



**STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER AND SCIENCE ADMINISTRATION**



WATER QUALITY CERTIFICATION

Nationwide Permit Reissuance, SPN-20-62

CERTIFICATION NUMBER: 20-WQC-0050

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

U.S. Army Corps of Engineers, Philadelphia District
The Wanamaker Building, 100 Penn Square East
Philadelphia, PA 19107-3390

EFFECTIVE DATE: December 15, 2020

PROJECT LOCATION: State of Maryland

DESCRIPTION OF CERTIFIED PROJECT: The Proposed Nationwide Permits (NWP) are general permits issued on a nationwide basis to streamline the authorization of activities that result in discharges of dredged or fill material into Waters of the United States with no more than minimal individual and cumulative adverse environmental effects. Many of the Proposed NWPs require notification to the District Engineer before commencing those activities, to ensure that the activities authorized by those NWPs cause no more than minimal individual and cumulative adverse environmental effects.

On September 15, 2020, the U.S. Army Corps of Engineers (Corps) published in the Federal Register its proposal to reissue the 52 existing NWPs with modification and issue five new Nationwide Permits. On October 15, 2020, the U.S. Army Corps of Engineers, Baltimore and Philadelphia Districts, requested a Water Quality Certification (Certification) for the proposed NWPs, with specific regionally applicable conditions and proposed suspensions, and specifically excluded a Certification request for the proposed NWPs numbered 1, 2, 8, 9, 10, 11, 24, 28, 35, A, and B because they would authorize activities which, in the opinion of the Corps could not reasonably be expected to result in a discharge into Waters of the United States. MDE disagrees with the Corps assessment of NWPs 1, 2, 8, 9, 10, 11, 24, 28, 35, A, and B that in all project types the activities will not cause a discharge requiring certification as defined in Section 401 of the Federal Water Pollution Control Act and its Amendments. In the case of NWP 8, it only authorizes activities seaward of the territorial seas. The following proposed NWPs are proposed to be suspended in Maryland: 1, 2, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 21, 26 (reserved) 28, 29, 33, 34, 35, 36, 39, 40, 41, 42, 43, 44, 45, 46, 47 (reserved), 49, 50, 51, C, D, E. The following proposed NWPs are proposed to be partially suspended in Maryland: 3, 52. The following proposed NWPs will not be suspended in Maryland: 3 (partial) 4, 8, 17, 20, 22, 23, 24, 25, 27, 30, 31, 32, 37, 38, 48, 52 (partial) 53, 54, A, B with regional conditions. This Certification is issued for all NWPs, regardless of suspensions proposed.

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 REQUEST FOR CERTIFICATION FOR THE PROPOSED NATIONWIDE PERMITS PUBLISHED SEPTEMBER 15, 2020 WITH PROPOSED REGIONAL CONDITIONS SUBMITTED ON OCTOBER 15, 2020 (ATTACHMENTS 1, 2) WILL NOT VIOLATE MARYLAND’S WATER QUALITY STANDARDS, IF CONDUCTED IN ACCORDANCE WITH THE CONDITIONS OF THIS CERTIFICATION AND THE NWP PROPOSED REGIONAL PERMIT CONDITIONS AND NWP PROPOSED GENERAL PERMIT CONDITIONS.

This Water Quality Certification (Certification) is issued under authority of Section 401 of the Federal Water Pollution Control 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 Department) has determined from a review of the request application file that the project activities described in the above will not violate Maryland’s water quality standards, provided that the following conditions are satisfied. **This Certification is applicable to the terms of the Proposed Nationwide Permits with General and Regional Conditions and only applies if the Final Nationwide Permits and General and Regional Conditions that are issued are no less restrictive than the Proposed Nationwide Permits and General and Regional Conditions.** This Certification does not relieve any person conducting activities under this Certification and the Proposed Nationwide Permits with General Conditions and Regional Conditions (Certification Holder) from the responsibility to obtain any other approvals, licenses, or permits in accordance with federal, State, or local requirements.

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.

Statement of Necessity for Condition: The condition is necessary to ensure that water quality standards are met under unique circumstances for discharges which may otherwise qualify under the certified Nationwide Permits.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.23.02.06

2) The Certification Holder shall meet all performance standards and conditions required by the Department for activities in tidal wetlands, nontidal waterways, their 100-year floodplains, nontidal wetlands, nontidal wetland buffers, or nontidal wetland 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.

Statement of Necessity for Condition: The condition is necessary to ensure that water quality standards are met under unique circumstances for discharges which may otherwise qualify under certified Nationwide Permits and that designated uses of waters are maintained.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08.02.10E; COMAR 26.23.02.06

3) If the Department determines that State water quality standards or other appropriate 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 revise this Certification to include conditions appropriate to assure compliance with such standards, requirements, and laws.

Statement of Necessity for Condition: The condition is necessary to ensure that water quality standards are met under unique circumstances for discharges which may otherwise qualify under certified Nationwide permits and that designated uses of waters are maintained.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann.

Code, Env. Article, Title 1, Subtitles 3 & 4; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.23.02.06, COMAR 26.08, COMAR 26.08.02.10E

- 4) The Certification Holder of any Nationwide Permit, excluding Nationwide Permit 27, shall apply the following conditions to their project:
 - a) Activities which result in loss of stream bed or stream bank may not exceed 300 linear feet or ½ acre, whichever is less.
 - b) Compensatory mitigation shall be required for loss of stream bed or bank of 300 linear feet or greater or 1/10 acre, whichever is less.
 - c) Compensatory mitigation shall be required for losses at the ratio of 1:1 or its equivalent based upon a method of functional assessment approved by the Department and U.S. Army Corps of Engineers.
 - d) Activities which result in the loss of wetlands, including alteration of the plant community to a different vegetation type, e.g., forested to emergent wetland, shall provide compensatory mitigation at amounts required under COMAR 26.23.04 for nontidal wetlands, or COMAR 26.24.05 for tidal wetlands.
 - e) Temporary impacts to nontidal and tidal wetlands shall be restored to pre-existing contours and elevations and previous conditions with at least the same nontidal and tidal wetland acreage and equivalent function as indicated by a return to the same wetland type.

Statement of Necessity for Condition: The above conditions are required to ensure that waters continue to meet designated uses. Wetlands provide essential habitat, water quality, food, and movement corridors for wildlife. Losses exceeding these limits may result in discharges which interfere with designated uses, including growth and propagation of fish, other aquatic life, and wildlife through loss of stream channel habitat and wetlands. Required mitigation and loss limits will maintain the designated uses.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 & 4; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Code Ann., Env. Article, Title 9, Subtitle 3; Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08; COMAR 26.08.02.01B(2)(c); COMAR 26.08.02.02B(1)(d); COMAR 26.08.02.02B(2)(a); COMAR 26.08.02.02B(5); COMAR

26.08.02.02B(6)(a); COMAR 26.08.02.02B(7); COMAR 26.08.02.02B(8); COMAR 26.08.02.07 E (1)-(3); COMAR 26.23.02.06

Statement of Necessity for Condition: Discharges resulting in losses of forested wetlands over trout streams may result in increases in water temperature above criteria necessary to support trout. Forested wetland losses adjacent to trout waters shall be minimized for losses for which there is no practicable alternative, compensatory mitigation shall be provided. In addition, temperature increases from loss of shade may result in the lowering of dissolved oxygen in the water below criteria for trout streams.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.23.02.06; COMAR 26.08, COMAR 26.08.02.03-3D-G

Statement of Necessity for Condition: Wetland soils are often acidic and their disturbance may result in a failure to meet numeric standards for pH. Limits to losses and mitigation will maintain the designated uses.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08, COMAR 26.08.02.03-3A(4); COMAR 26.08.02.03-3B(1); COMAR 26.08.02.03-3C(4); 26.08.02.03-3C-1(1); COMAR 26.08.02.03-3D(4); COMAR 26.08.02.03-3E(2)(a); COMAR 26.08.02.03-3F(4); COMAR 26.08.02.03-3G(1); COMAR 26.23.02.06

Statement of Necessity for Condition:

May result in discharges which interfere with the designated use of public water supply through loss or alteration of natural channel and adjacent wetlands. Required mitigation and loss limits will maintain the designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08, COMAR 26.08.02.02B(2)(b); 26.08.02.02B(4)(b); 26.08.02.02B(6)(b); 26.08.02.02B(8)(b); COMAR 26.23.02.06

Statement of Necessity for Condition: Temporary disturbances of nontidal wetlands must be conducted in a specific manner to ensure that the area remains a nontidal wetland with at least the same extent and characteristics to maintain designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08; COMAR 26.08.02.03B(1)(b); COMAR 26.08.02.03.03B(2); COMAR 26.08.02.01B(2)(c); COMAR 26.08.02.02B(1)(d); COMAR 26.08.02.02B(2)(a); COMAR 26.08.02.02B(5); COMAR 26.08.02.02 B(6)(a); COMAR 26.08.02.02 B(7); COMAR 26.08.02.02B(8); COMAR 26.23.02.06

- 5) The Certification Holder of Nationwide Permits 12 Oil or Natural Gas Pipeline Activities, C Electric Utility Line and Telecommunications Activities, and D Utility Line Activities for Water and Other Substances shall apply the following conditions to their project:
- a) A Preconstruction Notification (PCN) is required when there is:
 - i) Greater than or equal to 0.1 acre of mechanized clearing in a forested nontidal wetland;
 - ii) A discharge in 500 linear feet or more of stream; or
 - iii) The utility line crosses interstate boundaries
 - b) Prevent sidecasting of excavated material into a Water of the United States. Excavated or other fill material shall be placed in a location and manner which does not adversely impact surface or subsurface water flow into or out of nontidal wetlands, tidal wetlands, or nontidal waterways;
 - c) Excavated material as backfill shall not be placed in the Water of the United States if it contains waste metal products, unsightly debris, toxic material, or any other deleterious substance. If additional backfill is required, use clean material free of waste metal products, unsightly debris, toxic material, or any other deleterious substance;
 - d) All stabilization in the nontidal wetland and nontidal wetland buffer shall consist of the following species: Annual Ryegrass (*Lolium multiflorum*), Millet (*Setaria italica*), Barley (*Hordeum sp.*), Oats (*Uniola sp.*), and/or Rye (*Secale cereale*). These species will allow for the stabilization of the site while also allowing for the voluntary revegetation of natural wetland species. Other non-persistent vegetation may be acceptable, but must be approved by the Maryland Department of Environment, Nontidal Wetlands Division. Kentucky 31 fescue shall not be utilized in wetland or buffer areas. The area should be seeded and mulched to reduce erosion after construction activities have been completed within accordance with 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; and

- e) Activities which result in the loss of wetlands, including alteration of the plant community to a different vegetation type, e.g., forested to emergent wetland, shall provide compensatory mitigation at amounts required under COMAR 26.23.04 for nontidal wetlands, or COMAR 26.24.05 for tidal wetlands.

Statement of Necessity for Condition:

Sidcasting of material within or adjacent to regulated resources may result in discharges that result in impacts to water quality and designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.23.02.06; COMAR 26.08, COMAR 26.08.02.10E(2), COMAR 26.08.02.02B(1)(d), COMAR 26.17.01, 26.17.01.07

Statement of Necessity for Condition: The above conditions are required to ensure that waters continue to meet designated uses. Wetlands provide essential habitat, water quality, food, and movement corridors for wildlife. Losses exceeding these limits may result in discharges which interfere with designated uses, including growth and propagation of fish, other aquatic life, and wildlife through loss of stream channel habitat. Required mitigation and loss limits will maintain the designated use.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.23.02.06; COMAR 26.08, COMAR 26.08.02.02B(1)(d); COMAR 26.08.02.03.03B(2); COMAR 26.08.02.01B(2)(c); COMAR 26.08.02.02B(1)(d); COMAR 26.08.02.02B(2)(a); COMAR 26.08 .02.02B(5); COMAR 26.08.02.02 B(6)(a); COMAR 26.08.02.02 B(7); COMAR 26.08.02.02B(8); COMAR 26.23.04; COMAR 26.24.05

Statement of Necessity for Condition: Discharges of toxic materials in toxic amounts violate water quality standards.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitle 3 & 4, Md. Ann. Code, Env. Article, Title 9, Md. Ann. Code Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code Env. Article, Title 16; COMAR 26.08,

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COMAR 26.08.02.03A(1)(a)(i); COMAR 26.08.02.03A(1)(b)(i); COMAR 26.23.02.06;
COMAR 26.23; COMAR 26.24; COMAR 26.17.04

- 6) The Certification Holder of Nationwide Permits 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities shall comply with the following conditions:
- a) Habitat improvement projects in areas meeting the definition of nontidal wetlands having significant plant or wildlife value under COMAR 26.23.01B(80) must maintain or improve the qualifying significant habitat value of these areas;
 - b) Forested wetland conversion to another wetland type, excluding loblolly pine plantations and areas having significant plant or wildlife value which do not require a predominantly forested community shall be limited to ½ acre; and
 - c) The Certification Holder has documented sufficiently that sediment released by overtopping a dam will result in a net ecological gain. Testing of sediment size, distribution and potential pollutants based on past upstream land uses and discharges shall be conducted to the satisfaction of the Department, as required.

Statement of Necessity for Condition: Aquatic life and wildlife often requires specific habitat. Conversion of plant communities and alteration of flow and circulation of waters may result in failure to meet the designated use of that water, including wetlands. The discharge may result in loss of forested wetlands providing shade to maintain temperature criteria for trout.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08, COMAR 26.08.02.03B; COMAR 26.08.02.03-3F(3); COMAR 26.08.02.03-E(2); COMAR 26.08.02.03-D(3); COMAR 26.08.02.04-1; COMAR 26.23.02.06

- 7) The Certification Holder conducting activities under NWP 43 Stormwater Management Facilities shall ensure that discharges from the constructed facility do not:

- (a) Violate water quality standards; and
- (b) Result in erosive flows downstream.

Statement of Necessity for Condition: Construction of stormwater facilities in waters of the United States typically result in alteration of existing waters and are designed to receive pollutants. Discharges from the facility may contribute additional concentrated pollutants, heated waters, and erosion to downstream waters without proper design of the facility. Effects may result in waters failing to meet designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitle 3 and 4; Md. Ann. Code, Md. Ann. Code Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; COMAR 26.23.02.06; COMAR 26.23; COMAR 26.17; COMAR 26.08.02.03B

8) The Certification Holder of Nationwide Permit 48 Commercial Shellfish Mariculture Activities shall comply with the following conditions:

- a) Submit a Pre-Construction Notification;
- b) Losses of submerged aquatic vegetation (SAV) shall be limited to ½ acre, unless documentation is provided to the Department's satisfaction that the shellfish mariculture activities will result in a net ecological gain and not violate applicable water quality standards; and
- c) Other conditions of Nationwide Permits A and B

Statement of Necessity for Condition: SAV are a critical habitat for many aquatic species. Limitations on loss will sustain habitat for a variety of aquatic species, including anadromous fish and threatened or endangered species. Water quality regulations contain minimum thresholds for SAV in tidal waterways. In addition, direct loss and turbidity created by construction or ongoing operation must be limited to continue to provide for the support of aquatic life as a designated use and meet water quality standards.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.24; COMAR 26.08, COMAR 26.08.02.02B(1)(d); COMAR 26.23.02.03C(9)(c); COMAR 26.23.02.03C(9)(a) -(b); COMAR 26.24; COMAR .08.02.14; COMAR .08.02

Statement of Necessity for Condition: Discharges may result in increases in turbidity which may violate water quality standards for clarity needed to support SAV designated uses and designated uses for aquatic life.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.24; COMAR 26.08, COMAR 26.08.02.03-3C(5); COMAR 26.08.02.03-3C(9)

Statement of Necessity for Condition: Unmitigated loss of SAV may result in failure to meet SAV extents which are part of water quality standards, as well as designated use class for support of estuarine and marine aquatic life and shellfish harvesting.

Statement of Necessity for Condition: Structures to contain finfish may result in concentrated discharges of feed and animal waste which violate water quality standards. Structures may

also interfere with growth and propagation of fish, other aquatic life, and wildlife as a designated use.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.24; COMAR 26.08.02.03-3C(9)(c); COMAR 26.08.02.02-1D

- 9) The Certification Holder conducting activities under NWP 53 Removal of Lowhead Dams shall:
- a) Submit with the PCN descriptions of the following:
 - (i) Existing condition of the impoundment and structure; anticipated particle size distribution and potential pollutants based on past upstream land uses and discharges, which may have accumulated within the impounded area;
 - ii) Methods and schedule proposed to remove structure and restore flow; stabilize and restore the site of the structure and the impoundment area; and
 - iii) Documentation that the Certification Holder has consulted with the Department to determine if a sediment sampling and testing work plan is necessary;
 - b) If the Department has determined that sampling and testing of sediment is required the Certification Holder shall:
 - i) Submit a sediment sampling plan to the Department for review and approval prior to commencing work; and
 - ii) Implement the sediment sampling plan approved by the Department and submit the sampling results to the Department for review;
 - c) Based on the sampling results, the Department may require the Certification Holder to submit an additional implementation and monitoring plan for review and approval that includes at a minimum:
 - i) Monitoring of the site of the impoundment and downstream areas during and post-removal of the lowhead dam; and
 - ii) Additional sediment and or water quality testing, a sediment removal plan, or other measures deemed necessary by the Department to meet water quality standards; and
 - d) The Certification Holder shall implement the approved plan in Condition #9(c) as approved and required by the Department.

Statement of Necessity for Condition: Removal of material or other remediation may be required prior to removal of dam for anticipated resulting discharges in toxic amounts which may have an acute or chronic effect on designated uses and failure to meet water quality standards and meet designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.08, COMAR 26.08.02.03-3 A(5), 26.08.02.03-3B(1); 26.08.02.03-3D(5); COMAR 26.08.02.03-3E(2); COMAR 26.08.02.03-3F(5); COMAR 26.08.02.02B(1); COMAR 26.08.02.03-3G(1); COMAR 26.08.02.03B(1)(b); COMAR 26.08.02.03B(2)(e); COMAR 26.08.02.02B(4); COMAR 26.08.02.03B(2); COMAR 26.08.02.03-3C(7); COMAR 26.08.02.03B(5); COMAR 26.08.02.03A(1); COMAR 26.23.02.06

10) The Certification Holder conducting activities under Nationwide Permits A Seaweed Mariculture Activities and B Finfish Mariculture Activities shall comply with the following conditions:

- a) Submit a Pre-Construction Notification;
- b) Losses of submerged aquatic vegetation (SAV) shall be limited to ½ acre, unless documentation is provided to Department satisfaction that the mariculture activities will result in a net ecological gain and not violate applicable water quality standards;
- c) Structures and activities may not interfere with movement of aquatic life, fish, and other wildlife not confined within the mariculture facility area of disturbance or mariculture activity;
- d) Non-native species may not be introduced with adverse effect on the aquatic ecosystem;
- e) Structures shall be designed and placed to avoid entanglement of other fish, aquatic life, and wildlife;
- f) Volume of fish, feed, and waste shall be managed to prevent violation of water quality standards; and
- g) Mariculture Activities under Nationwide Permits A or B, when combined with Nationwide Permit 48 Commercial Shellfish Mariculture Activities, or as a multi-trophic mariculture system, including shellfish mariculture, shall comply with all conditions under Nationwide Permit 48.

Statement of Necessity for Conditions

Structures to contain finfish may result in concentrated discharges of feed and animal waste which violate water quality standards. Structures may also interfere with growth and propagation of fish, other aquatic life, and wildlife as a designated use. Loss of SAV beyond these limits may violate water quality standards and goals for SAV support as a designated use.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.24; COMAR 26.08, COMAR 26.08.02.02B(1)(d); COMAR 26.23.02.03C(9)(c); COMAR 26.23.02.03C(9)(a)-(b); COMAR 26.24; COMAR .08.02.14; COMAR .08.02

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.

Statement of Necessity for Condition: Sidecasting of material within or adjacent to regulated resources or other earth disturbance may result in discharges that result in impacts to water quality, clarity, growth and propagation of fish, other aquatic life, wildlife, potable water; and other designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10E; COMAR 26.08.02.02B(1); 26.08.02.03B(1)(b); 26.08.02.03B(2)(e); COMAR 26.17.01; COMAR 26.23.02.06; COMAR 26.23; COMAR 26.24

2) The disturbance of the bottom of the water and sediment transport into adjacent State waters shall be minimized.

Statement of Necessity for Condition: Sidecasting of material or other earth disturbance within or adjacent to regulated resources may result in discharges that result in impacts to water quality and designated uses, including growth and propagation of fish, other aquatic life, and wildlife.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5,

Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10E; COMAR 26.08.02.02B(1); 26.08.02.03B(1)(b); 26.08.02.03B(2)(e); COMAR 26.23.02.06

- 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:

Use I – March 1 through June 15, inclusive of any year. The instream prohibition shall be from March 1- June 30, inclusive, when short nose sturgeon may be present,

Use II – February 1 through May 31, inclusive of any year. The instream prohibition shall be from February 1- June 30 inclusive, when short nose sturgeon may be present,

Use III – October 30 through April 30, inclusive of any year,

Use IV – March 1 through May 31, inclusive of any year

Statement of Necessity for Condition: Restrictions on instream construction are necessary to protect designated uses for propagation and growth of fish, other aquatic life, and wildlife.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.03.03B(1)(b); 26.08.02.03.03B(2); COMAR 26.23.02.06

- 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;

Statement of Necessity for Condition: Movement of aquatic life and passage of flows is essential for growth and propagation of aquatic life, fish, and other wildlife to meet these designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10E; COMAR 26.08.02.02B(1); 26.08.02.03B(1)(b); 26.08.02.03B(2)(e); COMAR 26.17.01; COMAR 26.23.02.06; COMAR 26.23; COMAR 26.24; COMAR 26.17.04

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- 5) Stream crossings shall be designed and implemented to meet, at a minimum, the following performance criteria:
- a) Structure shall span the bank full wetted width and have additional headroom to provide semi-aquatic and terrestrial wildlife passage for species capable of movement through the pre-disturbance channel;
 - b) If a bridge is not feasible due to site constraints, then culvert bottoms, including footers, shall be embedded below the streambed a minimum of 2 feet and shall be embedded below the vertical adjustment potential of the streambed. Pipe culverts should be embedded at least 25%, or 2 feet, whichever is less;
 - c) Water velocity and depth within the crossing structure shall match those observed at reference conditions within the stream under a variety of flows. Low-flow conditions may not result in reduced fish passage within the culvert, compared to upstream and downstream conditions;
 - d) Substrate shall be placed within the structure, including both fine and coarse substrate, and should match the natural substrate found upstream and downstream of the crossing during normal flow conditions. Bank and other key bed structural elements and characteristics should be resilient to high-flow events and may require additional channel manipulation upstream and downstream of the structure (e.g., stream restoration, stabilization, etc.). Scour protection may not result in reduced fish passage and shall be avoided where possible; and
 - e) Culverts shall be aligned with the natural stream channel and skew should be minimized, not exceeding 30 degrees. The structure gradient shall be no steeper than the streambed gradient at either end of the crossing and should match the overall streambed gradient based on reference reach conditions. The culvert shall be designed and installed to retain transport rock and sediment to mimic natural bed conditions. When possible, crossing structures should be located at a pool feature.

Statement of Necessity for Condition: Movement of aquatic life and passage of flows is essential for growth and propagation of aquatic life, fish, and other wildlife to meet these designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10E; COMAR 26.08.02.02B(1); 26.08.02.03B(1)(b); 26.08.02.03B(2)(e); COMAR 26.17.01; COMAR 26.23.02.06; COMAR 26.23; COMAR 26.24; COMAR 26.17.04:

- 6) 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.

Statement of Necessity for Condition: The condition is necessary to ensure that water quality standards are met under unique circumstances for discharges which may otherwise qualify under the certified Nationwide Permits and to maintain designated uses of waters.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.23.02.06; COMAR 26.17.01; COMAR 26.23; COMAR 26.24

- 7) This Certification does not obviate the need to obtain required authorizations or approvals from other State, federal or local agencies as required by law.

Statement of Necessity for Condition: The condition is necessary to ensure that water quality standards are met under unique circumstances for discharges which may otherwise qualify under the certified Nationwide Permits and to maintain designated uses of waters.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.08.02.06; COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.23.02.06

- 8) The proposed project shall be constructed in accordance with the approved final plan by the Department, or, if Department approval is not required, the plan approved by the ACOE; and its approved revisions.

Statement of Necessity for Condition: The condition is necessary to ensure that water quality standards are met and designated uses are maintained under unique circumstances for discharges which may otherwise qualify under the certified Nationwide Permits and to maintain designated uses of waters.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.08.02.02B(1); 26.08.02.03B(1)(b); 26.08.02.03B(2)(e); COMAR 26.23.02.06; COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.23.02.06

- 9) 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.

Statement of Necessity for Condition: Fill and construction material within or adjacent to regulated resources may result in discharges that result in impacts to water quality and designated uses. The condition is necessary to ensure that water quality standards are met under unique circumstances for discharges which may otherwise qualify under the certified Nationwide Permits, including growth and propagation of fish, other aquatic life, and wildlife, and meets water quality standards for turbidity.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.08.02.03.03B(1)(b); COMAR 26.08.02.03.03B(2); COMAR 26.08.02.03-3 A(5); COMAR 26.08.02.03-3B(1); COMAR 26.08.02.03-3D(5); COMAR 26.08.02.03-3E(2); COMAR 26.08.02.03-3F(5); COMAR 26.08.02.03-3G(1); COMAR 26.08.02.02B(1); COMAR 26.08.02.03B(1)(b); COMAR 26.08.02.03B(2)(e); COMAR 26.08.02.03-3C(5); COMAR 26.08.02.03-3A(5); COMAR 26.23.02.06; COMAR 26.17.04; COMAR 26.23; COMAR 26.24

Statement of Necessity for Condition: Material within or adjacent to regulated resources may result in discharges that result in impacts to water quality and designated uses.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.02B(1); 26.08.02.03B(1)(b); 26.08.02.03B(2)(e); COMAR 26.23.02.06; COMAR 27.17.04; COMAR 26.23; COMAR 26.24

- 10) 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.

Statement of Necessity for Condition: The condition is necessary to clarify the scope of this certification to ensure compliance with water quality regulations, without limiting restrictions through other requirements.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08, COMAR 26.08.02.10E; COMAR 26.23.02.06; COMAR 26.17.04; COMAR 26.23; COMAR 26.24

11) 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.

Statement of Necessity for Condition: Conditions of certification involve precise actions to comply with water quality standards. Site inspection may be necessary to ensure that limits, methods, and other requirements are met to ensure that water quality standards are met and designated uses are maintained.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.23.02.06; COMAR 26.23; COMAR 26.24; COMAR 26.17.04

12) This Certification is valid for the NWP's identified herein until such time that the NWP's expire and are not administratively extended.

Statement of Necessity for Condition: This condition is necessary to qualify the period of applicability of the terms and conditions of this Certification and Coastal Zone Consistency Determination to be protective of Maryland water quality standards.

Citations: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; 40 C.F.R. 121, 15 C.F.R. 930, Md. Ann. Code, Env. Article, Title 1, Subtitles 3 and 4; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.23.02.06; COMAR 26.23; COMAR 26.24; COMAR 26.17.04

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.

CERTIFICATION APPROVED:

DATE:



December 15, 2020

D. Lee Currey
Director
Water and Science Administration

Attachments (1 & 2)