



Public Notice

U.S. Army Corps
of Engineers
Baltimore District
SPN-21-39

In Reply to Application Number
NAB-2020-00415 (Maryland State Programmatic General Permit-6)

Date: September 30, 2021

THE PURPOSE OF THIS PUBLIC NOTICE IS TO INFORM THE PUBLIC THAT THE U.S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT HAS ISSUED THE MARYLAND STATE PROGRAMMATIC GENERAL PERMIT-6 (MDSPGP-6) FOR A FIVE-YEAR PERIOD.

SUBJECT: The U.S. Army Corps of Engineers, Baltimore District, has issued the Maryland State Programmatic General Permit-6 (MDSPGP-6) for a five-year period. The MDSPGP-6 will be implemented and in full effect in the applicable portions of the State of Maryland on October 1, 2021. The MDSPGP-6 will expire on September 30, 2026, unless a decision is made to suspend or revoke it by or before that date. A copy of the MDSPGP-6 is attached and can be viewed on our web page at:

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

On November 23, 2020, the Corps issued Special Public Notice #20-66 requesting comments on whether to issue the MDSPGP-6 for a 5-year period. Following a thorough review of all comments received in response to the Special Public Notice, the Corps has decided to issue the MDSPGP-6.

In accordance with 33 CFR 325.5(c), MDSPGP-6 authorizes various proposed activities described herein, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and/or Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344).

LOCATION OF AUTHORIZED ACTIVITIES: This MDSPGP-6 applies to activities in waters of the United States, including wetlands and navigable waters, within the State of Maryland.

EXCLUDED WATERS: 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, including adjacent and contiguous jurisdictional wetlands to these tidal waterways (<https://www.nab.usace.army.mil/Portals/63/Chesapeake%20Delaware%20Canal%20NAP.pdf>)

PURPOSE: The MDSPGP-6 provides 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 satisfy other public interest review factors. The MDSPGP-6 has been developed in cooperation with the Maryland Department of the Environment (MDE), which has regulatory authority over waters of the State of Maryland. Programmatic general permits are authorized for a five-year period at which time they must be re-evaluated for their impacts on the aquatic environment.

All activities that have received written project-specific verification under the MDSPGP-5, that have commenced or are under contract to commence the authorized work by September 30, 2021, have until September 30, 2022 (12 months from the expiration date of the MDSPGP-5) to complete the work under the terms and conditions of the MDSPGP-5.

For expired permits, please see Reauthorization Procedure under Notable Modifications below.

NOTABLE MODIFICATIONS TO THE MDSPGP-6: Below is a list of some of the notable changes from the Maryland State Programmatic General Permit-5 (MDSPGP-5) to the MDSPGP-6:

Revisions to Existing Activities and Conditions:

- I. ***Editorial Revisions:*** Certain activity specific conditions were relocated into general conditions due to their applicability across multiple activities. Also, repetitive language throughout the document was removed where appropriate for clarification and redundancy. To streamline the MDSPGP-6, language discussing internal processes between agencies has been deleted.
- II. ***Category B Eligibility Thresholds:*** For most activities, the Category B eligibility threshold will now be based on loss of waters of the United States only, not total permanent and temporary impacts. To be eligible for Category B authorization under the MDSPGP-6, the single and complete project will result in no more than 0.5 acre of loss of tidal and nontidal waters of the United States, to include stream channel, wetlands, and open waters and the loss of stream channel may not exceed 1,000 linear feet.
- III. ***Single and Complete Project Definition:*** Revised to maintain consistency with the Nationwide Permit definitions, which now includes definitions for linear and non-linear single and complete projects that will be used for eligibility thresholds.
- IV. ***Activity a(3) Piers:*** Individual floating piers will now be authorized under Category A, as long as no floating piers or auxiliary pier platforms are in areas of mapped submerged aquatic vegetation (SAV) present or documented to exist in the last five years as specified in Section III of the MDSPGP-6.
- V. ***Activity a(6) Mooring Buoys:*** For Category A activities, a special condition was added that no mooring buoy(s) will be placed in, or within 25 feet of, areas mapped by the Virginia Institute of Marine Science to contain SAV, as documented to exist in the last five years of verified data.
- VI. ***Activity a(10) New Tidal Dredging:*** Category B activities no longer require that all dredge material be discharged into an upland site. Dredged material may be discharged at an approved upland disposal site or at an approved beneficial re-use site, provided the Corps finds the dredged material to be suitable for such disposal. The discharge of dredged material for beneficial re-use must be authorized under MDSPGP-6 Category B Activity f(2) Living Shorelines/Beach Nourishment or alternative Corps permit review process as appropriate.
- VII. ***Activity b(1) General Maintenance:*** General maintenance activities where more than 1 permanent culvert is proposed to be installed at a single location (side by side) within a perennial non-tidal stream channel are not authorized under Category A and must be reviewed on a project-specific basis under a Category B or an alternate Corps permit review process. For Category B activities, the impact threshold was removed.

- VIII. **Activity b(4) Maintenance of Tidal Roadside Ditches:** For Category B activities, there will be no limit on maintenance dredging as long as the proposed dredge area does not exceed the dredging depths and footprint that was previously authorized.
- IX. **Activity b(5) Maintenance of Mosquito Control Ditches:** For Category B activities, the single and complete project will result in no more than a total 0.5 acre loss of tidal waters of the United States, to include stream channel, wetlands, and open waters and the loss of stream channel may not exceed 1,000 linear feet.
- X. **Activity c(1) Utility Lines:** For Category B activities, this activity does not authorize any losses of waters of the United States. There is no limit on temporary impacts; however, temporary impacts must be avoided and minimized to the maximum extent practicable.
- XI. **Activity c(2) Foundations for Overhead Utility Lines Towers, Poles, Anchors, and Minor Attendant Features for Subsurface Utility Lines:** The title for this activity was modified to include minor attendant features for subsurface utility lines. Minor attendant features for subsurface utility lines must be necessary for the use and maintenance of the utility line and include manholes, fire hydrants, valves, and other minor fixtures.
- XII. **Activity f(2) Living Shorelines/Beach Nourishment:** The name of the activity was updated to become Living Shorelines/Beach Nourishment. The Category A activity does not allow for impacts to SAV and the total amount of vegetated wetlands which may be filled, graded, or excavated, in square feet, may not exceed 1 square foot per linear foot of the activity along the shoreline. For Category B activities there is no specific limit on SAV impact, however, impacts to SAV must be avoided and minimized to the maximum extent practicable. Under Category B, impacts to tidal waters is limited to 0.5 acre loss, but there can be no net loss of wetlands. Further, Category B now allows for the beneficial reuse of dredged material. The dredged material must be equal to or larger in grain size and character than the existing beach material, or determined otherwise to be compatible with existing site conditions acceptable to the Corps. The dredged material may not contain more than 10 percent silts and clays, or control measures such as breakwaters, groins or similar structures should be used to control movement. If activity requires beneficial reuse of dredge material, see General Condition 39.

New Activity:

Activity e(11), Aquatic Habitat Restoration, Enhancement, and Establishment Activities Associated with Compensatory Mitigation Requirements for Aquatic Resource Impacts Authorized under the MDSPGP-6: This activity authorizes discharges of dredged or fill material in waters of the United States and work in navigable waters of the United States associated with the restoration, enhancement, and establishment of non-tidal and tidal wetlands and riparian areas, including invasive, non-native or nuisance species control; the restoration and enhancement of non-tidal streams and other non-tidal open waters; and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic resource functions and services. The authorized activities must be designed and constructed to satisfy a State of Maryland or federal compensatory mitigation requirement for activities eligible for authorization under this Maryland State Programmatic General Permit-6. (Sections 10 and/or 404; all waters of the United States).

Category A: This activity authorizes compensatory mitigation activities required to offset unavoidable permanent impacts to waters and wetlands under a Category A MDSPGP-6 authorization.

Category B: This activity authorizes compensatory mitigation activities required by the Corps and/or MDE to offset permanent impacts to waters and wetlands losses eligible for Category B MDSPGP-6 project authorizations or compensatory mitigation activities required under a MDSPGP-6 authorization that are not eligible for Category A impact limits and requirements above.

New Project Criteria Requiring Category B Review

- I. A project that involves temporary fill in place greater than one year, does not meet culvert countersinking general condition requirements, or involves more than one (1) permanent culvert is proposed to be installed at a single location (side by side) within a perennial non-tidal stream channel (See General Condition 31. Removal of Temporary Fill Structures and Mats and 34. Countersinking Pipes and Culverts).
- II. A project that includes proposed work located in an area encumbered by an existing site protection instrument such as a conservation easement, deed restriction, or declaration of restrictive covenants required as a condition of a prior Corps, MDE, or EPA authorization.

Revisions to General Conditions:

- I. ***New General Condition for Critical Habitat:*** The new condition states: Any work proposed in designated or proposed critical habitat requires a case-by-case Category B review by the Corps. Current designated Critical Habitat within the State of Maryland includes:
 - a. **Potomac River** from the mouth of the Chesapeake Bay to the Little Falls Dam, including Breton Bay and St. Clements Bay;
 - b. **Nanticoke River** from the mouth of the Chesapeake Bay to the Route 313 bridge; and
 - c. **Marshyhope Creek** from the confluence with the Nanticoke River to the Route 318 bridge.
- II. ***New General Condition for Designated Critical Resource Waters:*** The new condition states: Any activity proposed in the designated National Estuarine Research Reserves, including wetlands adjacent to those waters must be reviewed by the Corps under a MDSPGP-6 Category B activity or other Department of the Army permit. The designated National Estuarine Research Reserves in Maryland are:
 - a. Jug Bay
 - b. Otter Point Creek
 - c. Monie Bay
- III. ***Revised Mitigation Standards General Condition:*** The general condition now outlines mitigation requirements for projects that result in the conversion of aquatic resources. Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland in a permanently maintained utility line right-of-way, mitigation may be required

to reduce the adverse environmental effects of the activity to the no more than minimal level.

- IV. **Revised Removal of Temporary Fill and Mats General Condition:** Renamed to “Removal of Temporary Fill, Structures, and Mats” now includes a condition that states: When temporary fills in waters of the United States will not be removed within the 12-month period, an application must be submitted, and the activity reviewed by the Corps under a Category B or alternate permit review process. Compensatory mitigation may be required to offset any adverse temporal effects. Additional conditions for the removal of temporary fill, structures, and mats were added to this general condition.
- V. **New General Condition for Depressing Pipes and Culverts:** The new general condition outlines conditions for culverted crossings of intermittent and perennial waterbodies, to include the following: Countersinking Pipes and Culverts, Hydraulic opening, pipes and culverts on bedrock or above existing buried utility lines or pipes, extensions of existing pipes and culverts, and when Category B review is required.
- VI. **Revised Water Crossings General Condition:** Category B review is now required for any new culvert installation or culvert replacement where more than one (1) permanent culvert is proposed to be installed at a single location (side by side) within a perennial non-tidal stream channel. (Please note that this condition does not apply to intermittent or ephemeral stream channels, temporary crossings, tidal crossings, or culverts installed in the floodplain). Please note that a single culvert may not be placed in each stream braid within the same channel under CAT A.
- VII. **New General Condition for Anadromous Fish Time-of-Year Restrictions:** Consolidated activity specific conditions to create new General Condition that states: This condition applies to activities b(1), b(2), b(4), b(5), b(6), c(1), c(2), c(3), e(1), e(5), e(7), e(9), and f(4): To ensure that activities do not impact spawning habitat or a migratory pathway for anadromous fish, all in-water work is prohibited during February 15 to June 15 each year to protect sensitive life states of anadromous fish in all tidal and nontidal coastal plain streams within the State of Maryland, and all piedmont streams in Harford and Cecil Counties, Maryland, unless specifically waived by the Corps in consultation with the National Marine Fisheries Service – Habitat and Ecosystem Services Division. (See <https://gisapps.dnr.state.md.us/coastalatlus/WAB2/index.html>) If compliance with this time of year restriction is not practicable, the applicant must request a waiver for this time of year restriction by submitting an application to MDE for Corps authorization under a Category B in coordination with the National Marine Fisheries Service – Habitat and Ecosystem Services Division. The application must include written supporting information, including all options considered, demonstrating that this condition cannot be practicably met.
- VIII. **New General Condition for Beneficial Reuse of Dredged Material:** The new condition states: Applicant must identify the intent to use dredge material for fill activities within waters of the United States at the proposed placement site. Applicants must provide the exact location and quantities of dredge material placement within waters of the United States to the Corps and MDE. Material testing is required at the dredging and placement sites prior to placement and must comply with the Evaluation of Dredged Material Proposed for Discharge in waters of the United States-Testing Manual: Inland Testing Manual https://www.epa.gov/sites/production/files/2015-08/documents/inland_testing_manual_0.pdf. At minimum, Tier 1 testing as outlined in Section 3.1 must be applied for all projects proposing beneficial reuse of dredge

material within waters of the United States. Any temporary storage of dredge material must be placed in uplands in accordance with federal, state, and local regulations.

- IX. ***New General Condition for Poured Concrete into Forms:*** The new condition states: Activities that involve the discharge of poured concrete must be contained within cells or watertight forms until the concrete is set.

Definitions: The following terms were defined and/or re-defined for clarity:

Breakwater, Discharge of Fill Material, Enhancement, Indirect Impacts, Linear Projects, Loss of Waters of the United States, Navigable Waters of the United States, Nontidal Wetland, Open Water, Perennial Stream, Permanent Conversion, Permanent Impacts, Personal Watercraft, Previously Authorized, Single and Complete Project, Single and Complete Projects (Non-Linear Projects), Submerged Aquatic Vegetation, Temporary Impacts, and Waters of the United States and Navigable Waters of the United States.

Reauthorization Procedure: The reauthorization procedure was modified as described below.

Category A: No written re-authorization is required for previously verified Category A MDSPGP permits as long as the proposed project meets the MDSPGP-6 terms and conditions AND impacts to jurisdictional aquatic resources have not changed. If the project no longer meets the Category A terms and conditions of MDSPGP-6 OR exceeds established MDSPGP-6 thresholds, authorization under an alternative permit will be required.

Category B: Written re-authorization is required for previously verified Category B MDSPGP permits. If the project no longer meets the Category B terms and conditions of MDSPGP-6 OR exceeds established MDSPGP-6 thresholds, authorization under an alternative permit will be required.

*Note that this requirement applies to projects that have a valid State authorization that has not expired.

The MDSPGP-6 does not authorize any activity that might directly or indirectly affect a threatened or endangered species or a species proposed for such designation, as identified under the federal ESA. In accordance with General Condition 11 of the MDSPGP-6, applicants may conduct a review for ESA resources, including FWS and/or NMFS species and critical habitat, utilizing the appropriate website(s) provided below:

Information on threatened and endangered species and their critical habitat can be obtained from the offices of the FWS and NMFS or their web pages at:

FWS: <https://ecos.fws.gov/ipac/>

NMFS: <https://www.greateratlantic.fisheries.noaa.gov/protected/section7/guidance/maps/index.html>

Enforcement Procedure: The Corps will no longer receive all enforcement cases. Only violations that exceed Category A thresholds will need to be sent to the Corps for Category B review. NOTE: The Corps has discretion to request any Category A after-the-fact permit applications.

EVALUATION REQUIREMENTS:

Maryland's Tidal Wetlands Protection Act, Nontidal Wetlands Protection Act, Nontidal Wetlands Protection Act, and Waterway Construction Act establish a statewide permit program for

protecting Maryland's aquatic resources. Maryland's procedures for the granting of permits and licenses require MDE to apply evaluation criteria consisting of alternatives analyses (for non-water dependent activities), avoidance techniques, the minimization of impacts, and if a permit is to be granted, compensatory mitigation. The evaluative criteria within Maryland's programs are similar to Federal criteria under Section 404(b)(1) of the Federal Clean Water Act. The Baltimore District Engineer will continue to evaluate the MDSPGP-4 process, to determine if activities have been authorized in accordance with the requirements of the MDSPGP-4 and in compliance with Federal Regulations.

The MDSPGP-6 will protect the aquatic resources of the State of Maryland within the Baltimore District of the U.S. Army Corps of Engineers' regulatory geographic boundaries and jurisdictional authorities; will reduce the administrative burden of the program for both the Corps of Engineers and the State of Maryland through interagency cooperation; will improve the regulatory response time; and will add predictability within specified limits to the permit program for the potential applicant and general public.

The decision to reissue the MDSPGP-5 as the MDSPGP-6 with the above modifications, was made after a thorough evaluation of the probable impacts including cumulative impacts of the proposed MDSPGP-6 on the public interest. This decision reflects the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal was balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal were considered including the cumulative effects thereof; among those were conservation, economics, aesthetics, general environmental concerns, wetlands, cultural resources, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, and, in general, the needs and welfare of the people.

Since the MDSPGP-6 is duplicative of some Nationwide Permits (NWP) and offers a more simplified and streamlined regulatory process, those NWP that are duplicated in the MDSPGP-6 are suspended in Baltimore District. Please see the following link:

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

Water Quality Certification (WQC) is required in accordance with Section 401 of the Clean Water Act from the Maryland Department of the Environment for any activity that would be authorized by MDSPGP-6 and involves the discharge of dredged and/or fill material into waters of the United States, including wetlands. The State's Clean Water Act, Section 401 Water Quality Certification decision on the proposed Maryland State Programmatic General Permit-6 (MDSPGP-6) was issued by the MDE on March 24, 2021. The WQC will be applicable to all authorizations under the MDSPGP-6.

The State's Coastal Zone Management Act (CZMA), Section 307 Federal Consistency on the proposed Maryland State Programmatic General Permit-5 (MDSPGP-6) was issued by the MDE on March 24, 2021. The CZMA will be applicable to all authorizations under the MDSPGP-6.

State and local authorizations may be required for the MDSPGP-6 to be valid.

The MDSPGP-6 processing procedures and conditions ensure compliance with Section 106 of the National Historic Preservation Act. The MDSPGP-6 is conditioned to ensure that on a case-by-case basis, cultural resources listed in the latest published version of the National Register of Historic Places or properties listed as eligible or potentially eligible for inclusion therein, will be given the consideration required by Section 106 of the National Historic Preservation Act.

The applicant will notify the Corps if the activity may affect any historic properties listed or eligible for listing, or that the applicant has reason to believe may be eligible for listing on the National Register of Historic Places.

The MDSPGP-6 processing procedures and conditions ensure compliance with Executive Order 13175, through coordination with Tribal Nations. Such coordination shall be performed in accordance with the applicable District's tribal coordination procedures.

The Baltimore District has determined, in consultation with National Marine Fisheries Service (NMFS) that activities authorized under the MDSPGP-6 may affect but are not likely to adversely affect Federally-listed Threatened and Endangered Species. The MDSPGP-6 processing procedures and conditions ensure compliance with Section 7 of the Endangered Species Act, as amended.

The Baltimore District has determined in consultation with NMFS that the adverse effects of this MDSPGP-6 on Essential Fish Habitat (EFH) for Federally managed species are no more than minimal and an expanded consultation has been conducted with NMFS. The MDSPGP-6 processing procedures and conditions ensure that authorized work will comply with the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, as amended.

It is requested that you communicate this information concerning the proposed revised MDSPGP-6 to any persons known by you to be interested and not being known to this office, 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 if you would like to request a paper copy of this public notice, please contact Mr. Donald Bole, 410-962-6079, Donald.R.Bole@usace.army.mil. This public notice is issued by the Chief, Regulatory Branch.