



**US Army Corps
of Engineers**[®]
Philadelphia District

**DELAWARE
2020 NATIONWIDE PERMIT REGIONAL CONDITIONS**

These Regional Conditions are applicable to waters of the United States within the geographic boundaries of the state of Delaware and in waters of the United States near and including the Chesapeake and Delaware Canal in Maryland. These areas in Maryland include 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. All Nationwide permit (NWP) verifications shall be made in accordance with the below listed regional conditions and all subparts, unless otherwise authorized by the district engineer through the preconstruction notification process.

REGIONAL GENERAL CONDITION – 1 (G-1)

This regional condition is applicable to all nationwide permits (NWPs) where a preconstruction notification (PCN) is required to be submitted to the U.S. Army Corps of Engineers, District Engineer and provides specific information to request verification by the Corps District in order to process your PCN. NWP activities require notification under certain circumstances. Review the terms of the individual NWP authorization, general condition 22 and 32 or the regional conditions to identify these circumstances. In addition, the PCN shall include:

Condition G-1:

1. The permittee shall notify the Corps of Engineers in accordance with General Condition 32 by using a signed application form (ENG Form 4345);
2. The PCN shall also include the following information:
 - A. All PCNs to the Corps of Engineers shall describe all activities that the applicant plans to undertake that are reasonably related to the same project.
 - B. A written statement that clearly describes the following: (1) what measures have been taken to avoid impacts on aquatic resources, (2) what measures have been taken to avoid and/or minimize any discharges into wetlands or waters of the United States, and (3) what measures have been developed to compensate for any impacts to wetlands or waters of the United States.
 - C. All PCNs to the Corps of Engineers shall include the following information, where applicable: (1) all information specified in the nationwide permit itself or general conditions; (2) plan(s) showing all work in areas subject to Federal jurisdiction on 8-1/2 by 11 inch paper and full-sized scaled engineering drawings, if available; (3) formal property identification such as lot and block or tax parcel number; (4) a delineation of areas within Federal jurisdiction, including wetlands, for the entire project area; (5) existing water depths; (6) depth of any cables or pipelines below mean low water; height of any cables, pipelines or other structures above mean high water; (7) the maximum distance that any structure(s) would extend channelward of the mean high water line or ordinary high water in non-tidal areas; (8) the maximum distance that any fill would extend channelward of the high tide line or ordinary high water in non-tidal areas; (9) the width of the waterway at the project site; (10) the location of any mapped floodplain areas; (11) the location of any dredged material disposal area; (12) the distance from the edge of any navigation channel; (13) the location of any temporary work, structures, vessels, or fills required for the construction; (14) a copy of any previous Federal or State approvals; (15) and, the location and nature of any submerged aquatic vegetation (e.g., eel grass Zostera marina) or shellfish beds.
 - D. Where the State has denied 401 WQC and/or not concurred with the Corps' CZM consistency determination for a NWP authorization, the prospective permittee shall contact the State to obtain an activity specific review and approval by the State prior to submitting any required preconstruction notification to the Corps of Engineers.

- E. Documentation from the State agency(s) indicating whether the proposed project is located within a State Natural Heritage site, or National Estuarine Research Reserve. This documentation shall also indicate whether the project is located on a property listed or eligible for listing on the National Register of Historic Places. The information provided to State agency(s) shall include the information described above in this condition and any other information specifically requested by the state agency(s) to conduct their evaluation. The appropriate addresses for these programs are also provided below (See Special Notes). (For further information see NWP general conditions 20, 22 and 32)

REGIONAL GENERAL CONDITION – 2 (G-2)

This regional condition is applicable to those nationwide permit activities that require coordination by the Corps of Engineers with the Federal and State resource agencies. This would include any NWP activities where the loss of wetlands or waters of the United States would exceed 0.5 acres. Some NWPs have been regionally conditioned to provide for coordination with the National Marine Fisheries Service (NMFS) only.

Condition G-2: As a part of the required PCN to the Corps of Engineers, the applicant shall provide evidence that a duplicate copy of the PCN has been submitted to and received by the other concerned Federal and State resource agencies (e.g., copy of certified/registered mail receipt or email). The addresses for these agencies are provided below (See Special Notes).

REGIONAL GENERAL CONDITION – 3 (G-3)

This regional condition is applicable to all nationwide permit activities located in waters of the United States that are a component of the National Wild and Scenic River System, or have been officially designated as a “study river” for possible inclusion in the system (See NWP General Condition 16).

Condition G-3: The applicant shall provide written notification to the National Park Service prior to performing the activity, and shall not begin work until notified by the National Park Service in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. A copy of this approval from the National Park Service shall be forwarded to the Corps of Engineers. All notifications to the National Park Service required by this regional general condition shall include the information identified in regional condition G-1 above. The appropriate addresses for the National Park Service are provided below.

- (1) For all projects, the applicant shall notify: National Park Service, 15 State Street, Boston Massachusetts, 02109.

The following list includes the waterway locations in Delaware that are currently subject to this regional condition.

- (2) White Clay Creek; Pennsylvania and Delaware; from the headwaters in Pennsylvania to the confluence with the Christina River in Delaware and all tributaries, including the East, West and Middle Branches, Middle Run, Pike Creek, Mill Creek, and other main branches and tributaries.

REGIONAL GENERAL CONDITION - 4(G-4) ENDANGERED SPECIES

This regional condition is intended to satisfy the requirements of Section 7 of the Endangered Species Act (ESA) for those species under the jurisdiction of the United States Fish and Wildlife Service (USFWS). This regional condition is applicable to ALL nationwide permit (NWP) activities where a preconstruction notification is not required or when a PCN is required and submitted to the Corps of Engineers.

Condition G-4: The applicant shall contact the USFWS prior to conducting the proposed work to verify compliance with NWP general condition 18 (Threatened and Endangered Species) utilizing the on-line project review process located on the USFWS Chesapeake Bay Field Office website: <https://www.fws.gov/chesapeakebay/EndSppWeb/ProjectReview/Index.html>. If upon completion of this process, the species list determination indicates there are no listed, proposed or candidate species found in the action area, email a complete project review package to the USFWS Chesapeake Bay Field Office at cbfoprojectreview@fws.gov, including the online project review certification letter, map of the action area and the species list generated by the Information for Planning and Conservation system (IPaC). It can be concluded that the proposed activity will not adversely affect any federally listed species under the jurisdiction of the USFWS and no further coordination with the USFWS will be required. If upon completion of this process the species list determination indicates there are listed, proposed or candidate species found in the action area, email a complete project review package to the USFWS Chesapeake Bay Field Office at cbfoprojectreview@fws.gov, including the information described above in this condition, map of the action area and the species list generated by the IPaC for further coordination prior to applying to the Corps for an NWP verification. If

it is not practical to email the project review package to the USFWS Chesapeake Bay Field Office, submit a hard copy to the address provided below (*See Special Notes*).

REGIONAL GENERAL CONDITION 5 (G-5) ENDANGERED SPECIES

This regional condition is intended to satisfy the requirements of the Section 7 of ESA for those species under the jurisdiction of the National Marine Fisheries Service (NMFS). This regional condition is applicable to ALL nationwide permit activities in Delaware where a PCN is not required or when a PCN is required and submitted to the Corps of Engineers. In coordination with the NMFS, the Corps of Engineers has determined that the following NWP activities will have no effect on NMFS protected resources and no further consultation is required under the ESA: 2, 21, 29, 30, 34, 39, 41, 44, 45, 46, 49, 50 and 51.

Condition G-5: Prior to any work, the applicant shall conduct an on-line project review by accessing the NOAA Fisheries ESA Section 7 Mapper found at <https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-species-critical-habitat-information-maps-greater#esa-section-7-mapper>. If upon completion of this review the species list determination indicates there are listed, proposed or candidate species found in the action area, the applicant is required to submit a PCN to the Corps of Engineers to determine if the action will result in an "EFFECT" to the listed species.

Additional technical consultation guidance can be found on the NOAA Fisheries website <https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-consultation-technical-guidance-greater-atlantic> to determine if a proposed NWP activity may affect a listed species.

REGIONAL GENERAL CONDITION 6 (G-6) ESSENTIAL FISH HABITAT

This regional condition is intended to satisfy the requirements of the Magnuson Stevens Fishery Conservation and Management Act (MSA). This regional condition is applicable to all nationwide permit activities where a PCN is not required or when a PCN is required and submitted to the Corps of Engineers. The NOAA National Marine Fisheries Service (NMFS) and the MSA requires federal agencies such as the Corps to consult with NMFS on projects that may adversely affect Essential Fish Habitat (EFH).

Condition G-6(a): A PCN must be submitted to the Corps of Engineers and the NMFS for the following NWP's: 27, 38, 52, 53 and 54. For those NWP's *not* listed, a PCN *must* be submitted to the Corps of Engineers and NMFS for any NWP activity that *is* proposed within 50 feet of submerged aquatic vegetation (SAV) beds, mapped SAV habitat and/or within sandbar shark (*Carcharhinidae plumbeus*) and sand tiger (*Carcharias taurus*). Habitat Areas of Particular Concern (HAPC) as depicted by the Essential Fish Habitat Mapper (<http://www.habitat.noaa.gov/protection/efh/efhmapper/>);

Condition G-6(b): In order to protect diadromous fish migrations, spawning activities, and EFH, in-water work shall be avoided in accordance to the following time of year restrictions:

- (a) To protect diadromous fish migrations and spawning, in-water work shall be avoided from **March 1 to June 30** in all waters. A waiver may be requested by submitting a PCN to the Corps of Engineers and NMFS. This time of year restriction is not applicable to waters of the United States located upstream of an obstruction that precludes fish passage.
- (b) Work within cofferdams that fully enclose and dewater the project area can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction and do not preclude the free movement of migrating and spawning aquatic species to ensure compliance with NWP General Condition 2 and 3.

REGIONAL GENERAL CONDITION 7 (G-7) FISH & WILDLIFE COORDINATION ACT

This regional condition is intended to satisfy conservation recommendations made under the Fish and Wildlife Coordination Act. This regional condition is applicable to ALL nationwide permit activities where a PCN is not required or when a PCN is required and submitted to the Corps of Engineers unless waived by the district engineer.

Condition G-7: In order to protect NOAA Trust Resources, in-water work shall be avoided from River Mile Zero (RM 0) at the mouth of the Delaware Bay, extending to the Kent/New Castle County line along the Delaware Bay shoreline, and to include ALL tributary mouths within this reach, from **April 15 to August 30**. In-water work shall also be avoided in Rehoboth Bay and Indian River Bay within this time of year restriction.

REGIONAL GENERAL CONDITION 8 (G-8)

This regional condition is a modification of general condition 22 (Critical Resource Waters).

Condition G-8: In the State of Delaware, State Natural Heritage Sites are included as critical resource waters and are subject to the terms and limitations specified in general condition 22. Information relating to Natural Heritage sites can be obtained by contacting the Wildlife Species Conservation and Research Program. Their address is listed below in Special Notes. General Condition 22 is included here for added information.

Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The Corps of Engineers may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The Corps of Engineers may also designate additional critical resource waters after notice and opportunity for public comment.

- (1) Discharges of dredged or fill material into waters of the United States are **NOT** authorized by NWPs *7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52* for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
- (2) For NWPs *3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38*, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The Corps of Engineers may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

Specific Nationwide Permit Regional Conditions

REGIONAL CONDITION FOR NWP (3) MAINTENANCE

Condition (a): For projects involving the replacement or maintenance of existing tide gates, the applicant shall demonstrate why it is not practicable to replace the tide gate with self-regulating tide gates. Self-regulating tide gates allow tidal flow and fish passage but can be set to close at a specified water level. A PCN shall be provided to the Corps of Engineers and a copy to the NMFS for all tide gate replacements and maintenance in which a one-way gate is proposed.

REGIONAL CONDITION FOR NWP (5) SCIENTIFIC MEASUREMENT DEVICES

Condition (a): Weirs and flumes cannot be constructed in a manner that would preclude the passage of anadromous fishes.

Condition (b): The construction or installation of subaqueous turbines or similar facilities is not authorized by this NWP.

REGIONAL CONDITION FOR NWP (6) SURVEY ACTIVITIES

Condition (a): Work cannot preclude the passage of anadromous fishes.

Condition (b): The use of in-water explosives is prohibited.

REGIONAL CONDITION FOR NWP (7) OUTFALL STRUCTURES AND ASSOCIATED INTAKE STRUCTURES

Condition (a): Any proposed intake structures must include “wedge wire” screening with mesh opening sizes of 2 millimeters (mm) or less and intake velocities equal to or less than 0.5 feet per second. This condition may be waived by the Corps of Engineers if an applicant proposes to utilize new or improved technologies that meets or exceeds the “wedge wire” design technology.

Condition (b): The applicant shall also demonstrate that the intake structure will be located and constructed to maximize its design effectiveness to minimize impingement and entrainment of aquatic species. This would include efforts that result in stream velocities over, around or past the intake structure that exceed the velocities through the intake structure.

REGIONAL CONDITION FOR NWP (10) MOORING BUOYS

Condition (a): Water depths in the mooring area must be sufficient to allow any moored vessel to float at all stages of the tide.

Condition (b): Mooring buoys are prohibited in areas mapped as submerged aquatic vegetation (SAV) habitat.

REGIONAL CONDITION FOR NWP (11) TEMPORARY RECREATIONAL STRUCTURES

Condition (a): This nationwide permit is applicable only to structures associated with discrete or specific recreational events.

Condition (b): All temporary structures must be located with sufficient water depths so that the structures float at all stages of the tide.

Condition (c): This NWP does not authorize the placement of any temporary structures in any areas mapped with submerged aquatic vegetation (SAV).

REGIONAL CONDITION FOR NWP (12) OIL OR NATURAL GAS PIPELINE ACTIVITIES

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP

Condition (b): Any PCN to the Corps of Engineers, which proposes a permanent access or maintenance road, must justify, to the satisfaction of the Corps of Engineers, that any such permanent fills are necessary, and that temporary access roads are not practicable.

Condition (c): This NWP does not authorize stockpiling excavated material in wetlands for longer than 30 days.

Condition (d): Any excavated or stockpiled materials shall be stabilized in accordance with Delaware's Sediment and Stormwater Regulations (October 2006 or as subsequently amended) to prevent reentry into any waterway or wetland.

Condition (e): Oil or natural gas pipelines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the Corps of Engineers to be impracticable.

Condition (f): This NWP does not authorize the discharge of any drilling muds that may be generated through such methods as directional boring or drilling. Further, any directional drilling or boring activities must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as "frac-out". If a frac-out occurs, the plan addressing containment and clean up shall be immediately implemented and the Corps of Engineers shall be notified of the frac-out within 24 hours.

Condition (g): Where an oil or gas pipeline is constructed parallel to a stream corridor, a buffer shall be maintained between the oil or gas pipeline and the waterway to avoid or minimize potential future impacts to waters of the United States. These disturbances would include such issues as leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the Corps of Engineers.

Condition (h): If a proposed activity would involve impacts to submerged aquatic vegetation (SAV), the applicant shall clearly document all efforts to avoid and minimize the impacts and to achieve restoration of these areas. At a minimum, this shall include pre-construction surveys along the entire right-of-way to map all existing SAV, construction schedules, and long term monitoring to assess restoration of SAV areas. This information shall also be furnished to NMFS in consort with the PCN for this NWP.

Condition (i): Clearances for aerial crossings must be a minimum of ten (10) feet above clearances required for bridges.

For Buried Pipelines Across Navigable Waters:

Condition (j): The top of the pipeline shall be located a minimum of 4 feet below the existing bottom elevation and shall be backfilled with suitable heavy material to the preconstruction bottom elevation.

Condition (k): Within 60 days after completion of the work, the permittee shall furnish the Corps of Engineers and National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the pipeline has been installed in compliance with the approved plans. The certification shall include a survey conducted by a licensed surveyor, or a "drawing of record" if installation is conducted by directional drilling, which clearly shows the elevations and alignment of the pipeline across the waterway. Any discrepancies shall be clearly noted.

Condition (l): There shall be no stockpiling or double handling of any excavated/dredged materials within any waterway, unless specifically reviewed and approved by the Corps of Engineers as a part of any PCN. Further, all excess or unsuitable dredged or excavated material not used as backfill over any cable or pipeline shall be disposed at a disposal site approved by the Corps of Engineers.

For Buried Pipelines Across the Delaware River Federal Navigation Channel:

Condition (m): The top of the pipeline crossing the Federal project channel shall be located a minimum of 25 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of pipeline shall be located a minimum of 15 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

For Buried Pipelines Across “ALL OTHER” Federal Navigation Channels:

Condition (n): The top of the pipeline crossing the Federal project channel shall be located a minimum of 6 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of pipeline shall be located a minimum of 4 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

REGIONAL CONDITION FOR NWP (13) BANK STABILIZATION

Condition (a): Any PCN to the Corps of Engineers that does not utilize a non-structural bank stabilization method (e.g. vegetation or combinations of vegetation and rock) must include an analysis demonstrating that such measures were not practicable and/or appropriate.

Condition (b): This NWP may not be used to authorize any stabilization activity where no demonstrable erosion is evident.

REGIONAL CONDITION FOR NWP (14) LINEAR TRANSPORTATION PROJECTS

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP.

Condition (b): Any discharge of poured concrete must be contained within cells or watertight forms until the concrete has set.

Condition (c): Any activity proposing a crossing of a stream or open water shall be designed to maintain continuity of existing benthic habitats and to maintain existing stream flow patterns. This can be achieved through the use of elevated structures, bottomless culverts, or by depressing culverts below the stream bottom. This design requirement must include a site-specific evaluation of the particular stream or waterbody to determine if it is experiencing erosion or sedimentation rates that would alter the bottom elevation. Where a series of culverts are used, only those cells or culverts, which carry the base stream flow, shall be depressed. The bottom of any other culverts or cells shall be raised to pass and maintain existing and expected high flows.

REGIONAL CONDITION FOR NWP (18) MINOR DISCHARGES

Condition (a): This NWP may not be used to authorize stream elimination, relocation, or impoundment.

REGIONAL CONDITION FOR NWP (23) APPROVED CATEGORICAL EXCLUSIONS

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the authorization of this NWP.

Condition (b): Activities authorized by this NWP shall not cause the loss of more than one acre of waters of the United States, including wetlands.

REGIONAL CONDITION FOR NWP (27) AQUATIC HABITAT RESTORATION, ESTABLISHMENT AND ENHANCEMENT ACTIVITIES

Condition (a): Any activity involving shellfish seeding, such as, the placement of shell material or any other habitat development or enhancement is restricted to native shellfish species.

REGIONAL CONDITION FOR NWP (28) MODIFICATIONS OF EXISTING MARINAS

Condition (a): This NWP is only applicable to those projects which have been previously reviewed and approved by the Corps of Engineers through the individual permit process.

Condition (b): Any discharge of poured concrete must be contained within cells or forms until the concrete has set.

REGIONAL CONDITION FOR NWP (29) RESIDENTIAL DEVELOPMENTS

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP. A duplicate copy of any PCN to the Corps of Engineers shall be forwarded to the Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Wetlands and Subaqueous Lands Section, 89 Kings Highway Dover, Delaware 19901.

Condition (b): Under the terms of this NWP, any wetlands that are located within the platted lot lines of any residential development will be considered an adverse effect on waters of the United States, unless the wetlands are protected by conservation easement, deed conveyance or covenants, or any other real estate mechanism that can demonstrate to the Corps of Engineers that these areas will be protected and/or preserved in perpetuity.

Condition (c): This NWP does not authorize construction of ponds or storm-water management basins in waters of the U. S.

Condition (d): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

Condition (e): This NWP does not authorize the discharge of dredged or fill material for the construction or expansion of a single-family residential structure, including any attendant features or structures. This type of activity may be eligible for some other type of authorization.

REGIONAL CONDITION FOR NWP (33) TEMPORARY CONSTRUCTION, ACCESS, AND DEWATERING

Condition (a): Activities authorized by this NWP may remain in place for no more than 6 months from the commencement date of the permitted activity.

Condition (b): Activities occurring in wetlands, authorized by this NWP shall require the use of construction pads, timber matting, and/or geotextile fabric, or a BMP to prevent wetland compaction.

REGIONAL CONDITION FOR NWP (35) MAINTENANCE DREDGING OF EXISTING BASINS

Condition (a): This NWP is only applicable to those projects which have been previously reviewed and approved by the Corps of Engineers through the individual permit process.

REGIONAL CONDITION FOR NWP (36) BOAT RAMPS

Condition (a): Any discharge of poured concrete must be contained within cells or watertight forms until the concrete has set.

REGIONAL CONDITION FOR NWP (39) COMMERCIAL AND INSTITUTIONAL DEVELOPMENTS

Condition (a): A duplicate copy of any PCN to the Corps of Engineers shall be forwarded to the Delaware Department of Natural Resources and Environmental Control, Division of Water Resources, Wetlands and Subaqueous Lands Section, 89 Kings Highway Dover, Delaware 19901.

Condition (b): Under the terms of this NWP, any wetlands that are located within the plotted lot lines of any commercial or institutional development will be considered an adverse effect on waters of the United States, unless the wetlands are protected by conservation easement, deed conveyance or covenants, or any other real estate mechanism that can demonstrate to the Corps of Engineers that these areas will be protected and/or preserved in perpetuity.

Condition (c): The discharge of fill for the construction or expansion of a single-family residential structure, including any attendant features or structures, is not authorized by this NWP. This type of activity may be eligible for authorization under the terms and conditions of other NWPs or individual permit.

Condition (d): This NWP does not authorize construction of ponds or storm-water management basins in waters of the United States.

Condition (e): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

REGIONAL CONDITION FOR NWP (40) AGRICULTURAL ACTIVITIES

Condition (a): This NWP does not authorize any activities located in any perennial stream.

REGIONAL CONDITION FOR NWP (41) RESHAPING EXISTING DRAINAGE AND IRRIGATION DITCHES

Condition (a): A PCN shall be submitted to the Corps of Engineers for any proposed activity in waters of the United States.

REGIONAL CONDITION FOR NWP (42) RECREATIONAL FACILITIES

Condition (a): This NWP does not authorize any support facilities or buildings such as parking facilities, storage or maintenance buildings, rental buildings or office buildings. In addition, the NWP does not authorize fill for the construction or expansion of golf courses or ski areas.

Condition (b): This NWP does not authorize construction of ponds or storm-water management basins in waters of the United States.

Condition (c): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

REGIONAL CONDITION FOR NWP (43) STORMWATER MANAGEMENT FACILITIES

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States.

Condition (b): This NWP does not authorize any activities located in perennial streams and intermittent waters.

REGIONAL CONDITION FOR NWP (48) COMMERCIAL MARICULTURE ACTIVITIES

Condition (a): A PCN must be submitted to the Corps of Engineers for all activities in waters of the United States.

Condition (b): Any introduced shellfish must be certified under Delaware standards as being disease and parasite free.

Condition (c): All structures associated with the aquaculture activity must be removed from waters of the United States when/if the activity is abandoned.

Condition (d): Use of unsuitable materials for shellfish seeding (i.e., asphalt, bituminous concrete slag, tires, wallboard, plastic, wood, metal, crushed glass, and garbage) is prohibited.

Condition (e): Any proposed shellfish aquaculture activity within any portion of the Shellfish Aquaculture Development Areas (SADA) locations in the Delaware Inland Bays would not be subject to the terms of Regional General Conditions G-1 or G-2.

Condition (f): Any PCN to the Corps of Engineers for any shellfish aquaculture activities within the SADA locations in the Delaware Inland Bays must provide the following information: (1) name and address of the applicant, (2) a copy of any lease agreement between the applicant and the State of Delaware for the proposed aquaculture activity, (3) a description of the proposed equipment to be used at each location, (4) the location of the proposed activity including latitude and longitude coordinates along with any other lease area identification numbers further identifying the leased area(s).

Condition (g): Predator control devices (i.e., mesh fences, mesh nets, and mesh tents) suspended or erected vertically or obliquely in the water column to surround or enclose shellfish containment gear is prohibited.

REGIONAL CONDITION FOR NWP (52) WATER-BASED RENEWABLE ENERGY GENERATION PILOT PROJECTS

Condition (a): Any activity associated with this NWP will require a PCN to the Corps of Engineers. The Corps of Engineers will coordinate review of all PCNs with the Federal and State resource agencies. As a part of the required PCN to the Corps of Engineers,

the applicant shall provide evidence that a duplicate copy of the PCN has been submitted to and received by the other concerned Federal and State resource agencies (e.g., copy of certified/registered mail receipt). The addresses for these agencies are provided below.

REGIONAL CONDITION FOR NWP (A) SEAWEED MARICULTURE ACTIVITIES

* Under the terms and conditions of this NWP a PCN will be required. The Corps of Engineers will be soliciting comments to be entered as regional conditions for this NWP as applicable. **This is a newly proposed NWP.**

REGIONAL CONDITION FOR NWP (B) FINFISH MARICULTURE ACTIVITIES

* Under the terms and conditions of this NWP a PCN will be required. The Corps of Engineers will be soliciting comments to be entered as regional conditions for this NWP as applicable. **This is a newly proposed NWP.**

REGIONAL CONDITION FOR NWP (C) ELECTRIC UTILITY LINE AND TELECOMMUNICATIONS ACTIVITIES

The Corps of Engineers will be soliciting comments to be entered as regional conditions for this NWP as applicable. This is a newly proposed NWP which captures activities previously covered under the 2017 NWP (12) UTILITY LINES.

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP

Condition (b): Any PCN to the Corps of Engineers, which proposes a permanent access or maintenance road, must justify, to the satisfaction of the Corps of Engineers, that any such permanent fills are necessary, and that temporary access roads are not practicable.

Condition (c): This NWP does not authorize stockpiling excavated material in wetlands for longer than 30 days.

Condition (d): Any excavated or stockpiled materials shall be stabilized in accordance with Delaware's Sediment and Stormwater Regulations (October 2006 or as subsequently amended) to prevent reentry into any waterway or wetland.

Condition (e): Electric and/or telecommunication utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the Corps of Engineers to be impracticable.

Condition (f): This NWP does not authorize the discharge of any drilling muds that may be generated through such methods as directional boring or drilling. Further, any directional drilling or boring activities must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as "frac-out". If a frac-out occurs, the plan addressing containment and clean up shall be immediately implemented and the Corps of Engineers shall be notified of the frac-out within 24 hours.

Condition (g): Where an electric and/or telecommunication utility line is constructed parallel to a stream corridor, a buffer shall be maintained between the electric and/or telecommunication utility line and the waterway to avoid or minimize potential future impacts to waters of the United States. These disturbances would include such issues as leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the Corps of Engineers.

Condition (h): If a proposed activity would involve impacts to submerged aquatic vegetation (SAV), the applicant shall clearly document all efforts to avoid and minimize the impacts and to achieve restoration of these areas. At a minimum, this shall include pre-construction surveys along the entire right-of-way to map all existing SAV, construction schedules, and long term monitoring to assess restoration of SAV areas. This information shall also be furnished to NMFS in consort with the PCN for this NWP.

For Aerial Transmission Lines Across Navigable Waters:

Condition (i): The following minimum clearances are required. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances, which would be required by the U.S. Coast Guard for new fixed bridges in the vicinity of the proposed transmission line. These clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code.

Nominal System Voltage, (kv)	Minimum additional clearance (feet) above clearance required for bridges
115 and below	20 feet
136	22 feet
161	24 feet
230	26 feet
350	30 feet
500	35 feet
700	42 feet
750 – 765	45 feet

Condition (j): Clearances for communication lines, stream gauging cables, ferry cables, and other aerial crossings must be a minimum of ten (10) feet above clearances required for bridges.

Condition (k): Within 60 days of completion of the work, the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the aerial wire has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the minimum clearance of the aerial wires above the mean high water line at the time of the survey. The certification shall also include a statement by the permittee that the clearance of the wires, at maximum sag conditions, shall never be less than the clearance shown on the approved plans.

For Buried Electric and/or Telecommunication Utility Lines Across Navigable Waters:

Condition (l): The top of the electric and/or telecommunication utility line shall be located a minimum of 4 feet below the existing bottom elevation and shall be backfilled with suitable heavy material to the preconstruction bottom elevation.

Condition (m): Within 60 days after completion of the work, the permittee shall furnish the Corps of Engineers and National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the electric and/or telecommunication utility line has been installed in compliance with the approved plans. The certification shall include a survey conducted by a licensed surveyor, or a “drawing of record” if installation is conducted by directional drilling, which clearly shows the elevations and alignment of the cable or pipeline across the waterway. Any discrepancies shall be clearly noted.

Condition (n): There shall be no stockpiling or double handling of any excavated/dredged materials within any waterway, unless specifically reviewed and approved by the Corps of Engineers as a part of any PCN. Further, all excess or unsuitable dredged or excavated material not used as backfill over any cable or pipeline shall be disposed at a disposal site approved by the Corps of Engineers.

For Buried Electric and/or Telecommunication Utility Lines Across the Delaware River Federal Navigation Channel:

Condition (o): The top of the electric and/or telecommunication utility line crossing the Federal project channel shall be located a minimum of 25 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the electric and/or telecommunication utility line shall be located a minimum of 15 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

For Buried Electric and/or Telecommunication Utility Lines Across “ALL OTHER” Federal Navigation Channels:

Condition (p): The top of the electric and/or telecommunication utility line crossing the Federal project channel shall be located a minimum of 6 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of electric and/or telecommunication utility line shall be located

a minimum of 4 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

REGIONAL CONDITIONS FOR NWP (D) UTILITY LINE ACTIVITIES FOR WATER AND OTHER SUBSTANCES

The Corps of Engineers will be soliciting comments to be entered as regional conditions for this NWP as applicable. This is a newly proposed NWP which captures activities previously covered under the 2017 NWP (12) UTILITY LINES.

Condition (a): A PCN shall be submitted to the Corps of Engineers for all activities in waters of the United States under the terms of this NWP

Condition (b): Any PCN to the Corps of Engineers, which proposes a permanent access or maintenance road, must justify, to the satisfaction of the Corps of Engineers, that any such permanent fills are necessary, and that temporary access roads are not practicable.

Condition (c): This NWP does not authorize stockpiling excavated material in wetlands for longer than 30 days.

Condition (d): Any excavated or stockpiled materials shall be stabilized in accordance with Delaware's Sediment and Stormwater Regulations (October 2006 or as subsequently amended) to prevent reentry into any waterway or wetland.

Condition (e): Utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the Corps of Engineers to be impracticable.

Condition (f): This NWP does not authorize the discharge of any drilling muds that may be generated through such methods as directional boring or drilling. Further, any directional drilling or boring activities must include a plan that addresses prevention, containment and cleanup of any accidental discharges known as "frac-out". If a frac-out occurs, the plan addressing containment and clean up shall be immediately implemented and the Corps of Engineers shall be notified of the frac-out within 24 hours.

Condition (g): Where a utility line is constructed parallel to a stream corridor, a buffer shall be maintained between the utility line and the waterway to avoid or minimize potential future impacts to waters of the United States. These disturbances would include such issues as leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the Corps of Engineers.

Condition (h): If a proposed activity would involve impacts to submerged aquatic vegetation (SAV), the applicant shall clearly document all efforts to avoid and minimize the impacts and to achieve restoration of these areas. At a minimum, this shall include pre-construction surveys along the entire right-of-way to map all existing SAV, construction schedules, and long term monitoring to assess restoration of SAV areas. This information shall also be furnished to NMFS in consort with the PCN for this NWP.

Condition (i): Clearances for aerial crossings must be a minimum of ten (10) feet above clearances required for bridges.

Condition (j): Within 60 days of completion of the work, the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the aerial wire has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the minimum clearance of the aerial wires above the mean high water line at the time of the survey. The certification shall also include a statement by the permittee that the clearance of the wires, at maximum sag conditions, shall never be less than the clearance shown on the approved plans.

For Buried Utility Lines Across Navigable Waters:

Condition (k): The top of the utility line shall be located a minimum of 4 feet below the existing bottom elevation and shall be backfilled with suitable heavy material to the preconstruction bottom elevation.

Condition (l): Within 60 days after completion of the work, the permittee shall furnish the Corps of Engineers and National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the utility line has been installed in compliance with the approved plans. The certification shall include a survey conducted by a licensed surveyor, or a "drawing of record" if installation is conducted by directional drilling, which clearly shows the elevations and alignment of the utility line across the waterway. Any discrepancies shall be clearly noted.

Condition (m): There shall be no stockpiling or double handling of any excavated/dredged materials within any waterway, unless specifically reviewed and approved by the Corps of Engineers as a part of any PCN. Further, all excess or unsuitable dredged or excavated material not used as backfill over any cable or pipeline shall be disposed at a disposal site approved by the Corps of Engineers.

For Buried Utility Lines Across the Delaware River Federal Navigation Channel:

Condition (n): The top of the utility line crossing the Federal project channel shall be located a minimum of 25 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of utility line shall be located a minimum of 15 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

For Buried Utility Lines Across "ALL OTHER" Federal Navigation Channels:

Condition (o): The top of the utility line crossing the Federal project channel shall be located a minimum of 6 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of the utility line shall be located a minimum of 4 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

REGIONAL CONDITIONS FOR NWP (E) WATER RECLAMATION AND REUSE FACILITIES

* Under the terms and conditions of this NWP a PCN will be required. The Corps of Engineers will be soliciting comments to be entered as regional conditions for this NWP as applicable. **This is a newly proposed NWP.**

SPECIAL NOTES:

(1) Where the State has denied 401 WQC and/or not concurred with the Corps' CZM consistency determination for a NWP authorization, the prospective permittee shall contact the State to obtain an activity specific review and approval by the State prior to submitting any required preconstruction notification to the Corps of Engineers.

DE Department of Natural Resources and Environmental Control
Division of Water
Wetlands and Subaqueous Lands Section
89 Kings Highway
Dover, Delaware 19901
(302) 739-9943

DE Department of Natural Resources and Environmental Control
Office of the Secretary
Delaware Coastal Management Program
100 W. Water Street, Suite 7B
State Street Commons
Dover, Delaware 19904
(302) 739-9283

(2) If an online notification is not an option, the following addresses shall be used for notification to those Federal and State agencies, where the review of the PCN must be coordinated by the Corps of Engineers.

Project Review
U.S. Fish and Wildlife Service
Chesapeake Bay Field Office
177 Admiral Cochrane Drive
Annapolis, Maryland 21401

U.S. Environmental Protection Agency, Region III
Wetlands and Marine Policy Section, 3ES30
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

National Marine Fisheries Service
Habitat Conservation Division
177 Admiral Cochrane Drive
Annapolis, Maryland 21401

Delaware Department of Natural Resources and Environmental Control
Division of Water
Wetlands and Subaqueous Lands Section
89 Kings Highway
Dover, Delaware 19901
(302) 739-9943

Delaware Division of Historic and Cultural Affairs
21, The Green
Dover, Delaware 19901

Delaware Department of Natural Resources and Environmental Control
Office of the Secretary
Delaware Coastal Management Program
100 W. Water Street, Suite 7B
State Street Commons
Dover, Delaware 19904
(302) 739-9283

Environmental Review Coordinator
Wildlife Species Conservation and Research Program
Delaware Division of Fish and Wildlife
6180 Hay Point Landing Road
Smyrna, Delaware 19977

Maryland Department of Natural Resources
Environmental Review, B-3
Tawes State Office Building
580 Taylor Avenue
Annapolis, Maryland 21401

State Historic Preservation Officer:
Maryland Historical Trust
Division of Historical & Cultural Programs
100 Community Place
Crownsville, Maryland 21032-2023

Maryland Department of the Environment
Water Resources Administration
Tidal Wetlands Division
Montgomery Park Business Center
1800 Washington Boulevard, Suite 430
Baltimore, Maryland 21230-1708

Maryland Department of the Environment
Non-tidal Wetlands and Waterways
Division/CZC Unit
Montgomery Park Business Center, Suite 430
Baltimore, Maryland 21230-1708