



# Nationwide Permits and WQC in Maryland

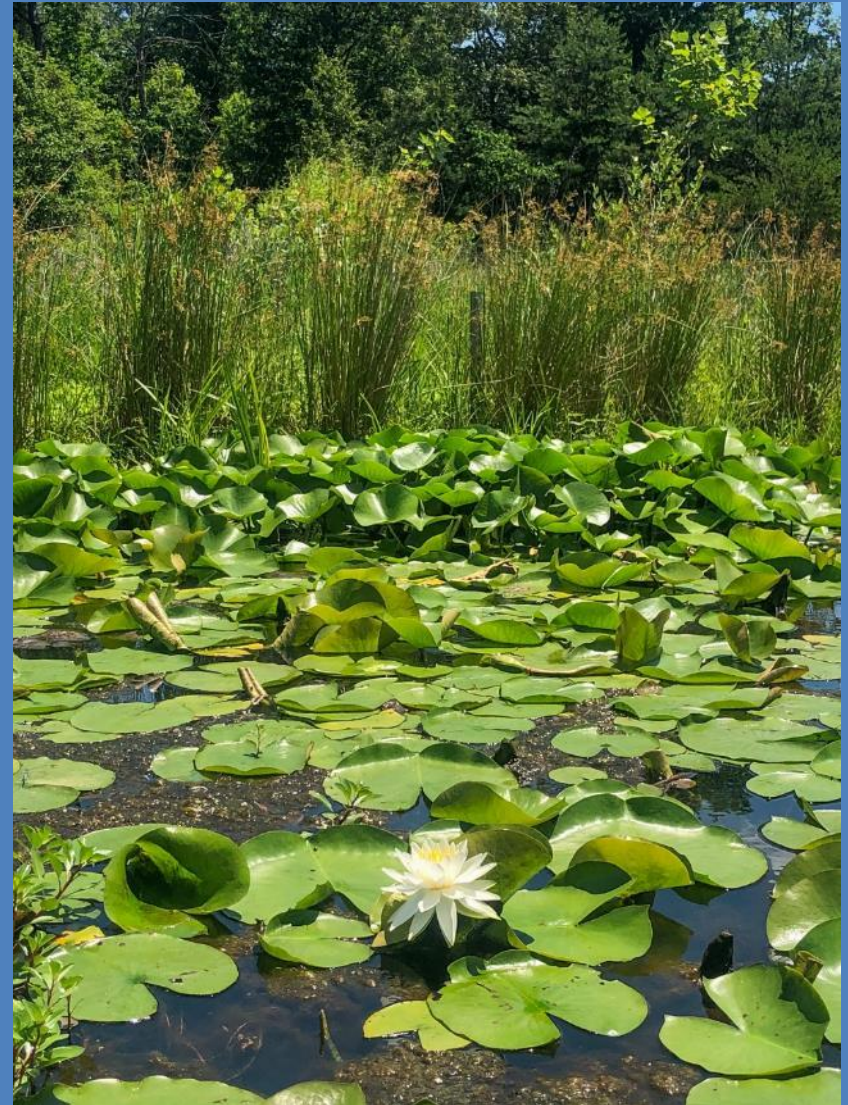
National Association of Wetland  
Managers Webinar

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Maryland Department of the  
Environment (MDE)

Photo: MDE





# Background

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- Maryland has independent authorities over tidal and nontidal wetlands, and waterways and their 100-year floodplain.
- The U.S. Army Corps of Engineers (USACE) has issued State Programmatic General Permits (MDSPGP) in Maryland since the 1990's.
- Many activities under the MDSPGP are comparable to Nationwide permits (NWPs).
- Another general permit was issued for restoration activities to meet Chesapeake Bay TMDL requirements.
- Consequently, many NWPS in Maryland have been suspended and federal authorization is through the MDSPGP.



# Active NWP

## 21 Active NWPs

- 3. Maintenance (partial)
- 4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- 8. Oil and Gas Structures on the Outer Continental Shelf
- 17. Hydropower Projects
- 20. Response Operations for Oil or Hazardous Substances
- 22. Removal of Vessels
- 23. Approved Categorical Exclusions
- 24. Indian Tribe or State Administered Section 404 Programs
- 25. Structural Discharges
- 27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- 30. Moist Soil Management for Wildlife
- 31. Maintenance of Existing Flood Control Facilities



Photo: MDE





# Active NWP cont.

## 21 Active NWPs

32. Completed Enforcement Actions

37. Emergency Watershed Protection and Rehabilitation

38. Cleanup of Hazardous and Toxic Waste

48. Commercial Shellfish Mariculture Activities

52. Water-Based Renewable Energy Generation Pilot Projects (partial)

53. Removal of Low-Head Dams

54. Living Shorelines

55. Seaweed Mariculture Activities

56. Finfish Mariculture Activities





## First WQC for 2021 NWPS

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- MDE issued WQC in December 2021 with some thresholds and practices and general conditions.
- USACE declined to accept MDE's WQC for the NWPs.
- Issue: Re-opener language



# Problematic Language

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**“The Department may require issuance of an individual water quality certification for an activity otherwise included in this Certification when the Department determines that additional review and conditions may be necessary to ensure that any discharge will not violate water quality standards of waters of this State...”**



Photo: MD DNR



## Problematic Language cont.

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**“Notwithstanding compliance with the terms and conditions of this Certification, the Department retains discretionary authority to require an individual certification for any project based on concerns for water quality impacts in unique circumstances not previously considered in issuance of the Certification.”**



Photo: MD DNR



## Problematic Language cont.

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Photo: MD DNR

**“If the Department determines that State water quality standards or other appropriate requirements of state law or regulation are not being met, or that State or federal law is being violated, or that further conditions are necessary to assure compliance with such standards, requirements, or laws, the Department may reevaluate and revise this Certification to include conditions appropriate to assure compliance with such standards, requirements, and laws.”**





## Problematic Language cont.

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Photo: MDE

### Other issues involved:

- **Mitigation thresholds and administration inconsistent with 2008 mitigation rule.**
- **PCN requirement for commercial shellfish mariculture activities-beyond federal scope.**



# Revised WQC

- Re-opener language removed- replaced with requirements for when Individual WQC is necessary to be requested.
- Mitigation language replaced with condition specifying that State-required mitigation be accomplished.
- PCN replaced with special condition.



Photo: MDE



## Special Conditions

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**Individual WQC, excluding Nationwide Permit 27 and Nationwide Permit 54, for losses exceeding:**

- a) 1,000 linear feet or  $\frac{1}{2}$  acre, whichever is less, of :**
- stream bed or stream bank of perennial or intermittent streams;**
  - tidal ditches; or**
- b)  $\frac{1}{2}$  total acre of tidal and nontidal wetlands.**



## Special Conditions

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### For NWP #27 Aquatic Resource Restoration

**Individual WQC required for restoration activities in designated high quality nontidal wetland categories.**

**Limited to < .5 acre conversion of forested wetland.**

**Potential testing of released sediment from removal of impoundments.**





## Special Conditions

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- **NWP #53 Removal of Lowhead Dams**

**Testing of released sediments.**

- **NWP#7 Outfalls**

**May not result in erosive flows  
downstream**



## Other Conditions

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- **Special Time of Year Restrictions for Waterfowl Concentration Areas, as pre-mapped.**
- **Specified mesh size and velocities for intake structures.**
- **Specified design standards for crossings.**



# Statements of Necessity

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- All refer to designated use maintenance for growth and propagation of fish, other aquatic life, and wildlife.
- Loss of forest linked to temperature standard and DO for trout waters.
- Sediment testing also linked to numeric standards in regulation.
- Limits to erosive velocity linked to numeric standards for turbidity.



# Statements of Necessity

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- Land disturbance of wetlands with acidic soils linked to numeric standard for pH.
- Mitigation and temporary impact restoration needed to maintain designated uses.
- Movement of aquatic life necessary for growth and propagation of wildlife, other aquatic life, and wildlife as designated use.





## Other Conditions

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- **Implement State-required mitigation**
- **Comply with other authorizations.**
- **General administrative conditions**



Photo: MD DNR



## Challenges for 2026 NWP's

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- **Avoiding re-opener language while trying to address potential unanticipated, unknown water quality violations.**
- **Setting thresholds, areas, or categories of resources.**
- **Specifying remedies.**



# Questions?

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## Contact information:

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