

# Maryland State Programmatic General Permit (MDSPGP)

## Overview

- Statewide general permit
  - | Successor to MDGP-1
  - | Used to authorize all types of work in all waters, including wetlands
  - | Replaces Nationwide Permits (NWPs) and Regional General Permits (RGPs) for most types of work

## Overview

- Based on partnership with Maryland Department of the Environment (MDE)
  - Maryland Tidal and Nontidal Wetland Protection Acts
- Activity based
- Threshold limits
  - Tidal waters and wetlands - 3 acres
  - Nontidal waters and wetlands - 5 acres

## Overview

- Goals
  - Equal or enhanced environmental protection
    - | State Tidal and Nontidal Wetland Protection Acts
  - Reduced duplication
    - | Joint federal/state permit application
    - | Shared jurisdictional determination and delineation responsibilities

## Overview

- | State-only review for most applications
- | Concurrent review for all other applications
- | One authorization package
  - State permits
  - Federal permit (MDSPGP)

## Structure

- Four categories of activities
  - Category I
    - | 41 activity descriptions
    - | Minimal impact activities
    - | Includes piers, shore erosion control, and minor fill activities
    - | MDE is sole reviewer

- Corps reviews programmatically through monitoring

## **Structure**

### **I** Category II

- | Activities that qualify for Category I **but** require Corps review
  - Potential interference with Corps navigation or civil works project
  - Projects grandfathered from MDE's process

## **Structure**

### **I** Category III

- | Activities that do not qualify for Category I
- | Activities that may be more than minimal
  - Concurrent Corps/MDE review
  - Agency and/or public coordination
- | Divided into three Subcategories based on State public notice requirements
  - IIIA - State permit public notice not required
  - IIIB - State permit public notice required
  - IIIC - State permit public notice required and activity is complex and/or controversial

## **Structure**

### **I** Category IV

- | Activities that exceed the impact thresholds of the MDSPGP
  - | Greater than 3 acres in tidal waters and wetlands
  - | Greater than 5 acres in nontidal waters and wetlands
- | Corps individual permit (IP) required

## **Category I Process**

### **I** Category I

- | Application received by MDE
- | Screened for endangered species and cultural resources
- | Delineation verified, if applicable
- | MDE determines whether project qualifies for Category I MDSPGP
- | MDE issues State authorization and attaches Federal authorization (MDSPGP)

## **Category II Process**

### **I** Category I - activities that may interfere with a Corps navigation or civil works project

- | Application received by MDE
  - | Screened for endangered species and cultural resources
  - | Delineation verified, if applicable
- | MDE categorizes as Category II
- | MDE forwards application to Corps

## **Category II Process**

- Corps coordinates with other District elements to determine whether project interferes with navigation or civil works project
  - ┆ 30-day coordination
- Corps determines whether project qualifies for Category I MDSPGP
- Corps notifies MDE of eligibility for MDSPGP
  - ┆ Authorized by MDSPGP, with or without special conditions

## **Category II Process**

- MDE issues State authorization and MDSPGP

- Category II - activities grandfathered from MDE's permit requirements
  - Application received by MDE
    - ┆ Screened for endangered species and cultural resources
    - ┆ Delineation verified, if applicable

## **Category II Process**

- MDE categorizes as Category II
- MDE forwards application to Corps
- Corps determines whether application qualifies for Category I MDSPGP
  - ┆ Corps issues MDSPGP authorization with copy to MDE

## **Category III Process**

- Category III
  - Activities that do not qualify for Category I
  - Application received by MDE
    - ┆ Screened for endangered species and cultural resources
    - ┆ Delineation verified, if applicable
  - MDE categorizes as Category IIIA, IIIB, or IIIC
  - MDE forwards application to Corps

## **Category IIIA Process**

- Category IIIA
  - Application received by Corps
  - Corps issues agency coordination notice
    - ┆ 30-day comment period
    - ┆ EPA, FWS, NMFS, DNR, MHT
  - Within 10 days after comment period, Corps notifies MDE whether project is

eligible for MDSPGP authorization

### **Category IIIA Process**

- | Joint Application Information (JAI) form
  - Activity qualifies for MDSPGP
  - Activity qualifies for MDSPGP with special conditions
    - Special condition letter attached
  - Activity does not qualify for MDSPGP - Category IV, IP required
- MDE issues State authorization and MDSPGP, with or without special conditions

### **Category IIIB Process**

- Category IIIB
  - Application received by Corps
  - MDE issues joint Corps/MDE public notice
    - | Issued twice monthly (1st and 15th)
    - | Multiple projects listed in notice
    - | 30-day comment period
    - | EPA, FWS, NMFS, DNR, MHT, and the public
  - Within 10 days after comment period, Corps notifies MDE whether project is eligible for MDSPGP authorization

### **Category IIIB Process**

- | Joint Application Information (JAI) form
  - Activity qualifies for MDSPGP
  - Activity qualifies for MDSPGP with special conditions
    - Special condition letter attached
  - Activity does not qualify for MDSPGP - Category IV, IP required
- MDE issues State authorization and MDSPGP, with or without special conditions

### **Category IIIC Process**

- Category IIIC
  - Application received by Corps
  - Corps or MDE issues joint Corps/MDE public notice
    - | Issued as needed
    - | One project on notice
    - | 30-day comment period
    - | EPA, FWS, NMFS, DNR, MHT, and the public

### **Category IIIC Process**

- Within 10 days after comment period, Corps notifies MDE whether project is eligible for MDSPGP authorization
  - ┆ Joint Application Information (JAI) form
    - Activity qualifies for MDSPGP
    - Activity qualifies for MDSPGP with special conditions
      - Special condition letter attached
    - Activity does not qualify for MDSPGP - Category IV, IP required

### **Category IIIC Process**

- MDE issues State authorization and MDSPGP, with or without special conditions

#### Agency Objection Process

- Analogous to 404(q) elevation process
- Process applies to Category IIIA, IIIB, and IIIC activities
- Agency receives notice
  - ┆ Agency notification - Category IIIA
  - ┆ Joint public notice - Category IIIB
  - ┆ Joint individual public notice - Category IIIC

### **Agency Objection Process**

- Agency makes recommendation within 30-day comment period
  - ┆ Special conditions for MDSPGP, or
  - ┆ MDSPGP not appropriate (IP required)
- Corps has 10 days from close of comment period to notify agency of Corps decision
  - ┆ Concurs with agency recommendation
  - ┆ Does not concur

### **Agency Objection Process**

- Agency has 15 days from date of Corps notification to send formal objection from Regional Administrator/Director
- If agency objections are resolved within 30 days of Corps receipt of formal objection, Corps notifies MDE and applicant that:
  - ┆ Project is authorized by MDSPGP, or

### **Agency Objection Process**

- ┆ Project is authorized by MDSPGP with special conditions, or
  - ┆ Project requires IP review
- If agency objections are not resolved within 30 days of Corps receipt of formal objection

- Project requires IP review

### **Category IV Process**

- MDE forwards application to Corps
  - Separate Corps and MDE review
- Corps follows IP review process
- Corps issues IP to applicant with a copy to MDE

### **Nationwide Permits (NWP)**

- Most NWPs suspended in Maryland on August 15, 1997 (see public notice hand-out)
  - Suspended all that are duplicated by the MDSPGP
  - Retained 6, not duplicated by the MDSPGP

### **Replacement NWPs**

- NWPs issued to replace NWP 26
  - Final Rule published in Federal Register on March 9, 2000
    - Issued 5 new NWPs
    - Modified 6 existing NWPs
    - Modified 9 existing general conditions
    - Added 2 new general conditions
  - Baltimore District expects to suspend the replacement NWPs