

**T OF THE ARMY  
ASSISTANT SECRETARY  
- WORKS  
Y PENTAGON  
N DC 20370-0108**



**REPLY TO  
ATTENTION OF**

**8 APR 1996**

**Honorable George T. Frampton  
Assistant Secretary for Fish  
and Wildlife and Parks  
U.S. Department of the Interior  
Office of the Secretary  
Washington, D. C. 20240**

**Dear Mr. Frampton:**

**This is in response to your letter of April 1, 1996, in which you requested a higher level review of issues related to the proposed Department of the Army programmatic general permit with the State of Maryland (MDSPGP). The MDSPGP would authorize, subject to terms and conditions, certain projects regulated by the State pursuant to its wetlands program.**

**Your request for elevation was made pursuant to Part IV of the 1992 Section 404(q) Memorandum of Agreement (MOA) between the Department of the Interior (DOI) and the Department of Army. The DOI's concerns focused on the following issues: 1) your belief that the MDSPGP does not adequately address the potential individual and cumulative impacts; 2) the need to change the upper and lower thresholds to one acre and 5,000 square feet respectively; 3), the need to clarify and simplify the permit language; 4) the need for a quick and automatic resource agency kick-out; 5) the need to require a comprehensive range of alternatives for consideration for projects involving wetland fills; 6) the need for a trial period to monitor the MDSPGP; 7) a mechanism to ensure that no project may receive authorization under the MDSPGP which does not receive State review and authorization; 8) the need to revoke the existing nationwide general permits that involve discharges of dredge and/or fill material; 9) the MDSPGP should not apply to part of the State program delegated to a county unless such programs are subject to full Federal agency and public review; and 10) the need to modify attachment 12 of the MDSPGP to include interagency review and notice of any new State general permits.**

**Part IV of the MOA establishes procedures for elevation of specific permit cases. To satisfy the explicit requirements for elevation, two tests must be met: 1) the proposed project must involve an aquatic resource of national importance (ARNI's); and 2) the project must result in substantial and unacceptable impacts to ARNI's.**

We have reviewed carefully the concerns raised in your letter and the Baltimore District's proposed MDSPGP. Our review also included my meeting with you, and subsequent meetings between Army Corps of Engineers, Fish and Wildlife Service (FWS), and National Marine Fisheries Service (NMFS) representatives. Based upon our review, we do agree that some activities being authorized in accordance with the MDSPGP could potentially involve ARNI's. We do not agree, however, that these projects will result in substantial and unacceptable adverse impacts to ARNI's. We base this decision upon the substantial environmental safeguards in the MDSPGP and the nature of the State's program. Further, the Federal resource agencies will have an opportunity to review virtually all projects and require the Corps to evaluate any particular action as an individual permit.

Notwithstanding our strong belief that the MDSPGP will not result in more than minimal impacts, we do agree that certain improvements should be made. Specifically, we have identified five areas that should help address your concerns. These five areas, which were developed in coordination with your staff, include the following:

- 1) reducing the acreage threshold in tidal waters from five to three acres;
- 2) requiring additional notification procedures and coordination in non-tidal waters for projects impacting between three and five acres. Such activities would now go into tier four review;
- 3) clarification and reformatting of the MDSPGP to make it more user friendly and understandable. Further, the standard operating procedures (SOP) will be clarified and finalized before the MDSPGP is issued. Both will be done in coordination with the FWS and the NMFS;
- 4) revocation of all nationwide general permits within the State of Maryland that would otherwise duplicate authorization of activities under the MDSPGP; and
- 5) an agreement to conduct an annual review of the implementation of the MDSPGP in coordination with the Federal resource agencies. This will be articulated in the SOP.

Such reviews will focus on clarity and formatting issues and will not involve discussions of issues such as acreage thresholds. We expect the District to finalize and issue the MDSPGP and SOP by April 24, 1996. Therefore your staff should be

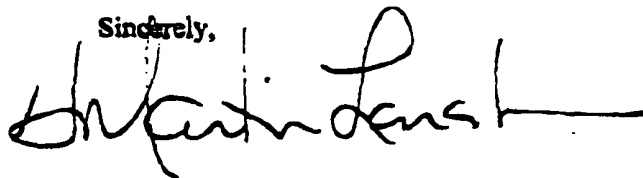
prepared to expedite its review and provide comments to the District by April 19, 1996. Corps Headquarters staff will also review the final documents before permit issuance.

Based on our review, I am convinced that protection of the aquatic environment has been addressed fully by the District and the State and that activities authorized by the MDSPGP will not result in more than minimal individual or cumulative impacts. I also believe that even greater protection for the aquatic environment will accrue from the MDSPGP due to the revocation of the Corps nationwide general permits. In short, the Corps, the FWS and other Federal agencies will have an opportunity to review substantially more projects than they could without the MDSPGP. This is undertaken in a manner that allows permit applicants to have one stop shopping with the State, reducing unnecessary Federal review consistent with Administration policy.

In light of the findings summarized above, additional review of the MDSPGP pursuant to the MOA is not required. I will advise the Corps to continue its efforts to modify and clarify the MDSPGP in coordination with the FWS and NMFS as noted above.

Although in this particular case we disagree on some of the specific issues raised, we share your desire to protect the Nation's aquatic resources and the public interest. We look forward to our continued close coordination on the MDSPGP and other regulatory issues. Should you have any questions or comments concerning our decision in this case, do not hesitate to contact me or Mr. Michael L. Davis, Chief of the Corps Regulatory Branch at (202) 761-0199.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Martin Lancaster". The signature is written in a cursive style with a long horizontal stroke at the end.

H. Martin Lancaster  
Assistant Secretary of the Army  
(Civil Works)