

Statewide Activity Approval (SAA) – Qualifying Criteria for Projects Seeking to Utilize the SAA

Delaware Department of Natural Resources and Environmental Control (DNREC)- Division of Water – Wetlands & Waterways Section

AUTHORIZED ACTIVITIES:

The Statewide Activity Approval (SAA) authorizes specific activities in Delaware’s regulated waterways and subaqueous lands. This approval has been updated to reflect additional activities as referenced on Page 1 of the Statewide Activity Approval Authorization Form and Criteria for Utilizing the SAA. Please read these instructions carefully before submitting your application.

APPLICABILITY:

Any recreational, residential or applicable commercial facilities within tidal or non-tidal waters subject to 7 Del. C., Chapter 72 and the Regulations Governing the Use of Subaqueous Lands (Regulations).

BLANKET CRITERIA:

1. Navigation and Safety for all proposed activities:

The existing structure(s) cannot currently impair the ability of adjacent property owners to access the water and may not cause a general navigation or safety hazard.

2. Serviceability for all proposed activities:

As required in Section 4.4 of the Regulations (Chapter 72, Regulations Governing Subaqueous Lands), structures to be repaired or replaced must be “*intact and functioning for the original intended design purpose*” (except in the event of a specific and catastrophic water event – See Definitions, below).

3. Compliance with applicable Department of the Army U.S. Army Permit:

Projects must be able to comply with the requirements of the appropriate Department of the Army Permit.

REPAIR CRITERIA FOR DOCKS, PIERS, RAMPS, CHANNEL MARKERS AND OTHER VESSEL BERTHING OR LAUNCHING FACILITIES:

1. Structural Footprint:

All structures approved under this SAA shall be constructed in the structural footprint of the existing structures (except as noted in #3, below).

2. Materials/Design:

Materials can be changed. Creosote-treated wood is prohibited for replacement structures and must be removed from the aquatic environment when it was used for existing structures. Salt-treated wood is acceptable, but recycled plastics, fiberglass,

polymer-coated piling, helical screw piling, and other alternatives which minimize the introduction of toxic materials into the aquatic environment are preferred wherever feasible. Fixed docks and piers may be replaced with floating docks or piers provided the floating dock or pier will not be sitting on the bottom. (For tidal waters the floating structures shall not sit on the bottom during the average daily low tide). Floating docks and piers may be wider than the fixed docks or piers they replace provided the dimensions follow the Department's current "Boat Docking Facilities Guidance Document".

3. Compliance with Existing Authorizations:

If the existing structure is following its current lease, permit or letter of authorization, or is smaller than originally authorized, the structure(s) authorized by this SAA shall have the same or smaller dimensions than the existing structure. If the existing structure is larger than originally authorized, it shall be brought into compliance with its current lease, permit or letter of authorization.

REPAIR CRITERIA FOR BULKHEAD REPAIR/REPLACEMENTS:

1. This Subaqueous Lands Authorization (SAA) authorizes the repair or replacement of existing bulkheads up to 500 linear feet under State Programmatic General Permit-18 (SPGP-18). For structures exceeding 500 linear feet, authorization may be granted under this SAA contingent upon the use of an appropriate Nationwide Permit issued by the U.S. Army Corps of Engineers.

2. Structural Footprint

Bulkheads repaired or replaced under this Statewide Activity Approval (SAA) must be constructed within the footprint of, or landward of, the existing structure. A step-out of up to 18 inches channelward is permissible in artificial tidal lagoons in accordance with SPGP 18. For natural waterbodies, SPGP 20 may allow a step-out of up to 18 inches; however, this is subject to review and may require additional authorizations from the Department. Any proposed change in structure height must be clearly indicated on the submitted plans as well as comply with 4.7.1.6 of the Regulations Governing the Use of Subaqueous lands which states "The extent to which the proposed project may adversely impact natural surface and groundwater hydrology and sediment transport functions.

3. Creosote-Treated Wood

When an existing bulkhead proposed for repair or replacement is constructed of creosote-treated lumber, all creosote-treated materials shall be removed from the environment to the maximum extent practicable and disposed of in accordance with applicable regulations.

CONSTRUCTION IN LAGOONS CRITERIA:

1. Boat Docking and Launching Structures:

Channelward Encroachment Limits (see Definitions, p. 6):

In all lagoons, no part of any dock, pier, boat lift, piling, ramp or other docking structure authorized by this SAA shall extend channelward beyond the mean high water line for a distance greater than 20% of the lagoon width (see Definitions on p. 6, below) at the location where the structure is proposed.

Maximum Structure Size:

For each residence, this Statewide Activity Approval (SAA) authorizes either one fixed dock not to exceed 5 feet in width (or up to 6 feet in width when associated with a boat lift), or floating dock not to exceed 6 feet in width. Floating docks must be limited to the minimum size necessary to safely and effectively support the docked personal watercraft or other vessel. Additionally, one access pier up to 4 feet in width is authorized. The total length of any dock structure shall be limited to the minimum necessary to accommodate the vessel(s) to be berthed, defined as the length of the vessel plus 5 feet.

2. Shoreline Stabilizations Structure Criteria:

This SAA does not authorize shoreline stabilization projects unless demonstrable erosion is evident at the project site. This SAA authorizes the new construction, repair, or replacement of gabions, stone rip-rap revetments, vegetative stabilization or bulkheads, not to exceed 500 linear feet.

Unless at least 75% of the linear feet of the individual lagoon's shoreline has already been bulkheaded, new shoreline stabilization projects must be constructed using either stone rip-rap revetments, gabions or vegetative stabilization. Vegetative stabilization is encouraged and preferred in all locations where its use is practical and feasible.

This SAA authorizes the repair or replacement of existing bulkheads or rip-rap only if the new structure stays within the footprint of, or behind the old structure. When replacing a bulkhead, construction shall be phased in order to minimize the loss of fill from behind the bulkhead. Minor excavation from the lagoon to replace fill which has washed in during construction is authorized by this SAA.

REPAIRS TO AIDS TO NAVIGATION CRITERIA:

1. Structural Footprint:

All structures approved under this SAA shall be constructed in the structural footprint of the existing structures (except as noted in #3, below).

2. Materials/Design:

Materials can be changed. Creosote-treated wood is prohibited for replacement structures and must be removed from the aquatic environment when it was used for existing structures. Salt-treated wood is acceptable, but recycled plastics, fiberglass, polymer-coated piling, helical screw piling, and other alternatives which minimize the introduction of toxic materials into the aquatic environment are preferred wherever feasible.

FISH AND WILDLIFE HARVESTING, ENHANCEMENT AND ATTRACTION DEVICES AND ACTIVITIES CRITERIA:

1. Structural Footprint:

All structures should be located landward of mean low water line when proposed in tidal waters

2. Materials/Design:

Materials proposed in both non-tidal and tidal waters should be reviewed and approved by DNREC Division of Fish and Wildlife.

3. Compliance with Existing Authorizations:

If the existing structure is in compliance with its current lease, permit or letter of authorization, or is smaller than originally authorized, the structure(s) authorized by this SAA shall have the same or smaller dimensions than the existing structure. If the existing structure is larger than originally authorized, it shall be brought into compliance with its current lease, permit or letter of authorization.

SCIENTIFIC MEASUREMENT DEVICES CRITERIA:

1. Structural Footprint:

All structures approved under this SAA shall be minimal in footprint and location clearly identified on project plans.

2. Materials/Design:

Devices, materials, anchoring, identification, and locations should be clearly defined.

SURVEY ACTIVITIES CRITERIA:

1. Structural Footprint:

All structures approved under this SAA shall be minimal in footprint and location clearly identified on project plans

2. Materials/Design:

Devices, materials, methodology, identification, and locations should be clearly defined.

REPAIR BY REPLACE BANK STABILIZATION – Non-Bulkhead

1. Structural Footprint:

All structures approved under this SAA shall be constructed in the structural footprint of the existing structures not to exceed 500 linear feet in length and 1 cubic yard per running foot.

2. Materials/Design:

Appropriately sized stone should be used. The toe of riprap should be trenched in. Stone should be clean, free of debris, oil, and grease. Filter cloth should be placed beneath the stone to prevent settling.

DEFINITIONS:

Activity: Includes, but is not limited to, any human induced action, such as dredging, draining, filling, grading, bulkheading, mining, drilling, extraction of materials or excavation or construction of any kind, including, but not limited to, construction of a boat ramp or slip, breakwater, residences, bridge, bulkhead, culvert, dam, derrick, dock, groin, jetty, lagoon, gabion, rip-rap, launching facility, marina, mooring facility, pier, seawall, walkway or wharf.

Boat Docking Facility: Means a place where a vessel or vessels may be secured to a fixed or floating structure, or moorage or mooring onto the shoreline or shoreline structure (including marginal docks), either temporarily or indefinitely.

Commercial: Means any activity undertaken for profit, for which a fee will be charged, directly or indirectly, or which results in the generation of revenue.

Department of the Army Nationwide Permit: Nationwide permits (NWP) are general permits issued on a nationwide basis to streamline the Department of the Army (DA) authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. In order to qualify for the use of a NWP, prospective permittees must comply with all of the terms, general conditions (GCs), and regional conditions (RCs) of the NWP, including any requirements for the submittal of a pre-construction notification (PCN).

Facility: Means all related land, structures, services, appurtenances and improvements associated with an activity regulated under 7 Del.C. Ch. 72.

Floating Platform: Means any floating structure which has no means of propulsion or is not designed as a boating vessel.

Lease: Means an agreement for exclusive possession of lands for a determinate period. A lease (renewable on a 10-year term) is required for the placement of any structure (dock, pier, pipeline, shoreline stabilization, etc.) or any fill placed in underwater lands channelward of the mean low water line. Projects that involve fill below the mean low water line are also subject to an annual lease fee. All tidal underwater lands within the State of Delaware below the mean low water line, except those underwater lands specifically granted by the State to a private owner, are considered to be Public Subaqueous Lands held in trust by the State of Delaware for all Delaware citizens.

Letter of Authorization: Is a written approval from DNREC that allows a person to conduct a specific activity in, on, or over state-owned subaqueous lands or tidelands, without requiring a full permit or lease.

Maintenance: Means the actions required to return a channel, bridge, culvert, stormwater basin or water control structure to its full operational condition or to prevent a decline in its utility. These actions shall not change the purpose, scope or capacity of the channel, bridge, culvert, stormwater basin or water control structure.

Mean Low Water or Mean Low Tide (a tidal datum): Means the average lowest point on a bank, tide flat, beach or shore, found during normal tide conditions. This may be determined by physical or biological characteristics, interpolation from mean high water based on knowledge of tidal range for an area or tide gauge information, if corrected to account for local conditions.

Permit: Refers to the state authorization required for activities affecting lands under water (subaqueous lands and tidelands). Delaware regulates these through the Subaqueous Lands Act (Title 7, Chapter 72 of the Delaware Code) and related regulations.

Pier: Means a structure in, on, or over subaqueous lands which is used by the public primarily for fishing, crabbing, swimming, or viewing. A pier shall not include vessel berthing use unless specifically designated as such.

Regulations Governing the Use of Subaqueous Lands: These regulations refer to governing the use of subaqueous lands are promulgated in accordance with the provisions of 7 Del.C. §7212.

Serviceability: For repair and replacement projects of serviceable structures, serviceability must be proven to the satisfaction of the Department. A serviceable structure includes existing structures which are intact and functioning for the original intended design purpose. For structures which are no longer intact due to a specific and catastrophic water event or activity, camera-dated photographs or aerial photography must clearly indicate the serviceability of said structure (as defined by the criteria above) within six (6) months prior to the date of application.

Shoreline Erosion Control Structure or Measure: Means any activity or structure which provides for stabilization of the shore or bank of a watercourse including, but not limited to, a bulkhead, breakwater, gabion, groin, jetty, rip-rap revetments, seawall, vegetation, and/or grading of banks.

State Programmatic General Permit 18 (SPGP-18): State Programmatic General Permit (SPGP) is a type of permit that is administered by a state agency and designed to eliminate duplication of effort between Corps districts and states, as well as to make the permitting process more efficient with flexibility as to the geographic region covered and whether nationwide permits are revoked. This general permit has been developed for certain categories of structures and work and the discharge of dredged and fill material in waters of the U.S. that require Department of the Army and State of Delaware authorizations. Activities typically authorized by SPGP-18 include work and structures such as bulkheads, breakwaters, piers, docks, pilings, rip-rap, dredging and filling, etc. The revalidation and extension of SPGP-18 was coordinated with other interested Federal agencies, the State of Delaware, and the general public.

State Programmatic General Permit 20 (SPGP-20): State Programmatic General Permit (SPGP) is a type of permit that is administered by a state agency and designed to eliminate duplication of effort between Corps districts and states, as well as to make the permitting process more efficient with flexibility as to the geographic region covered and whether nationwide permits are revoked. This general permit authorizes the construction of proposed and maintenance of existing piers, docks, gangways/ramps, stairs/ladders, mooring piles, boat lifts, modular floating platforms for jet skis and larger vessels, breakwaters and the replacement of existing serviceable bulkheads.

Statewide Activity Approval: These authorizations have an abbreviated processing procedure and can be used for various activities which have been determined to have minimal adverse impacts on subaqueous lands.

Structure: Includes, but is not limited to, any boat ramp, slip, building, breakwater, bridge, bulkhead, culvert, dam, derrick, dock, gabion, groin, jetty, residence, launching facility, marina, mooring facility, pier, seawall, walkway, or wharf.

Submerged Lands: Means land lying below the line of mean low tide in the beds of all tidal waters within the boundaries of the State, together with the beds (channel ward of ordinary high water in non-tidal waters) of navigable rivers, streams, lakes, bays, inlets, ponds, or other waterways within the boundaries of the State.

Substantially Developed Artificial Tidal Lagoons: Are those artificial tidal lagoons at which the surrounding lands are uplands and do not support wetlands other than a narrow band of fringe wetlands along the waterline. Lagoons are defined as artificially created linear waterways, sometimes branched, terminating in a dead end with no significant upland drainage.

Tidal Waters: Means any waters affected by tide.