



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



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

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

CERTIFICATION NUMBER: 20-WQC-0029

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

EFFECTIVE DATE: July 1, 2020

EXPIRATION DATE: June 30, 2025

Project Location: Chesapeake Bay, nontidal waters of the United States, including nontidal wetlands in the Chesapeake Bay watershed within the State of Maryland. Excluded waters include the Coastal Bays in Worcester County, Maryland, and the waters located in the Ohio River drainage in Western Maryland. Additional excluded waters of Maryland include adjacent and contiguous jurisdictional wetlands to Back Creek (of the Chesapeake and Delaware Canal) east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the dam that crosses Herring Creek; and Long Branch to the Boat Yard Road Bridge to the north. All these areas above are excluded as they are located within the regulatory geographic boundary of the Corps Philadelphia District.

WATER QUALITY CERTIFICATION

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

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

Description of Certified Project:

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

Water Quality Certification Number: 20-WQC-0029

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

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

SPECIAL CONDITIONS

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

Water Quality Certification Number: 20-WQC-0029

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

GENERAL CONDITIONS

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

Water Quality Certification Number: 20-WQC-0029

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

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

COASTAL ZONE CONSISTENCY

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

CERTIFICATION APPROVED:

DATE:



7/10/2020

D. Lee Currey
Director
Water and Science Administration