



DEPARTMENT OF THE ARMY
U. S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT
ATTN: REGULATORY DIVISION
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201-2930

MDSPGP-7

Activity j(2)

Chesapeake Bay Total Maximum Daily Load (TMDL)/Municipal Separate Storm Sewer Systems (MS4) Activities:

The authorized Nontidal Stream and Wetland Restoration and Enhancement Activities Associated with an Acceptable TMDL/MS4 Watershed Strategy activities must comply with the following applicable activity specific conditions, all general conditions of this permit, and any project-specific special conditions.

This activity authorizes stream and wetland restoration and enhancement activities in nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters. The activity must be part of an acceptable TMDL/MS4 watershed strategy to reduce nutrients and sediment pollution and produces functional lift within the project site. This activity applies to the discharge of dredged or fill material, including attendant features both temporary and permanent, which will result in impacts to nontidal waters of the United States. (Section 404, limited to nontidal waters of the United States).

Activities authorized include, but are not limited to, the placement of in-stream structures for riffle-grade control, habitat structure placement, and/or modifications to the stream bed and/or banks to enhance, rehabilitate, or re-establish meanders. This activity does not authorize work in, over, or under navigable waters under Section 10 of the Rivers and Harbors Act of 1899 or nontidal wetlands adjacent to tidal waters.

Category A Impact Limits and Requirements:

- (i) The total permanent and temporary impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters, are not to exceed 0.5 acre including no more than 1,000 linear feet of streams, rivers, and other nontidal open waters.
- (ii) The discharge will not result in permanent loss or conversion of any type of waters of the United States, which includes wetlands, streams, rivers, and other nontidal open waters.
- (iii) No activities in designated Specific Designated Use Class Coldwater and Tier II streams are authorized under Category A. To avoid adverse effects to native aquatic species from increased water temperatures, Category B review is required for any work proposed in Coldwater streams (designated as Specific Designated Use Class, Use III and Use IV waters, and other cold-water resources identified in mapped waterways (COMAR 26.08.02.02; <https://maryland.maps.arcgis.com/apps/webappviewer/index.html?id=dc5100c0266d4ce89df813f34678944a>) or work proposed in Tier II watersheds (COMAR 26.08.02.04-1).

Category B Impact Limits and Requirements:

- (i) The total permanent impacts to nontidal waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters are not to exceed three (3) acres and/or 5,000 linear feet of nontidal streams, rivers, and other nontidal open waters.
- (ii) The total permanent loss or conversion must not exceed 10,000 square feet of waters of the United States, which includes nontidal wetlands, streams, rivers, and other nontidal open waters. Of this, no more than 200 linear feet of nontidal streams, rivers, open waters, or a combination thereof, may be permanently lost or converted.

Requirements Applicable to Both Category A and Category B Activities:

- (i) Application must be submitted to MDE for Corps authorization.
- (ii) For stream restoration projects: A copy of a completed current version of the MDE Stream Restoration Authorization Checklist;
- (iii) A statement that describes the acceptable TMDL/MS4 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 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;
- (iv) 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);
- (v) Stream degradation: Documentation that the existing (pre-construction) stream reach is in a degraded condition using a Corps approved Functional of Conditional Assessment Methodology (FCAM) or Benthic Index of Biologic Integrity (BIBI) Score in combination with geomorphic evidence of stream quality degradation. The applicant must also provide a rationale for stream site selection and the proposed design approach using applicable evidence, prioritization tools (i.e., excessive erosion as indicated by Bank Erosion Hazard Index/Bank Assessment for Non-Point Source Consequences of Sediment (BEHI/BANCS), impaired stream conditions and/or functions as documented by a FCAM), and literature. Corps approved stream and wetland functional assessments can be found here: <https://www.nab.usace.army.mil/Missions/Regulatory/Mitigation/>.
- (vi) Functional lift: Forecast functional stream lift by evaluating existing vs. projected lift as documented using a Corps-approved FCAM in combination with citing applicable research supporting the restoration approach if appropriate.

(vii) Riparian and wetland vegetation in the authorized project area shall be protected from unnecessary clearing and disturbance to the maximum extent practicable through:

- a. Minimization of project and impact footprint
- b. Designation of staging areas and access points in open, upland areas
- c. Fencing or other barriers demarking construction areas, and/or
- d. Use of alternative equipment (e.g., crane, portable bridges).

(viii) The project must be self-sustaining, meaning that a project must be designed in a way that does not require routine work to maintain the as-built integrity.

(ix) Within 30 days from the completion of the authorized work, all temporary impacts must be restored to preconstruction contours, elevations, and stabilized. Areas that require planting must be planted within the first growing season after completion of the project.

(x) Year 1 Post Construction Report: The permittee must electronically provide a post-construction report (PDF format preferred) to the Corps (nab-regulatory@usace.army.mil) by December 31 of project completion year. The post-construction report shall include:

- a. The Corps application tracking number and State permit number.
- b. Location of the completed work (latitude and longitude in decimal degrees).
- c. Dates during which the work occurred.
- d. A point of contact name and contact information (email and phone).
- e. A set of geo-referenced photographs that show the pre-construction and post-construction conditions of the project using consistent photo stations.
- f. A narrative describing how the project purpose and objectives were met.
- g. Surveyed as-built drawings, to scale, with control (latitude/longitude) depicting the final work including the restoration of the temporary impacts. As-built drawings must be completed within 90 days of completion of the work.

(xi) Three Year Monitoring Requirements: The permittee must electronically provide an annual monitoring report to the Corps (nab-regulatory@usace.army.mil) by December 31 of each respective year. (Note: Three-year post construction monitoring reports are in addition to Year 1 Post Construction Monitoring Requirements noted above. Monitoring requirements listed below apply to all three years, unless otherwise specified). The monitoring reports must include:

- a. The Corps application tracking number and State permit number.

- b. Location of the completed work (latitude and longitude in decimal degrees).
- c. Dates during which the work occurred.
- d. A point of contact name and contact information (email and phone).
- e. A set of geo-referenced photographs that show the pre-construction and post-construction conditions of the project using consistent photo stations.
- f. The permittee must demonstrate functional lift and stability by comparing pre-construction and post-construction functions and conditions using the same functional/conditional assessment methodology to determine degradation.
- g. Documentation of achievement of design objectives as compared to baseline values.
- h. Documentation of at least 85% coverage of the riparian vegetation, including volunteers. Of these, invasive species coverage may not exceed baseline (Year 3 only).
- i. Documentation of the re-establishment of impacted or relocated wetlands and streams (years 1 and 3 only).
- j. A delineation of wetlands and waterways for the project site to ensure that there has been no additional loss or conversion. If additional loss or conversion is determined, the applicant may need to provide compensatory mitigation (Year 3 only).
- k. A detailed description of any necessary corrective measures, including maintenance and repair, or alteration in any way, of the permitted work. (Note: permittees must notify the Corps of proposed corrective measures at least 15 days prior to performance of such corrective measures for review and approval. In addition, a summary of corrective measures must be included in the monitoring report for the respective year).
- l. The permittee must demonstrate functional lift and stability by comparing pre-construction and post-construction ecological functions and conditions using a Function/Conditional Assessment Method for three (3) years following construction completion.
- m. If monitoring shows that a project is not trending towards success in meeting project goals and objectives, monitoring may be extended on a case-by-case basis. Projects not meeting required functional lift and stability by year three may result in noncompliance or enforcement actions by the Corps, or compensatory mitigation requirements.