



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Horacio Tablada, Secretary
Suzanne E. Dorsey, Deputy Secretary

August 25, 2022

Philadelphia District
US Army Corps of Engineers
Attn: Michael Hart, PE
Wannamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390

Via email: Michael.F.Hart@usace.army.mil

Re: Agency Interest Number: 164964
Tracking Number: 202260905
Emergency Water Quality Certification Number: 22-WQC-0027EX

Dear Mr. Hart:

Your project did not qualify as a type of project that is covered by the Maryland State Programmatic General Permit (MDSPGP) and its associated 401 Water Quality Certification (WQC), or any other General WQC. This project is an U.S. Army Corps of Engineers (USACE) Civil Works project and as such, there is no USACE regulatory program permit. However, an individual 401 WQC is necessary for this project in accordance with Section 401 of the Clean Water Act and USACE interpretation of Section 401 of the CWA with regard to its applicability to USACE civil works projects.

The emergency Water Quality Certification WQC for this project issued by the Maryland Department of the Environment is attached. Please read and review the WQC for this project to ensure that you understand the limits of the certified project and all of the general and special conditions.

You should not begin any work until you have obtained all necessary State, local, and federal authorizations. Please do not hesitate to contact me at danielle.spendiff1@maryland.gov or 410-537-4023 with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle Spendiff".

Danielle A. Spendiff, Chief
Regulatory and Customer Service Division



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



WATER QUALITY CERTIFICATION

CERTIFICATION NUMBER: 22-WQC-0027EX

ISSUED TO: Philadelphia District
US Army Corps of Engineers
Wannamaker Building
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390
Attn: Michael Hart, PE

EFFECTIVE DATE: August 24, 2022

EXPIRATION DATE: September 30, 2022

PROJECT LOCATION: Chesapeake & Delaware Canal Federal Navigation Channel
Pearce Creek Dredge Material Containment Site
Chesapeake and Delaware Canal, Cecil & Kent Counties, MD

DESCRIPTION OF CERTIFIED PROJECT: To maintenance dredge a section of the Chesapeake and Delaware (C&D) Canal approach channel located near Worton Point, and to place the dredged material at the Pearce Creek Dredged Material Containment Facility (DMCF). Maintenance dredging will be performed on an emergency basis as required to maintain the authorized 35-foot project depth within the navigation channel from: 39°19'0"N, 76°13'0"W to 39°19'80"N, 76°12'0"W. All material related to the emergency work (estimated to be 60,000 CY) will be removed by bucket, hopper or hydraulic pipeline dredges and placed in the Pearce Creek Dredged Material Containment Facility.

22-WQC-0027EX was requested as an emergency WQC to address increased shoaling to depths of up to 30 feet in the previously-authorized 35-foot channel causing a significant hazard to navigation. The excessive shoaling of up to 5 feet is located in a critical section of the navigation channel near Worton Point; a Local Notice to Mariners has been posted by the US Coast Guard for this area.

WATER QUALITY CERTIFICATION

UNDER AUTHORITY OF SECTION 401 OF THE FEDERAL WATER POLLUTION CONTROL ACT AND ITS AMENDMENTS AND IN ACCORDANCE WITH § 9-313 THROUGH § 9-323, INCLUSIVE, OF THE ENVIRONMENT ARTICLE, ANNOTATED CODE OF MARYLAND, THE MARYLAND DEPARTMENT OF THE ENVIRONMENT, WATER AND SCIENCE ADMINISTRATION (DEPARTMENT) HAS DETERMINED THAT THE REGULATED ACTIVITIES DESCRIBED IN THE REQUEST FOR CERTIFICATION WILL NOT VIOLATE MARYLAND'S WATER QUALITY

STANDARDS, IF CONDUCTED IN ACCORDANCE WITH THE CONDITIONS OF THIS CERTIFICATION.

This Water Quality Certification (Certification) is issued under authority of Section 401 of the Federal Water Pollution Control Act and its Amendments, Title 9, Subtitle 3 of the Environment Article, and Code of Maryland Regulations (COMAR) 26.08.02.10. The Maryland Department of the Environment (Department) has determined from a review of the request application file that the project activities described in the above will not violate Maryland's water quality standards, provided that the following conditions are satisfied. This Certification does not relieve any person conducting activities under this Certification (Certification Holder) from the responsibility to obtain any other approvals, licenses, or permits in accordance with federal, State, or local requirements.

The Certification Holder subject to this Certification shall comply with the following conditions:

SPECIAL CONDITIONS

1. The emergency project shall be conducted only within the area specified in this Certification and only for the specified period of time.
2. The sediments to be dredged from the C&D Canal and its approach channel shall be tested in accordance with Environmental Protection Agency regulation/guidelines to ensure the suitability for placement of the dredged material at its designated site. The results of the Corps of Engineers' sediment testing shall be provided to the Department for its review prior to commencing any dredging and dredged material placement.
3. The Corps of Engineers shall inspect and maintain the liner to ensure that any dredged material placed at the Pearce Creek DMCF will not result in the deterioration/contamination of groundwater resources.
4. The Corps of Engineers shall take all steps necessary to ensure that discharges of sediment or any other pollutants to waters of the State do not occur at any time during which the DMCF is in operation.
5. The Corps of Engineers shall continue to implement its MDE-approved plan dated January 2017 for monitoring the groundwater in the Magothy, Upper Patapsco Shallow, and, Upper Patapsco Deep aquifers. The plan describes the wells to be monitored, the constituents to be monitored at each well, and the frequency of monitoring water levels and constituents for each well. The plan includes scale map(s) showing the location, well identification #, and aquifer monitored for all monitoring wells. The Corps shall submit an annual report by February 1 of each year containing tabular results of the prior year's monitoring, including water level maps and data trends using previous year's data from each monitoring well. In addition, when necessary, the Corps of Engineers shall implement the MDE-approved plan for properly abandoning and sealing any wells within the Pearce Creek DMCF.
6. The Corps of Engineers shall continue to implement its MDE-approved plan for all surface water discharges from the Pearce Creek DMCF. The discharge monitoring plan includes

key parameters such as flow volume/discharge rate, total suspended solids, pH, dissolved oxygen, nutrients, and metals. Monitoring results shall be reported to MDE's Water and Science Administration Compliance Program on a monthly basis except when monitoring results indicate exceedances of any water quality standards. Exceedances of water quality standards must be immediately reported (i.e., within 24 hours of becoming known).

7. The Corps of Engineers shall maintain the structural integrity and stability of the existing dike system at the Pearce Creek DMCF under all modes of operation and weather conditions. The Corps of Engineers shall notify MDE immediately if any structural stability problems are observed at the DMCF.
8. The Corps of Engineers shall notify MDE prior to any proposed modifications of the Pearce Creek DMCF that could impact the quantity or quality of any discharges from the facility, either to surface or groundwater, or any modification that has the potential to alter the structural stability of the dikes. MDE reserves the right to review and approve any new plans to modify the facility prior to construction.

GENERAL CONDITIONS

1. All water quality-related performance standards and conditions required by the Department in any state issued authorization for activities in tidal wetlands, nontidal waterways, their 100-year floodplains, nontidal wetland buffers, nontidal wetland expanded buffers, or any other water quality requirements of state law or regulation shall be met to ensure that any discharges will not result in a failure to comply with water quality standards in COMAR 26.08.02.
2. The Dredged Material Containment Facility shall be operated in a manner which will not violate Maryland's Water Quality Standards as set forth in COMAR 26.08.02. The applicant shall notify the Water and Science Administration's Compliance Program, at 410-537-3510, ten (10) days prior to the placement of dredged material at the DMCF.
3. The certification holder shall notify the Water and Science Administration's Regulatory and Customer Service Division, in writing, upon transferring property ownership or responsibility for compliance with these conditions to another person. The new owner/operator shall request, in writing, transfer of this water quality certification to his/her name.
4. The certification holder shall allow the Water and Science Administration or its representative to inspect the project area at reasonable times and to inspect records regarding this project.
5. This Certification is valid for the project identified herein and the associated federally-approved U.S. Army Corps of Engineers Civil Works Navigation Branch project, until such time that federal approval expires or is not administratively extended.

STATEMENTS OF NECESSITY AND CITATIONS

1. Statement of Necessity for Special Condition 1: The condition is necessary to ensure that discharges associated with dredging result in water depths which are appropriate to support designated uses of fishing and water contact recreation and propagation of fish, other aquatic life and wildlife; and to ensure that no discharges are unsightly, create a nuisance, change to an objectionable color, or interferes with designated uses or violates water quality standards.

Citations: COMAR 26.08.02.01B(2); COMAR 26.08.02.02B(1); 26.08.02.02B(3); COMAR 26.08.02.03B

2. Statement of Necessity for Special Conditions 2, 4, 6, 8, and General Conditions 1 & 2: The condition is necessary to ensure that water quality standards are met and designated uses are maintained.

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

3. Statement of Necessity for Special Conditions 2, 4, & 6: Activities which result or may result in a discharge to regulated waters, including dredging and dredged material placement may require monitoring to ensure that water quality standards are met and designated uses are maintained, and to determine if remedial measures are needed to restore compliance with water quality standards if they are not met as a result of the discharge. The condition is necessary to ensure that dredged material does not result in violation of general and numeric water quality standards and interfere with designated uses.

Citation: COMAR 26.08.02.03-3A(5); COMAR 26.08.02.03-3(C(5); COMAR 26.08.02.01B(2); COMAR 26.08.02.02B(1) COMAR 26.08.02.02B(3); COMAR 26.08.02.03B; COMAR 26.08.02.02B(1); 26.08.02.03B(1)(b); 26.08.02.03B(2)(e); 26.08.02; 26.08.01.02A; 26.08.02.09A; 26.08.02.02B(1)(d); COMAR 26.24; 26.08.02.03-3C(9)(a); COMAR 26.08.02.03B(2); COMAR 26.08.02.02B(1)(d);

4. Statement of Necessity for Special Conditions 3 & 5: Dredged material may contain pollutants in amounts toxic to aquatic or human life if the pollutant enters groundwater. Groundwater may be used as potable drinking water or for irrigation of crops, and may enter surface waters. The condition is necessary to ensure that the quality of groundwater is safe for human use and aquatic life and meets designated uses.

Citation: COMAR 26.02.08.09C and D; COMAR 26.08.02.02B; COMAR 26.08.02.03

5. Statement of Necessity for Special Conditions 7 & 8: The condition is necessary to ensure that water quality standards are met under unique circumstances for inadvertent discharges and that designated uses of waters are maintained. Releases of significant amounts of

sediment can impact aquatic environments and if unchecked can alter them to an uninhabitable state.

Citation: Federal and state laws that authorize this condition include but are not limited to: 33 U.S.C. § 1341(a), (b), & (d); 33 U.S.C. § 1251(b); 33 U.S.C. § 1370; Md. Ann. Code, Env. Article, Title 1, Subtitles 3 & 4; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 5, Subtitles 5 and 9; Md. Ann. Code, Env. Article, Title 9, Subtitle 3; Md. Ann. Code, Env. Article, Title 16; COMAR 26.08; COMAR 26.08.02.10G(3); COMAR 26.17.04; COMAR 26.23; COMAR 26.24; COMAR 26.23.02.06, COMAR 26.08, COMAR 26.08.02.10E; COMAR 26.08.02.09C(3); COMAR 26.08.02.03B(1)(b); COMAR 26.08.02.03B(2); COMAR 26.08.02.03-3; COMAR 26.08.02.02B(2); COMAR 26.08.02.02B(4); COMAR 26.08.02.02B(6); COMAR 26.08.02.02B(8)

6. Statement of Necessity for General Condition 4: The condition is necessary to clarify the scope of this certification to ensure compliance with water quality regulations, without limiting restrictions through other requirements.

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

7. Statement of Necessity for General Condition 5: Conditions of certification involve precise actions to comply with water quality standards. Site inspection may be necessary to ensure that limits, methods, and other requirements are met to ensure that water quality standards are met and designated uses are maintained.

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

8. Statement of Necessity for General Condition 6: This condition is necessary to qualify the period of applicability of the terms and conditions of this Certification to be protective of Maryland water quality standards.

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

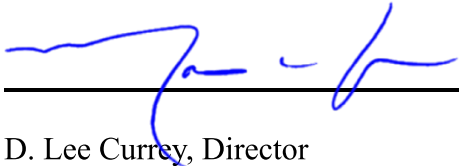
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Based on the aforementioned conditions, the Department has determined that the proposed dredging and the utilization of the Pearce Creek DMCF for the placement of the dredged material is consistent with the State's federally-approved Coastal Zone Management Program, as required by Section 307 of the Federal Coastal Zone Management Act of 1972, as amended.

Failure to comply with these conditions may subject the Certification Holder to criminal and/or civil penalties or other enforcement action in accordance with applicable law.

CERTIFICATION APPROVED:

DATE:



8/25/2022

D. Lee Currey, Director
Water and Science Administration

Tracking Number: 202260905
Agency Interest Number: 164964
Effective Date: August 24, 2022

cc: WSA Inspection & Compliance Program