in degradation of water quality.

MDE/Water and Science Administration
Regulatory Services Section - 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 Department of Environmental Quality
Water Quality Division
P.O. Box 1105
Richmond, Virginia 23218

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

DCDOEE
1200 First Street NE
Washington, DC 20002

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

11. 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 and 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 Bay TMDL RGP.
12. Minimal Effects: Projects authorized shall have no more than minimal individual or cumulative adverse environmental effects, as determined by the Baltimore District.
13. 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.
14. Single and Complete Project: This Bay TMDL RGP shall only be applied to single and complete projects. For purposes of this Bay 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. This Bay TMDL RGP cannot be used more than once for the same single and complete project.
15. Multiple General Permit Authorizations: An activity can be authorized by more than one general 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.
16. Contractor Compliance: The prospective permittee shall ensure that a copy of the Bay 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. Any activity authorized by the Bay TMDL RGP shall comply with Section 106 of the National Historic Preservation Act. Assistance regarding information on the location of or potential for presence of historic resources shall be sought from the SHPO, as appropriate, and the National Register of Historic Places. 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 cause effects to 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. When reviewing applications, the Corps will comply with the current procedures for addressing the requirements of Section 106 of the National Historic Preservation Act. The Corps shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey of archaeological and historical resources in the project area. The Corps shall determine whether National Historic Preservation Act Section 106 consultation is required.
 - 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.
 - iv. If the permittee discovers any previously unknown archaeological or other cultural resource while accomplishing the work authorized by the Bay TMDL RGP, the permittee shall immediately notify the Corps of what has been found and stop work in the permit area until the required coordination has been completed. The permittee shall not begin or continue work until notified by the Corps that the requirements of the National Historic Preservation Act have been satisfied and that the activity may proceed.

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 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 Bay 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 Bay 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 Bay TMDL RGP does not authorize the “take” of a threatened or endangered species as defined under the ESA. The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take 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:
<http://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Index.html>
I. 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 Streams: No activity may increase water temperatures in coldwater streams (Use III, Use IV, and other cold water resources identified in mapped (<https://maryland.maps.arcgis.com/apps/webappviewer/index.html?id=dc5100c0266d4ce89df813f34678944a>)) that adversely affects aquatic species indigenous to the waterbody (COMAR) Section 26.08.02.02].
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, FWS).
26. Federal Projects: Authorized activities may not interfere with any existing or proposed Federal projects.
27. Navigation: (a) No activity may cause more than a minimal adverse effect on navigation. (b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee’s expense on facilities in navigable waters of the U.S. (c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. (d) If, in the opinion of the Secretary of the Army,

or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration. (e) applicants must submit an application and a PCN form if the activity will occur along and/or within 150 feet of the horizontal limits of a Federal navigation project.

28. Fills Within Floodplains: The authorized activity must comply with applicable requirements of any Federal Emergency Management Agency-approved state or local floodplain management requirements.
29. 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.
30. Environmental Justice: Activities authorized under this Bay TMDL RGP must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".
31. Federal Liability: In issuing this Bay 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 Bay 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.
32. Avoidance and Minimization: The activity must be designed to avoid and minimize adverse effects, both temporary and permanent, to Waters of the U.S. to the maximum extent practicable at the project site.
33. Mitigation: All authorized activities under this RGP require avoiding, minimizing, or compensating for resource losses. Mitigation may be required to ensure that the adverse effects to the aquatic environment are minimal. Temporary impacts not restored to pre-construction contours may be determined to be permanent impacts and compensatory mitigation may be required to assure adverse effects to the aquatic environment are minimal.
34. Heavy Equipment in Wetlands: Heavy equipment 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 Bay TMDL RGP.

35. **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. Permittees are encouraged to perform work within waters of the U.S. during periods of low flow or no flow. The stream length affected by stream diversion devices must be included in the quantification of impact area authorized by this Bay TMDL RGP.
36. **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 waters and wetlands authorized by this Bay TMDL RGP shall be properly stabilized during use to prevent erosion. 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. 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 Bay TMDL RGP.
37. **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.
38. **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.
39. **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.

40. 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).
41. Spawning Areas: Activities, including work in waters of the U.S., 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.
42. Migratory Bird Breeding Areas: Activities in waters of the U.S. that serve as breeding and wintering areas for migratory birds must be avoided to the maximum extent practicable.
43. Water Supply Intakes: No discharge of dredged or fill material may occur in the proximity of a public water supply intake.
44. 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.
45. 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
46. 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 Bay TMDL RGP. The Corps reserves the right to require post-

construction engineering drawings and/or surveys of any work authorized by this Bay TMDL RGP, as deemed necessary on a case-by-case basis.

47. 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 Bay TMDL RGP.
48. Property Rights: This Bay 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.
49. Modification, Suspension, and Revocation: This Bay 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 Bay TMDL RGP when they occur; however, it is incumbent upon you to remain informed of any changes to this Bay TMDL RGP.
50. Special Conditions: The Corps may impose special conditions on any project authorized under the Bay 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.
51. 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.
52. Transfer of Authorization: The transferee and permittee must supply the Corps with a written request in order to transfer authorization under this Bay 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.

53. Changes to State Statutes, Regulations, or General Permits: The Corps will review proposed changes to the State program statutes and regulations, including the development of State general permits, to determine whether, and to what extent, the proposed changes will affect this Bay TMDL RGP. The Corps will determine whether or not to continue use of the Bay TMDL RGP under the modified State statutes, regulations, or general permits based on considerations outlined in 33 CFR 325.7(a). The Corps review may result in immediate suspension or revocation of this Bay TMDL RGP, in accordance with Department of the Army regulations.
54. 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 #57 below, work authorized under this Bay TMDL RGP must be completed before the Bay 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 Bay TMDL RGP. If this Bay 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 Bay TMDL RGP at any time it deems necessary to protect the public interest.
55. Grandfather Provision for Expiring Bay TMDL RGP: Activities authorized under this Bay 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 Bay TMDL RGP's expiration, modification, or revocation to complete the activity under the terms and conditions of this Bay 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.
56. Existing or proposed activities associated with an ongoing Corps or EPA enforcement action until such time as the enforcement action is resolved or the Corps determines that the activity may proceed independently without compromising the enforcement action.

X. DEFINITIONS:

Certain terms that are referenced in the Bay 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

Bankfull Discharge: The flow that is most effective at moving sediment, forming or removing bars, forming or changing bends and meanders, and doing work that results in the average morphologic characteristics of stream channels (Dunne and Leopold 1978). The bankfull stage is the point at which water begins to overflow onto a floodplain (may not coincide with the top of the visible bank in incised streams).

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. [77 Fed. Reg. 10184 (February 21, 2012)]

Construction Mats: Construction, swamp, and timber mats (herein referred to as “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 Bay 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 Bay TMDL RGP:

- 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.
- 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.

- Relocation of non-tidal waters and wetlands on a project site, including relocation activities that create open water impoundments where existing non-tidal 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 Effects: see Cumulative Impacts

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 [77 Fed. Reg. 10184 (February 21, 2012)]

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)

Ephemeral Stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow. [77 Fed. Reg. 10184 (February 21, 2012)]

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area and functions. (33 CFR 332.2)

Fill Material: Material placed in waters of the U.S. 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 waters of the U.S. 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 (such as following rainfall or snowmelt events). Commonly the "floodplain" is referred to as the area of the valley floor which is inundated during flood events.

Floodplain Disconnection: For purposes of this Bay TMDL RGP, floodplain disconnection is present when all flows greater than or equal to a 2 year storm event return interval do not access or spread onto the adjacent floodplain. The channel forming flow (i.e., bankfull) may be used in place of the minimum 2 year storm event return interval and must be identified and validated using appropriate regional curves for this region (e.g., U.S. Fish and Wildlife, U.S. Geological Survey, Baltimore County).

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 Bay TMDL RGP, an FCAM is a Methodology which assesses a range of functions and conditions of a stream or wetland. For the purposes of this Bay TMDL RGP, an FCAM must include at least two of five parameters from the below five categories: Hydrology, Hydraulics, Geomorphology, Water Chemistry, Biology. 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))

Impact: See “Temporary Impact,” “Permanent Impact,” and “Cumulative Impact”

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 (77 FR 34, pg 10289). 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.

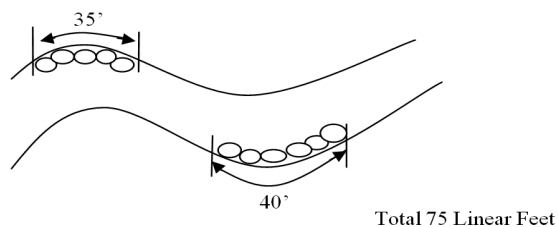
Indirect Effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. [77 Fed. Reg. 10184 (February 21, 2012)]

Intermittent Stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow. [77 Fed. Reg. 10184 (February 21, 2012)]

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.

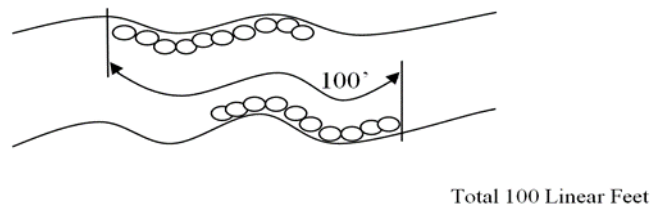
Linear Feet of Stream Impact: For categorical determinations (e.g., 200 linear feet or 500 linear feet) involving stream impacts in this RGP, the linear footage of stream impact should be measured as shown in the following plan view drawings (this is not used for calculating impacts to wetlands and open water impoundments which are based on square feet):

- a. *For regulated work on one stream bank, the linear footage of a stream*

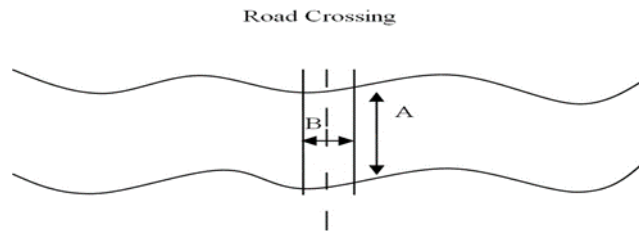


impact should be measured along the bank being impacted. When both stream banks are being impacted at separate locations, the linear footage of stream impact is also measured along the banks being impacted.

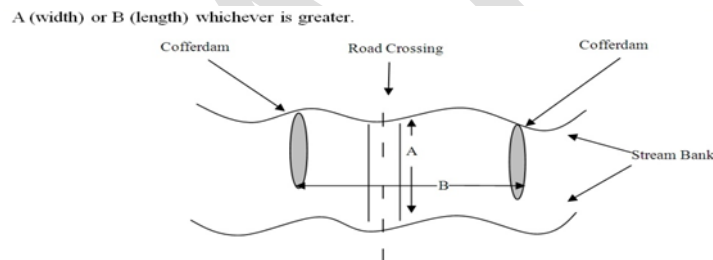
- b. *For regulated work proposed along both stream banks, where at least a portion of the work on the opposing stream bank is overlapping, the linear footage of stream impact should be measured along the centerline of the stream.*



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



d. 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 outlets, conveyance, discharge points of waters of the U.S. including jurisdiction storm drain networks, and outlets of stormwater management facilities.

Perennial Stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow. [77 Fed. Reg. 10184 (February 21, 2012)]

Permanent Impact: The permanent alteration of an aquatic resource that is expected to remain after a permitted activity's construction activities are completed. For purposes of this Bay TMDL RGP, permanent impacts include those permanent effects from filling, flooding, excavation, or drainage because of the regulated activity. 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 waters of the U.S. 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. When a discharge of dredged or fill material is placed to construct an in-stream weir, the permanent impact includes the footprint of the weir and the waters of the U.S. permanently flooded behind the weir. Permanent impacts include relocation of aquatic resources from one place to another on the project site. Waters of the U.S. that are temporarily filled, flooded, excavated, or drained 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 Bay TMDL RGP when there is not a net gain in functions at the project site as compared to baseline values.

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)

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)

Riparian Areas: Riparian areas are lands adjacent to streams, rivers, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. [77 Fed. Reg. 10184 (Feb. 21, 2012)]

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 activity for the purpose of restoration and enhance of stream conditions and functions that may include improvement of water quality, hydrology, 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 waters of the U.S. are restored to their preconstruction contours, 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.

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 waters of the U.S.

STATE WATER CONTROL BOARD
NOTICE OF INTENT TO PROVIDE SECTION 401 WATER QUALITY CERTIFICATION OF
BALTIMORE DISTRICT ARMY CORPS OF ENGINEERS' REGIONAL GENERAL PERMIT (RGP)
FOR CHESAPEAKE BAY TOTAL MAXIMUM DAILY LOAD (TMDL) ACTIVITIES
May 13, 2020

Pursuant to Virginia Water Protection (VWP) Permit Regulation 9 VAC 25-210-130 H, the State Water Control Board (Board) is giving notice of its intent to provide unconditional Section 401 Water Quality Certification for activities authorized by the above referenced U.S. Army Corps of Engineers (USACE) Baltimore District Regional General Permit after considering public comment for a 30-day period starting May 13, 2020.

On December 9, 2019, the U.S. Army Corps of Engineers (USACE) Baltimore District published a notice of their proposed issuance of the *Regional General Permit (RGP) For Chesapeake Bay Total Maximum Daily Load (TMDL) Activities*. This proposed regional general permit authorizes 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. Applicable waters include nontidal waters and nontidal wetlands in the Chesapeake Bay watershed within the State of Maryland; within the District of Columbia; and within Fort Belvoir, Fort Myer, and the Pentagon in Virginia. This TMDL RGP is proposed to provide a streamlined form of Department of the Army authorization for certain recurring activities that are similar in nature, have minimal individual and cumulative adverse effects on the aquatic environment, and stratify other public interest review factors. Per the Corps notice, 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 Corps verification with agency coordination; and a requirement for post construction reporting for all activities. The USACE notice and proposed TMDL RGP can be found at:

<https://www.nab.usace.army.mil/Missions/Regulatory/Public-Notices/Year/2019/Month/12/>

The Board may only issue final Section 401 Certification decisions of a nationwide or regional USACE permit if the permit meets the requirements of the VWP regulation, as well as having advertised and accepted public comment for 30 days on its intent to provide, deny, or condition certification. Therefore, the State Water Control Board will issue its final Section 401 Water Quality Certification decision on this Regional Permit and conditions at the end of the public comment process.

Written comments, including those by email, must be received no later than **June 12, 2020**, and should be submitted to David L. Davis at the address given below. Only those comments received within this period will be considered by the Board. Written comments shall include the name, address, and telephone number of the writer, and shall contain a complete, concise statement of the factual basis for comments. **CONTACT PERSON:** For additional information, contact: David L. Davis, Director, Office of Wetlands & Stream Protection - Department of Environmental Quality, P. O. Box 1105, Richmond, Virginia 23218, Phone (804) 698-4105, or e-mail vwppublicnotices@deq.virginia.gov.



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

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.

Please do not hesitate to contact Dave Davis (804) 698-4105 or 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