



**US Army Corps
of Engineers**
Philadelphia District

Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390
ATTN: CENAP-OPR

Public Notice

Public Notice No. NAP-CZM and WQC Table	Date October 4, 2022
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Application No. Special Public Notice for NWP	File No.
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In Reply Refer to:
REGULATORY BRANCH

**MODIFICATION TO PHILADELPHIA DISTRICT'S WATER QUALITY
CERTIFICATION AND COASTAL ZONE MANAGEMENT ACT REGIONAL
CONDITIONS IN THE STATE OF MARYLAND FOR 16 FINAL 2021 NATIONWIDE
PERMITS 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58**

The purpose of this special public notice is to inform the public of the modification to Philadelphia District's final Section 401 Water Quality Certification and Section 307 Coastal Zone Management Act regional conditions in the State of Maryland for the 16 final 2021 Nationwide Permits published in the Federal Register (86 FR 2744) on January 13, 2021.

On April 4, 2022, prior to the April 6th Order of the Supreme Court in *Louisiana et al. v. American Rivers et al.*, the State of Maryland issued a modified Section 401 Water Quality Certification (WQC) (20-WQC-0050(R2)) in accordance with the EPA's regulations at 40 CFR 121.2(b) and a modified Section 307 Coastal Zone Management Act (CZMA) consistency determination in accordance with 15 CFR 930.46 and 33 CFR 330.4(d)(7) for the 16 final 2021 Nationwide Permits (NWP) published in the Federal Register (86 FR 2744) on January 13, 2021 (NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58). This modified WQC and CZMA consistency determination superseded the original WQC and CZMA decisions made by the State of Maryland on December 15, 2020, for those 16 final 2021 NWP.

The Philadelphia District is announcing modifications to the Philadelphia District's CZM and WQC Status Table for the 16 final 2021 NWP 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58 to incorporate the modified WQC and CZMA issued by the State of Maryland.

These modifications are necessary to provide efficient regulatory reviews and to further ensure that these 16 final 2021 NWP authorize only those activities with no more than minimal adverse environmental effects. All other regional conditions for the 16 final 2021 NWP for the State of Maryland within the Philadelphia District area of responsibility announced in Special Public Notice dated 08 March 2021 remain valid.

The Philadelphia District has posted a complete copy of the final, modified 2021 NWP CZM and WQC Status Table at:

<https://www.nap.usace.army.mil/Missions/Regulatory/Permits/NWP.aspx>

Additional information concerning this permit application may be obtained by calling Michael D. Yost at (267) 240-5278, via email at michael.d.yost@usace.army.mil, or writing this office at the above address.

Todd A. Schaible
Chief, Regulatory Branch

Enclosure:
2021 NWP's CZM and WQC Status Table

2021 NWP's CZM and WQC Status Table: Delaware, Maryland (C&D Canal), New Jersey, Pennsylvania

NWP #	DE CZM	DE WQC	MD CZM	MD WQC	NJ CZM	NJ WQC	PA CZM	PA WQC
NWP 1	ISSUED	N/A	ISSUED*	N/A	ISSUED	N/A	ISSUED	N/A
NWP 2	ISSUED	N/A	ISSUED*	N/A	DENIED	N/A	ISSUED	N/A
NWP 3	ISSUED #	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 4	ISSUED	ISSUED	ISSUED*	ISSUED*	ISSUED	ISSUED	ISSUED	ISSUED
NWP 5	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 6	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 7	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 8	DENIED	N/A	ISSUED*	N/A	DENIED	N/A	ISSUED	N/A
NWP 9	ISSUED	N/A	ISSUED*	N/A	DENIED	N/A	ISSUED	N/A
NWP 10	ISSUED	N/A	ISSUED*	N/A	DENIED	N/A	ISSUED	N/A
NWP 11	ISSUED	N/A	ISSUED*	N/A	DENIED	N/A	ISSUED	N/A
NWP 12	DENIED	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 13	ISSUED #	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 14	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 15	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 16	ISSUED	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 17	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 18	ISSUED #	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 19	ISSUED	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 20	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 21	DENIED	WAIVED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 22	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 23	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 24	ISSUED	N/A	ISSUED*	N/A	ISSUED	N/A	ISSUED	N/A
NWP 25	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 27	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 28	ISSUED	N/A	ISSUED*	N/A	DENIED	N/A	ISSUED	N/A
NWP 29	DENIED	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 30	ISSUED	ISSUED	ISSUED*	ISSUED*	ISSUED	ISSUED	ISSUED	ISSUED
NWP 31	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 32	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 33	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 34	DENIED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 35	ISSUED #	N/A	ISSUED*	N/A	DENIED	N/A	ISSUED	N/A
NWP 36	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 37	ISSUED	ISSUED	ISSUED*	ISSUED*	ISSUED	ISSUED	ISSUED	ISSUED
NWP 38	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 39	DENIED	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 40	DENIED	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 41	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 42	DENIED	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 43	DENIED	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 44	DENIED	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 45	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 46	DENIED	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 48	ISSUED #	ISSUED	ISSUED*	ISSUED*	ISSUED	ISSUED	ISSUED	ISSUED
NWP 49	DENIED	WAIVED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 50	DENIED	WAIVED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 51	DENIED	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 52	DENIED	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 53	ISSUED	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 54	ISSUED #	ISSUED	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 55	ISSUED #	N/A	ISSUED*	N/A	DENIED	DENIED	ISSUED	N/A
NWP 56	ISSUED #	N/A	ISSUED*	N/A	DENIED	DENIED	ISSUED	N/A
NWP 57	ISSUED #	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 58	ISSUED #	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED
NWP 59	ISSUED #	ISSUED #	ISSUED*	ISSUED*	DENIED	DENIED	ISSUED	ISSUED

NOTE 1: * The State of Maryland has issued the CZM consistency concurrence and issued the WQC for this NWP provided the activity complies with the attached conditions.

NOTE 2: # The State of Delaware has issued the CZM consistency concurrence and issued the WQC for this NWP provided the activity complies with the following conditions.

DELAWARE CZM

1. The Delaware Coastal Management Program concurs with the CZM consistency determination for **NWP 3 and 48**, provided those activities do not occur in Critical Resource waters, including Natural Heritage Sites.
2. The Delaware Coastal Management Program concurs with the CZM consistency determination for **NWP 35** for projects that dredge up to 50,000 cubic yards. Individual consistency is required for those dredging projects that exceed 50,000 cubic yards.
3. Individual consistency is required for those project that require a District Engineer waiver under the terms of **NWP 54**.
4. The Delaware Coastal Management Program concurs with the CZM consistency determination for **NWPs 55 and 56**, provided those activities do not occur in Critical Resource waters, including Natural Heritage Sites and:
 - a. Any introduced shellfish as part of an integrated multi-trophic mariculture system must be certified under Delaware standards as being disease and parasite free;
 - b. All structures associated with the mariculture activity must be removed from waters of the United States when/if the activity is abandoned;
 - c. Use of unsuitable materials for shellfish seeding (i.e. asphalt, bituminous concrete slag, tires, wallboard, plastic, wood, metal, crushed glass, and garbage) is prohibited;
 - d. Any PCN to the Corps of Engineers for any mariculture 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 mariculture 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).
5. The Delaware Coastal Management Program concurs with the CZM consistency determination for **NWPs 13, 18, 57 and 58**, provided those activities do not result in the discharge of dredged and/or fill material in Critical Resource waters, including Natural Heritage Sites.
6. The Delaware Coastal Management Program concurs with the CZM consistency determination for **NWP 59**, provided:
 - a. the activity does not include the placement of temporary structures in areas mapped with submerged aquatic vegetation (SAV);
 - b. the activity does not include stream elimination, relocation, or impoundment;
 - c. the activity does not include construction of sewage disposal systems in waters of the United States;
 - d. activities include the use of best management practices, such as construction pads, timber matting and/or geotextile fabric to prevent wetland compaction;
 - e. the activity does not include the construction of support facilities or buildings such as parking facilities, storage or maintenance buildings and/or office buildings.

DELAWARE WQC

1. The DDNREC has issued WQC for **NWP 12**, provided the following:
 - a. The activity does not result in a discharge in a Delaware ERES waters;
 - b. The applicant contacts DNREC Emergency Response if there is a release of muds and/or drilling fluids into surface waters.

2. The DDNREC has issued WQC for **NWP 13**, provided the following:
 - a. The applicant shall provide a pre-construction notification to DNREC Wetlands and Subaqueous Lands Section including information demonstrating that the proposed discharge of dredge or fill material will not result in a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols.
 - b. This nationwide permit is not certified for discharges of dredge or fill materials from locations with known contaminants such as brownfield sites unless those contaminants are specifically addressed in a Contaminated Materials Management Plan (CMMP) for that site. Proof of an approved CMMP must be submitted to DNREC, Wetlands and Subaqueous Lands Section.
3. The DDNREC has issued WQC for **NWP 16**, provided the following:
 - a. The applicant shall provide a pre-construction notification to DNREC Wetlands and Subaqueous Lands Section including information demonstrating that the proposed discharge of dredge or fill material will not result in a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols.
 - b. An individual water quality certification is required for any projects that may result in discharges to Delaware Exceptional Recreational or Ecological Significance Waters.
4. The DDNREC has issued WQC for **NWP 18**, provided the following:
 - a. An individual water quality certification is required for any projects that may result in discharges to Delaware Exceptional Recreational or Ecological Significance Waters.
5. The DDNREC has issued WQC for **NWP 19**, provided the following:
 - a. The applicant shall provide a pre-construction notification to DNREC Wetlands and Subaqueous Lands Section including information demonstrating that the proposed discharge of dredge or fill material will not result in a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols.
6. The DDNREC has issued WQC for **NWPs 29 and 39**, provided the following:
 - a. The applicant shall provide a pre-construction notification to DNREC Wetlands and Subaqueous Lands Section including information demonstrating that the proposed discharge of dredge or fill material will not result in a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols;
 - b. This nationwide permit is not certified for discharges of dredged or fill materials from locations with known contaminants such as brownfield sites unless those contaminants are specifically addressed in a Contaminated Materials Management Plan (CMMP) for that site. Proof of an approved CMMP must be submitted to DNREC, Wetlands and Subaqueous Lands Section.
7. The DDNREC has issued WQC for **NWPs 40, 42, 43 and 44**, provided the following:
 - a. The applicant shall provide a pre-construction notification to DNREC, Wetlands and Subaqueous Lands Section including information demonstrating that the proposed discharge of dredge or fill material will not result in a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols;
 - b. The activity does not occur in a Delaware ERES;
8. The DDNREC has issued WQC for **NWPs 51, 52 and 59** provided the following:
 - a. The applicant shall provide a pre-construction notification to DNREC Wetlands and Subaqueous Lands Section including information demonstrating that the proposed discharge of dredge or fill material will not result in a statistically significant reduction, accounting for natural variations, in biological, chemical, or habitat quality as measured or predicted using appropriate assessment protocols;

- b. The activity does not occur in a Delaware ERES;
9. The DDNREC has issued WQC for **NWPs 57 and 58**, provided the following:
- a. The activity does not occur in a Delaware ERES;
 - b. The applicant contacts DNREC Emergency Response if there is a release of muds and/or drilling fluids into surface waters.

MARYLAND CZM

1. Discharges for any Nationwide Permit, excluding Nationwide Permit 27 and Nationwide Permit 54, resulting in losses exceeding the thresholds below require an individual Determination:

- a) **1,000 linear feet or ½ acre, whichever is less, of stream bed or stream bank of perennial or intermittent streams and tidal ditches; or**
- b) **½ total acre of tidal and nontidal wetlands.**

2. The person conducting a Nationwide Permit activity (Permittee) shall meet all water quality-related performance standards and conditions required by the Department in any state issued authorization for activities in Waters of the United States to ensure that any discharges 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 and enforceable policies under the Maryland Coastal Zone Management Program; and local and State Critical Area Program approvals.

3. The Permittee conducting activities under **Nationwide Permit 3 Maintenance shall comply with the following enforceable policies limited to those areas which are Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:**

- 5.2.1 Critical Area Policy 2 -Buffer Disturbance; and
- 5.2.1 Critical Area Policy 17 – Buffer Management Plan.

4. The Permittee of **NWP 7 Outfall Structures and Associated Intake Structures shall:**

- a) Ensure that no discharges from the constructed facility:
 - (i) Violate water quality standards; or
 - (ii) Result in erosive flows downstream; and
- b) Comply with the following enforceable policies for activities in Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area, and according to the applicable land use category:

- 5.1.3 Water Resources Protection & Management Policy 8 – Stormwater Management;
- 5.2.1 Critical Area Policy 11 -Intensely Developed Areas;
- 5.2.1 Critical Policy 12 -Limited Development Areas & Resource Conservation Areas

5. The Permittee conducting activities under **Nationwide Permit 13 Bank Stabilization shall comply with the following enforceable policies limited to those areas which are Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:**

- 5.2.1 Critical Area Policy 2 – Buffer Disturbance; and
- 5.2.1 Critical Area Policy 17 – Buffer Management Plan

6. The Permittee conducting activities under **Nationwide Permit 14 Linear Transportation Projects shall comply with the following enforceable policies limited to those areas which are Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:**

- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas;
- 5.2.1 Critical Area Policy 1 – Scope of the Buffer;
- 5.2.1 Critical Area Policy 2 – Buffer Disturbance; and
- 5.2.1 Critical Area Policy 17 – Buffer Management Plan

7. The Permittee of **Nationwide Permit 17 Hydropower Projects** shall comply with the following enforceable policies limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake or Atlantic Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations; and
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures

8. The Permittee conducting activities under **Nationwide Permit 19 Minor Dredging** shall comply with the following enforceable policy:

- 5.2.1 Critical Area Policy 2 – Buffer Disturbance

9. The Permittee conducting activities under **Nationwide Permit 23 Categorical Exclusions** shall comply with the following enforceable policies limited to those areas which are Waters of the United States in the Chesapeake and Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 1 – Scope of the Buffer;
- 5.2.1 Critical Area Policy 2 – Buffer Disturbance; and
- 5.2.1 Critical Area Policy 17 – Buffer Management Plan

10. The Permittee conducting activities under **Nationwide Permit 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities** shall comply with the following conditions:

a) An individual determination is required for activities:

i) In nontidal wetlands having significant plant or wildlife value, as defined in COMAR 26.23.01B(80) as identified by the Certification Holder via the Maryland Watershed Resources Registry at the link: <https://watershedresourcesregistry.org/states/maryland.html>; or

ii) Resulting in the conversion of greater than ½ acre of forested wetlands to another wetland type, excluding conversions of loblolly pine plantations; and

iii) In tidal wetlands that support threatened or endangered species, or species in need of conservation as listed in COMAR 08.03.08; are contiguous to nontidal wetlands having significant plant or wildlife value as defined in COMAR 26.23.01.01B(80) as identified by the Certification Holder via the Maryland Watershed Resources Registry at the link: <https://watershedresourcesregistry.org/states/maryland.html>; or support communities with bald cypress (*Taxodium distichum*) or Atlantic white cedar (*Chamaecyparis thyoides*) and that contain at least 20 percent of these species in any strata as determined by the 1987 Corps of Engineers Wetland Delineation Manual and applicable regional supplements; or

b) For projects that result in the release of sediments from impounded waters, the Permittee shall:

(i) Conduct all sediment testing required by the Department; and

(ii) Implement subsequent requirements of the Department, based on the sampling results, including monitoring or other measures deemed necessary by the Department to meet water quality standards to protect water quality based on the sampling results; and

(iii) Submit documentation to the Corps that the Permittee has satisfied the requirements of the Department.

c) The Permittee conducting activities under **Nationwide Permit 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities** shall comply with the following enforceable policies in addition to #9 a - c above, limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;
- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas;
- 5.2.1 Critical Area Policy 1 – Scope of the Buffer;
- 5.2.1 Critical Area Policy 2 – Buffer Disturbance; and
- 5.2.1 Critical Area Policy 17 – Buffer Management Plan

11. The Permittee conducting activities under **Nationwide Permit 38 Hazardous and Toxic Waste** shall comply with the following enforceable policies limited to those areas which have foreseeable coastal effect to Waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area, and according to the applicable land use category:

5.2.1 Critical Area Policy 11 – Intensely Developed Areas; or

5.2.1 Critical Area Policy 12 – Limited Development Areas & Resource Conservation Areas.

12. The Permittee conducting activities under **Nationwide Permit 40 Agricultural Activities** shall comply with the following enforceable policy limited to those areas which have foreseeable coastal effect to waters of the United States in the Chesapeake and Atlantic Coastal Bays Critical Area:

5.2.1 Critical Area Policy 25 - Best Management Practices for Agriculture.

13. The Permittee conducting activities under **NWP 53 Removal of lowhead dams** shall:

a) Conduct all sediment testing required by the Department; and

b) Implement subsequent requirements of the Department, based on the sampling results, including monitoring or other measures deemed necessary by the Department to meet water quality standards to protect water quality based on the sampling results; and

c) Submit documentation to the Corps that the Certification Holder has satisfied the requirements of the Department.

d) Comply with the following applicable Enforceable Policies;

5.1.1 Quality of Life Policy 10 – Erosion & Sediment Control

5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses

5.1.4. Flood Hazards & Community Resilience Policies 1-3

5.2.1 Critical Area Policy 5 -Restrictions on Stream Alteration;

5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces

5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures

5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts

5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas

5.2.2 Tidal Wetlands Tidal Wetlands Policy 1 – Projects That Alter Natural Character Shall Avoid Dredging & Filling, Be Water-Dependent and Provide Appropriate Mitigation

5.2.3 Non-Tidal Wetlands Non-Tidal Wetlands Policy 1 – Removal or Alteration is Generally Prohibited Unless There Is No Practicable Alternative, in Which Case, Impacts are First Minimized & Then Mitigated to Replace Ecological Values Lost

5.2.6 Living Aquatic Resources Policy 1 – Protection of Rare, Threatened or Endangered Fish or Wildlife

5.2.6 Living Aquatic Resources Policy 3 – Protection of State Fishery Sanctuaries & Management Resources.

5.2.6 Living Aquatic Resources Policy 4 – Fish Passage

5.2.6 Living Aquatic Resources Policy 6 – Protection of Forest Buffers Along Trout Streams

5.2.6 Living Aquatic Resources Policy 7 –Non-Tidal Habitat Protection & Mitigation

5.2.6 Living Aquatic Resources Policy 8 – Protection & Management of Submerged Aquatic Vegetation (SAV)

14. The Permittee conducting activities under **Nationwide Permit 54 Living Shorelines** shall comply with the following enforceable policies:

5.2.1 Critical Area Policy 1 – Scope of the Buffer;

5.2.1 Critical Area Policy 2 – Buffer Disturbance; and

5.2.1 Critical Area Policy 17 – Buffer Management Plan

15. The Permittee conducting activities under **Nationwide Permit 59** shall comply with the following enforceable policy:

5.2.1 Critical Area Policy 2 – Buffer Disturbance.

16. 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.

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

18. The Permittee shall adhere to the construction time of year restrictions, unless waived or amended by the Department, as identified in a state authorization Enforceable Policies:

- 5.1.3 Water Resources Protection & Management Policy 2 – Protection of Designated Uses**
- 5.2.1 Critical Area Policy 5 -Restrictions on Stream Alterations;**
- 5.2.1 Critical Area Policy 6 - Prohibition of Riprap and Artificial Surfaces;**
- 5.2.1 Critical Area Policy 7 - Prohibition of Dams and Structures;**
- 5.2.1 Critical Area Policy 8 - Restrictions on Stream Crossings and Impacts;**
- 5.2.1 Critical Area Policy 9 - Time of Year Restrictions for Construction in Streams**
- 5.2.1 Critical Area Policy 10 - Avoid & Minimize Construction Impacts in Habitat Areas**
- 5.2.6 Living Resources Policies 1-9**

19. 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, and**
- b) Passage of normal or expected high water flows.**

20. The Permittee shall design and implement stream crossings to meet, at a minimum, unless otherwise determined by the Department in a state authorization, the following performance criteria:

- a) If practicable, a structure (for example, bridge or arched culvert) 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 spanning in accordance with item a. is not feasible due to site constraints, then culvert bottoms, including footers, shall be embedded below the streambed a minimum of 2 feet and 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;**
- 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; and**
- f) Structures shall be designed and placed to avoid entanglement of other fish, aquatic life, and wildlife.**

21. The Permittee shall obtain any and all additional authorizations or approvals, including self-certifying General Permits issued by the Department, and shall comply with all conditions of such authorizations.

22. This Determination does not obviate the need to obtain required authorizations or approvals from other State, federal or local agencies as required by law.

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

24. 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.

25. This Determination does not authorize any injury to private property, any invasion of rights, or any infringement of federal, state, or local laws or regulations.

26. The Permittee 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 Determination.

27. This Determination is valid for the NWP's identified herein until such time that the NWP's expire.

28. Coastal Zone Consistency is based upon compliance with all applicable enforceable policies under the approved Coastal Zone Management Program.

Maryland WQC

1. The Certification Holder conducting activities under NWP 7 Outfall Structures and Associated Intake Structures shall not:

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

2. Individual Water Quality Certification is required for discharges that qualify for Nationwide Permit 12, Oil and Natural Gas Pipeline Activities.

3. Discharges for any Nationwide Permit, excluding Nationwide Permit 27 and Nationwide Permit 54, resulting in losses exceeding the thresholds below require an individual Determination:

- a) 1,000 linear feet or ½ acre, whichever is less, of stream bed or stream bank of perennial or intermittent streams and tidal ditches; or
- b) ½ total acre of tidal and nontidal wetlands.

4. The Certification Holder of Nationwide Permit 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities shall comply with the following conditions:

a) An individual Water Quality Certification is required for activities:

i) In nontidal wetlands having significant plant or wildlife value, as defined in COMAR 26.23.01B(80) as identified by the Certification Holder via the Maryland Watershed Resources Registry at the link: <https://watershedresourcesregistry.org/states/maryland.html>; or

ii) Resulting in the conversion of greater than ½ acre of forested wetlands to another wetland type, excluding conversions of loblolly pine plantations; and

iii) In tidal wetlands that support threatened or endangered species, or species in need of conservation as listed in COMAR 08.03.08; are contiguous to nontidal wetlands having significant plant or wildlife value as defined in COMAR 26.23.01.01B(80) as identified by the Certification Holder via the Maryland Watershed Resources Registry at the link: <https://watershedresourcesregistry.org/states/maryland.html>; or support communities with bald cypress (*Taxodium distichum*) or Atlantic white cedar (*Chamaecyparis thyoides*) and that contain at least 20 percent of these species in any strata as determined by the 1987 Corps of Engineers Wetland Delineation Manual and applicable regional supplements; or

b) For projects that result in the release of sediments from impounded waters, the Certification Holder shall:

(i) Conduct all sediment testing required by the Department; and

(ii) Implement subsequent requirements of the Department, based on the sampling results, including monitoring or other measures deemed necessary by the Department to meet water quality standards to protect water quality based on the sampling results; and

(iii) Submit documentation to the Corps that the Certification Holder has satisfied the requirements of the Department.

5. The Certification Holder conducting activities under Nationwide Permit 43, Stormwater Management Facilities shall ensure that discharged from the constructed facility do not:

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

6. The Certification Holder of Nationwide Permit 48 Commercial Shellfish Mariculture Activities, Nationwide Permits 55 Seaweed Mariculture Activities and 56 Finfish Mariculture Activities shall comply with the following conditions:

- a) The Certification Holder shall obtain and comply with a Maryland Department of Natural Resources state nonshellfish or shellfish authorization, or both as appropriate, for the activity being conducted;
- b) Structures and activities may not interfere with movement, nor cause the entanglement, of aquatic life, fish, and other wildlife naturally occurring outside of the mariculture facility area of disturbance or mariculture activity;
- c) Non-native species may not be introduced with adverse effects on the aquatic ecosystem; and
- d) Volume of fish, feed, and waste shall be managed to prevent violation of water quality standards.

7. The Certification Holder conducting activities under Nationwide Permit 53, Removal of Lowhead Dams shall:

- a) Conduct all sediment testing required by the Department; and
- b) Implement subsequent requirements of the Department, based on the sampling results, including monitoring or other measures deemed necessary by the Department to meet water quality standards to protect water quality based on the sampling results; and
- c) Submit documentation to the Corps that the Certification Holder has satisfied the requirements of the Department.

8. The drilling fluid used in trenchless technology operations shall consist of water and bentonite clay. No additives are permitted without prior approval from the MDE. The Certification Holder may submit to the Department for pre-approval a list of thickening additives to be stored on site in order to prevent delays in the drilling operation. Any additive must be certified in conformance with ANSI/NSF Standard 60 (Drinking Water Treatment Chemicals - Health Effects) and used in the manner indicated in the certification of the additive.

9. The Certification Holder shall notify the Department within 24 hours of any inadvertent returns from trenchless technology use and shall:

- a) Cease operations; and
- b) Implement an inadvertent return contingency plan approved by the Department.

10. The Certification Holder shall implement any plans and other requirements of the Department in the event of inadvertent return of drilling fluids or discharges of material transported by the utility line into waters of the United States.

11. The Certification Holder may not conduct blasting for utility line installation unless otherwise authorized by the Department.

12. The Certification Holder shall meet all water quality-related performance standards and conditions required by the Department in any state issued authorization for activities in Waters of the United States to ensure that any discharges 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.

13. The Certification Holder conducting activities with temporary impacts to nontidal and tidal wetlands shall ensure that such nontidal and tidal wetlands are restored to pre-construction 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 and in accordance with state issued authorizations.

14. The Certification Holder conducting activities which result in the loss of tidal or nontidal wetlands or waterways, shall implement mitigation in accordance with state issued authorizations.

15. 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.

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

17. The Certification Holder shall adhere to the construction time of year restrictions, unless waived or amended by the Department, as identified in a state authorization.

18. The Certification Holder conducting activities in Historic Waterfowl Concentration Areas as identified on the Maryland Department of Natural Resource's MERLIN Online website (<https://gisapps.dnr.state.md.us/MERLIN/index.html>) under the "Living Resources" layer and labeled "Waterfowl Areas", shall apply, unless otherwise determined by the Department in a state authorization, a time of year construction restriction of November 15-March 1, inclusive of any year. The following types of projects are not subject to the November 15-March 1, inclusive of any year, time of year restriction:

- a) Riprap/revetment shoreline protection construction of 375 linear feet or less in length
- b) Bulkhead construction or replacement that is 350 linear feet or less in length
- c) Living shoreline construction that is 375 linear feet or less in length and has a maximum channelward extent of 35 feet or less

19. 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.

20. When operating an intake structure, the Certification Holder shall use a screen having a nominal mesh size of 1mm and an intake velocity not to exceed 0.5 ft/sec. during the Time of Year Restriction specified in the applicable Department authorization.

21. The Certification Holder shall design and implement stream crossings to meet, at a minimum, unless otherwise determined by the Department in a state authorization, the following performance criteria:

- a) If practicable, a structure (for example, bridge or arched culvert) 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 spanning in accordance with item a. is not feasible due to site constraints, then culvert bottoms, including footers, shall be embedded below the streambed a minimum of 2 feet and 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;
- 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; and
- f) Structures shall be designed and placed to avoid entanglement of other fish, aquatic life, and wildlife.

22. The Certification Holder shall obtain any and all additional authorizations or approvals, including self-certifying General Permits issued by the Department, and shall comply with all conditions of such authorizations.

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

- 24. 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 Corps; and its approved revisions.**
- 25. 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.**
- 26. 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.**
- 27. 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.**
- 28. This Certification is valid for the NWP's identified herein until such time that the NWP's expire.**