



Maryland
Department of
the Environment

MDE

Wetlands and Waterways Program Permitting TMDL-Related Restoration Projects

*Adjustments to wetlands and waterways
permitting processes to –compliment the
purpose and intent of TMDL-related
restoration projects*



Overview

- Why are adjustments to the permitting process necessary?
 - Eliminate inconsistencies between TMDL-related restoration activities and wetlands and waterways permitting process and criteria
- What adjustments have been made?
 - By the Corps?
 - By MDE?
- What materials are available to aid applicants for MDE permits?
- Questions?



Why are adjustments necessary?

- Section 404 of the Clean Water Act and State wetland/waterway laws were enacted to balance the competing interests of “those who wish to **develop** wetlands/waterways and those who wish to **preserve** them”.
- Federal and state law requires applicants for permits to “develop” wetlands and waterways to:
 - *Avoid impacting wetlands/waterways*
 - *Minimize adverse impacts to wetlands and waterways (if impacts are unavoidable)*
 - *Mitigate any permitted adverse impacts*
- Works great for “development” projects—*but not always applicable for projects that are restorative in nature*
 - Avoidance of impacts to wetlands/waterways is not possible when the purpose is to repair/restore these resources
 - How can minimization of adverse impacts be achieved when the project purpose is to restore/improve?
 - Is mitigation required if the project itself is restorative of some elements of aquatic structure/function?



What adjustments have been made by the Corps?

- Corps issued Chesapeake Bay TMDL Regional General Permit (RGP) and considers restoration activities under the permit to be self-mitigating
- RGP authorizes restoration activities in wetlands and waterways that meet nutrient and sediment load reduction targets under the Bay TMDL *AND* restore functions that support and/or enhance aquatic biological resources at the project site provided that:
 - *Activity is part of an acceptable watershed strategy (e.g., Bay WIP)*
 - *Stream degradation criteria are met;*
 - *Total impacts do not exceed 1 acre. Of this, no more than 2,000 linear feet of streams may be impacted;*
 - *Conversions fall within Corps' 4 Conversion Thresholds (e.g., one wetland type to another wetland type cannot exceed 5,000 square feet).*



What adjustments have been made by MDE?

- MDE explicitly recognizes the distinction between development projects and restoration projects and the need for streamlining of restoration project permitting
- 90 Day turnaround for most projects
- Watershed strategy such as the Bay WIP satisfies alternatives analysis ("avoid" test)
- Applicant has to document degradation/need for restoration at the site
- Applicant has to document expected *functional uplift* at the project site
- MDE explicitly recognizes that uplift at the project site may involve conversions and MDE operates under the presumption that *conversions that are within the Corps' Conversion Thresholds do not trigger compensatory mitigation*
- For larger conversions, MDE requires that the applicant demonstrate that there is no practicable option that achieves the same degree of uplift with a lesser degree of conversions at the project site in order to still "qualify" for no compensatory mitigation.



MDE Definition of Functional Uplift

- *“measurable improvement of physical, chemical, and/or biological aquatic resource functions and/or services between the existing and proposed conditions as a result of a restoration or enhancement activity at the project site”*



Available Materials to Aid Applicants in Applying for Permits

- Guidelines for the Permitting of MS4/Chesapeake Bay TMDL-related Restoration Projects (dated 8/5/2016)
- Case Study Examples
- Permit Checklist
- Revised/Shortened Joint Application
- Also, MDE is offering Quarterly Meetings for Counties to voluntarily present upcoming projects to better ensure smooth permit processing



Questions?

