DNREC DIVISION OF WATER

# Statewide Activity Approval Guidance

# Helpful Definitions

| Term | Simple Definition |
|---|---|
| DNREC | Delaware Department of Natural Resources and Environmental Control |
| USACE | U.S. Army Corps of Engineers |
| Mean High Water | (a tidal datum) means the point on a bank, tide flat, beach or shore, up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation (non-aquatic), physical markings or characteristics, known vegetation lines, and maybe further identified by tidal gauge data, or any other suitable means delineating the mean height reached by a rising tide. |
| Mean Low Water | (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. |
| Channelward | Toward the deeper, navigable part of a waterbody (away from shore). |
| Landward | Toward or in the direction of the upland shore (away from channel). |
| Artificial Lagoon | Artificially created linear waterways, sometimes branched, terminating in a dead end with no significant upland drainage. |
| Natural Waterbody | A lake, river, stream bay, or any waterbody that formed naturally. |
| Nationwide Permit | Federal authorization issued by the USACE that allows certain activities with minimal environmental impact, like small scale construction or shoreline projects, to proceed without needing an individual permit. |

# Guidance Presentation Purpose

- A Statewide Activity Approval (SAA) is a streamlined authorization issued by the Delaware Department of Natural Resources and Environmental Control (DNREC) through its Wetlands and Waterways Section. A SAA allows specific activities in, on, or over Delaware's regulated wetlands and waterways that do not require a full permit or subaqueous lands lease.

- Eligible activities and structures include:
  - repairs in natural waterbodies,
  - repairs and new construction in artificial lagoons,
  - aids to navigation,
  - fish and wildlife harvesting, enhancement and attraction devices,
  - scientific measurement devices, and
  - survey activities.

- When pursuing this authorization, it is important to understand the regulatory requirements and eligibility criteria that apply to your project. This guidance presentation outlines the criteria for each activity type allowed under a SAA and explains the application submission requirements, helping applicants better understand and navigate this authorization process.

| | |
|---|---|
| Introduction | • State and Federal Jurisdiction<br>• Qualifying Criteria for all Projects |
| Activity Types & Criteria | • Repairs in Natural Waterbodies<br>• Repairs or New Construction in Artificial Lagoons<br>• Additional Activities |
| Application Submissions Requirements | • Application Forms<br>• Submission Checklist<br>• SAA Process Flow |

# State Jurisdiction

## ➢What is the Wetlands and Waterways' jurisdiction, and what do they regulate?

### The Wetlands

- State jurisdiction includes all tidal wetlands as well as those non-tidal wetlands that include 400 or more contiguous acres under the Delaware Wetlands Act (7 Del. Code, Chapter 66) and the state's *Wetlands Regulations* (7 DE Admin. Code 7502). You can find the official State Wetland Maps from the State-Regulated Wetland Map Index.
- State regulated wetlands protected by law are defined as "those lands lying at or below two feet above local mean high water which support or are capable of supporting" certain plant species that are listed in the law and regulations.
- The types of activities in these wetlands that are regulated, and therefore require a permit, include dredging, draining, filling, construction of any kind, bulk heading, mining, drilling and excavation.

### The Waterways

- State jurisdiction includes all tidal waters up to the mean high-water line as well as all nontidal rivers, perennial streams, intermittent streams, lakes, ponds, bays, and inlets up to the ordinary high-water line under the Subaqueous Lands Act (7 Del. Code, Chapter 72) and the *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504).
- The activities regulated in these waters include the placement of any structure in, on, over or under subaqueous lands (including docks, piers, buoys, ramps, dolphins, pilings, dams, culverts, bridges, etc.), as well as the laying of any pipeline or utility line (electric, telephone, fiber optic, water, sewer, gas, etc.), bank or channel stabilization structures (rock veins, grade controls, rip-rap, groins, gabions, breakwaters, bulkheads, biologs/vegetation), any dredging, filling, excavating or extracting of materials, or establishing an anchorage for mooring more than two vessels.

# Qualifying Criteria for All Projects

- This SAA is applicable to any recreational, residential, or applicable commercial facilities within tidal or non-tidal waters subject to 7 Del., Chapter 72 and Regulations Governing the Use of Subaqueous Lands (Regulations).
- For all projects:
  - Navigation and safety of current structures on the property:
    - The existing structure(s) cannot currently impair the ability of neighboring property owners to access the water and may not cause a general navigation or safety hazard.
  - Serviceability for proposed activities on the property:
    - As required in Section 4.4 of the Regulations (Chapter 72, Regulations Governing Subaqueous Lands), structures that are proposed 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. If the structure is not serving its intended purpose due lack of upkeep, applicants must propose a new structure, rather than a repair or replacement.

# Repair in Natural Waterbodies: Boat Docking or Launching Structures

- **For projects that will include the repair of docks, piers, ramps, channel markers, and other vessel berthing or launching facilities located in natural waterbodies, this SAA can be utilized given the following requirements:**
  - Materials:
    - Materials of the existing structure can be changed. Creosote-treated wood is prohibited for replacement structures and must be removed from the water when it was used for existing structures. Salt treated wood is acceptable but alternatives that minimize the introduction of toxic materials into the water are preferred. For example, recycled plastics, fiberglass, polymer-coated piling, or helical screw piling.
  - Fixed Dock and Piers to Floating Docks and Piers:
    - Fixed docks and piers may be replaced with floating docks or piers so long as the floating dock or pier will not be sitting on the bottom, for tidal waters the floating structure should not sit on the bottom during the average low tide. The floating docks or piers can be wider than the fixed docks or piers as long as the dimensions follow the Departments current “Boat Docking Facilities Guidance Document.”
  - Structural Footprint:
    - All structures must be replaced in the structural footprint they currently occupy.
    - If the existing structure is authorized under a lease, permit, or letter of authorization, or is smaller than originally authorized, the structure(s) authorized by this SAA must have the same or smaller dimensions than the existing structure. If the existing structure is larger than what was originally authorized, it is in violation of its conditions and must be brought into compliance with its current lease, permit, or letter of authorization.

# Repair in Natural Waterbodies: Bulkhead Structures

- **For projects including the repair or replacement of an existing in bulkhead in natural water bodies, this SAA can be utilized given the following requirements:**
  - Length of Bulkhead:
    - This SAA authorizes the repair or replacement of existing bulkheads up to 500 linear feet under the State Programmatic General Permit-18 (SPGP-18). If a structure exceeds 500 linear feet, authorization may be grated under this SAA contingent upon the use of an appropriate Nationwide Permit issued by the U.S. Army Corps of Engineers (USACE).
  - Structural Footprint Changes in Natural Waterbodies:
    - Bulkheads repaired or replaced under this SAA must be constructed within the footprint of, or landward of, the existing structure. A step out of up to 18 inches may be allowed in natural waterbodies in accordance with State Programatic General Permit-20 (SPGP-20), but this change is subject to review and may require additional authorizations from the Department.
  - Proposed Change in Height:
    - Any proposed change in height for any repair or replacement 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 extend to which the proposed project may adversely impact natural surface and groundwater hydrology and sediment transport functions.”
  - Materials:
    - If an existing bulkhead proposed for repair or replacement is constructed of creosote-treated lumber, all creosote-treated materials must be removed from the water to the maximum extent practical and disposed of in accordance with applicable regulations.

# Repair in Natural Waterbodies: Non-Bulkhead Bank Stabilization

- **For projects including a repair by replacement of a non-bulkhead bank stabilization structure(s) in natural water bodies, this SAA can be utilized given the following requirements:**
  - Structural Footprint:
    - All structure approved under this SAA must be constructed in the structural footprint of the existing structure and not exceed 500 linear foot in length and 1 cubic yard per running foot.
  - 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 places beneath the stone to prevent settling.

# Repair in Artificial Lagoons: Boat Docking or Launching Structures

- **For projects that will include the repair of docks, piers, ramps, channel markers, and other vessel berthing or launching facilities located in an artificial lagoon, this SAA can be utilized given the following requirements:**
  - Materials:
    - Materials of the existing structure can be changed. Creosote-treated wood is prohibited for replacement structures and must be removed from the water when it was used for existing structures. Salt treated wood is acceptable but alternatives that minimize the introduction of toxic materials into the water are preferred. For example, recycled plastics, fiberglass, polymer-coated piling, or helical screw piling.
  - Fixed Dock and Piers to Floating Docks and Piers:
    - Fixed docks and piers may be replaced with floating docks or piers so long as the floating dock or pier will not be sitting on the bottom, for tidal waters the floating structure should not sit on the bottom during the average low tide. The floating docks or piers can be wider than the fixed docks or piers as long as the dimensions follow the Departments current “Boat Docking Facilities Guidance Document.”
  - Structural Footprint:
    - All structures must be replaced in the structural footprint they currently occupy.
    - If the existing structure is authorized under a lease, permit, or letter of authorization, or is smaller than originally authorized, the structure(s) authorized by this SAA must have the same or smaller dimensions than the existing structure. If the existing structure is larger than what was originally authorized, it is in violation of its conditions and must be brought into compliance with its current lease, permit, or letter of authorization.

# Repair in Artificial Lagoons: Bulkhead Structures

- **For projects including the repair or replacement of an existing bulkhead in a artificial lagoon, this SAA can be utilized given the following requirements:**
  - Length of Bulkhead:
    - This SAA authorizes the repair or replacement of existing bulkheads up to 500 linear feet under the State Programmatic General Permit-18 (SPGP-18). If a structure exceeds 500 linear feet, authorization may be grated under this SAA contingent upon the use of an appropriate Nationwide Permit issued by the U.S. Army Corps of Engineers (USACE).
  - Structural Footprint Changes in a Lagoon:
    - Bulkheads repaired or replaced under this SAA must be constructed within the footprint of, or landward of, the existing structure. A step out of up to 18 inches is permissible in artificial tidal lagoons in accordance with SPGP-18.
  - Proposed Change in Height:
    - Any proposed change in height for any repair or replacement 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 extend to which the proposed project may adversely impact natural surface and groundwater hydrology and sediment transport functions.”
  - Creosote-Treated Wood:
    - If an existing bulkhead proposed for repair or replacement is constructed of creosote-treated lumber, all creosote-treated materials must be removed from the water to the maximum extent practical and disposed of in accordance with applicable regulations.

# New Construction in Artificial Lagoons: Boat Docking and Launching Structures

- **For projects including construction of a new dock, pier, boat lift, piling, ramp, or other docking structure in an artificial lagoon, this SAA can be utilized given the following requirements:**
  - Channelward Encroachment:
    - In all artificial lagoons, no part of any new structure proposed can extend channelward beyond the mean high water line for a distance greater than 20% of the lagoon width at the location where the structure is proposed.
  - Maximum Structure Size:
    - For each residence, this SAA authorizes either one fixed dock not to exceed 5 feet in width (or up to 6 feet in with one 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 birthed, defined as the length of the vessel plus 5 feet.

# Repair or New Construction in Artificial Lagoons: Shoreline Stabilization

- **For projects including new construction, repair, or replacement of gabions, stone rip-rap revetments, vegetative stabilization or bulkhead, that do not exceed 500 linear feet of shoreline in an artificial lagoon, this SAA can be utilized given the following requirements:**
  - Evident Erosion:
    - This SAA does not authorize shoreline stabilization unless there is demonstrable erosion at the project site.
  - New projects:
    - Unless at least 75% of the linear feet of the individual lagoon's shoreline has already been bullheaded, 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.
  - Repair/Replacement Projects:
    - 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 maintain 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.

# Aids in Navigation

- **For projects including repairs to aid navigation, this SAA can be utilized given the following requirements:**
  - Structural Footprint:
    - All structures approved under this SAA shall be constructed in the structural footprint of the existing structure.
    - 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 what was originally authorized, it is in violation of its conditions and must be brought into compliance with its current lease, permit, or letter of authorization.
  - Materials:
    - Materials of the existing structure can be changed. Creosote-treated wood is prohibited for replacement structures and must be removed from the water when it was used for existing structures. Salt treated wood is acceptable but alternatives that minimize the introduction of toxic materials into the water are preferred. For example, recycled plastics, fiberglass, polymer-coated piling, or helical screw piling.

# Fish & Wildlife Harvesting, Enhancement, and Attraction Devices

- **For projects including fish and wildlife harvesting, enhancement, and attraction devices, this SAA can be utilized given the following requirement:**
  - Structural Footprint:
    - All structures should be located landward of the mean low water line when proposed in tidal waters.
  - Materials/Design:
    - Materials proposed in both non-tidal and tidal waters should be reviewed and approved by DNREC Fish and Wildlife.
  - 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 what was originally authorized, it is in violation of its conditions and must be brought into compliance with its current lease, permit, or letter of authorization.

# Scientific Measurement Devices

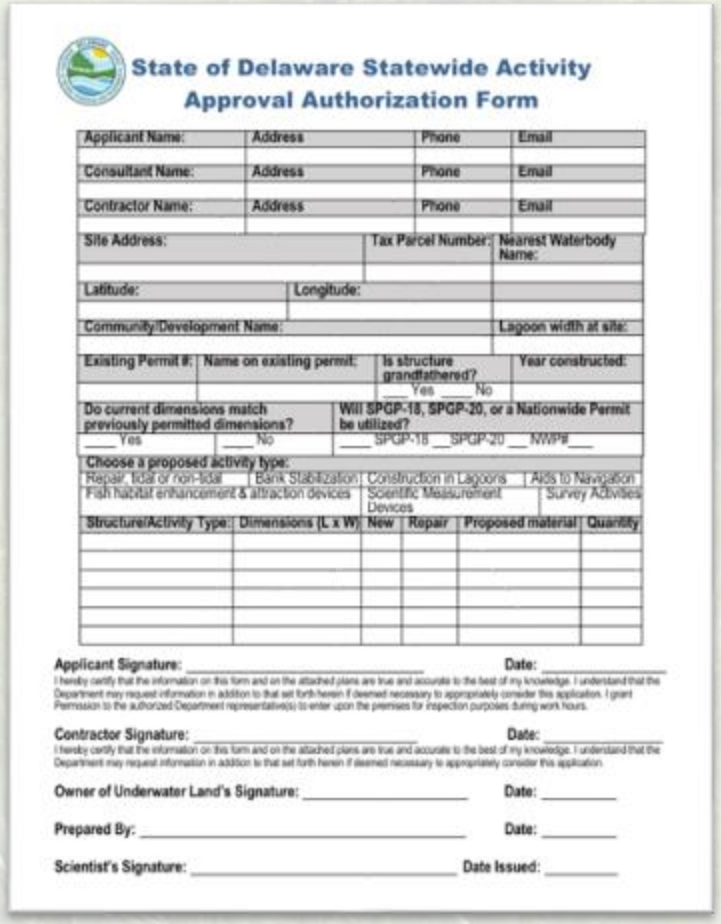
- **For projects including the implementation of scientific measurement devices, this SAA can be utilized given the following requirements:**
  - Structural footprint:
    - All structures approved under this SAA must be minimal in footprint and the location clearly identified on project plans.
  - Materials/Design:
    - Devices, materials, anchoring, identification, and locations should be clearly defined.

# Survey Activities

- **For projects including surveying activities, this SAA can be utilized given the following requirements:**
  - Structural Footprint:
    - All structures approved under this SAA must be minimal in footprint and the location clearly identified on project plans.
  - Materials/Design:
    - Devices, materials, methodology, identification, and locations should be clearly defined.

# Application Forms From the Wetlands and Waterways Section

- For the SAA application, applicants must complete the State of Delaware Statewide Activity Approval Authorization Form. The applicant must provide general information such as applicant identification, project location, activity type, and other required details.



**State of Delaware Statewide Activity Approval Authorization Form**

| Applicant Name: | Address | Phone | Email |
|---|---|---|---|
| | | | |
| Consultant Name: | Address | Phone | Email |
| | | | |
| Contractor Name: | Address | Phone | Email |
| | | | |

| Site Address: | Tax Parcel Number: | Nearest Waterbody Name: |
|---|---|---|
| | | |
| Latitude: | Longitude: | |
| | | |
| Community/Development Name: | | Lagoon width at site: |
| | | |

| Existing Permit #: | Name on existing permit: | Is structure grandfathered? ___Yes ___No | Year constructed: |
|---|---|---|---|
| | | | |

| Do current dimensions match previously permitted dimensions? | | Will SPGP-18, SPGP-20, or a Nationwide Permit be utilized? |
|---|---|---|
| ___Yes | ___No | ___SPGP-18 __SPGP-20 __NWP#___ |

Choose a proposed activity type:

| | | | | |
|---|---|---|---|---|
| Repair, tidal or non-tidal | Bank Stabilization | Construction in Lagoons | Aids to Navigation | |
| Fish habitat enhancement & attraction devices | | Scientific Measurement Devices | Survey Activities | |

| Structure/Activity Type: | Dimensions (L x W) | New | Repair | Proposed material | Quantity |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

**Applicant Signature:** _____ **Date:** _____

I hereby certify that the information on this form and on the attached plans are true and accurate to the best of my knowledge. I understand that the Department may request information in addition to that set forth herein if deemed necessary to appropriately consider this application. I grant Permission to the authorized Department representative(s) to enter upon the premises for inspection purposes during work hours.

**Contractor Signature:** _____ **Date:** _____

I hereby certify that the information on this form and on the attached plans are true and accurate to the best of my knowledge. I understand that the Department may request information in addition to that set forth herein if deemed necessary to appropriately consider this application.

**Owner of Underwater Land's Signature:** _____ **Date:** _____

**Prepared By:** _____ **Date:** _____

**Scientist's Signature:** _____ **Date Issued:** _____

# Submission Checklist

- **Applicants must include the following components as part of a complete SAA Application. Submission of all required materials at the time of application will facilitate timely review and authorization issuance:**
  - ❑ Completed Statewide Activity Approval Authorization Form.
  - ❑ Written approval from the owner of the underwater lands where the project will occur, or irrefutable evidence that the applicant is the owner.
  - ❑ Plan and section view drawings showing mean high water, mean low water, width of waterbody, and an indication that the project occurs at least 10 feet away from neighboring property lines.
  - ❑ Certified copy of the deed and a property survey for the project site.
  - ❑ Vicinity map showing location and boundaries.
  - ❑ A check for the appropriate application fees made payable to the State of Delaware ($250). If submitting online, have a form of payment ready once applicant has compiled all documents to submit.
  - ❑ One copy of the complete application mailed to DNREC, Division of Water, Wetlands and Waterways Section, 89 Kings Highway, Dover, Delaware 19901 or apply online.

Digital Submission Homepage

# Application Submission Requirements