

## **Maryland Department of Environment**

### **Policies and Procedures for**

#### **Small Pond Approval**

The Maryland Department of the Environment (MDE or Department) through regulation and oversight ensures all dams in Maryland are designed, constructed, operated and maintained safely to prevent failures and the resulting consequences. Maryland's Dam Safety Program develops and enforces the implementation of applicable dam safety laws, regulations, and best practices.

Section 5-503 of the Environment Article, Annotated Code of Maryland ("EN 5-503") requires that a person proposing to construct, reconstruct, change, or repair any reservoir, dam or waterway obstruction shall obtain a waterway construction permit from MDE. EN-503 specifies that a person is exempt from the requirement to obtain a waterway construction permit from MDE for construction, reconstruction, alteration, repair, or removal for any dam or reservoir if:

- the contributory drainage area is less than 1 square mile (640 acres);
- the dam is not greater than 20 feet in height measured vertically from the lowest point on the top of the dam to the lowest point on the upstream toe of the dam;
- the dam can impound no greater than 50 acre-feet of water at the crest elevation;
- the pond is a low hazard (class "A") structure, which is unlikely to cause loss of life or property damage if it were to fail;
- the pond meets minimum standards for safety set forth in MDE rules and regulations ("COMAR");
- the plans and specifications are approved by the appropriate Soil Conservation District or the Department's designee;
- the pond is not located within the drainage of the Gwynns Falls, Jones Falls, or Herring Run streams situated in or adjacent to Baltimore City; and,
- the Soil Conservation District or Department's designee notifies MDE of any pond approved under this exemption.

Dams meeting the above requirements are referred to as "Small Ponds". MDE recognizes a Soil Conservation District's or Department designee's approval of a Small Pond when completed in accordance with the Code of Maryland Regulations (COMAR) Title 26.17.04.05, Natural Resources Conservation Service (NRCS) MD-378 Standards and Specifications for Ponds ("MD-378 Standards"), and MDE's policies and procedures (as published on the MDE Dam Safety website). To ensure clear implementation of the standards, MDE will accept a Small Pond approval for both urban and agriculture ponds from a Soil Conservation District or Department designee when all of the following are met:

1. Prior to issuing a Small Pond approval, a technical review of all supporting plans, reports and analyses shall be performed by a Maryland registered professional engineer ("Technical Reviewer") with the following qualifications:
  - Should have had a bachelor's degree in civil, agricultural, or related engineering

- discipline from an accredited college or university;
  - Must have had college level coursework or training in the field of hydraulics, hydrology, and soil mechanics;
  - Must have professional experience in the field of stormwater management, hydrologic and hydraulic modeling, dam breach modeling and hazard classification, hazard creep, geotechnical engineering, earth dam construction, and familiarity with the NRCS methods of determining storm rainfall runoff; and
  - Must have professional experience in the design and construction of Small Ponds in accordance with NRCS' MD-378 Standards.
2. All plans and specifications to construct, reconstruct, alter, repair, or remove, any Small Pond must be reviewed by the Technical Reviewer in accordance with the following: Small Pond construction drawings and design computations must meet the minimum standards of COMAR 26.17.04.05, MD-378 Standards, and MDE's policies and procedures.
  3. All applications to the Soil Conservation District to construct, reconstruct, alter, repair, or remove Small Ponds must be accompanied by an updated dam breach analysis and hazard classification, performed in accordance with MDE guidelines, dated May 2018.
  4. The Technical Reviewer shall sign and seal a Technical Review Affidavit [Appendix A] indicating that, to the best of their knowledge, the design meets all regulatory requirements and is recommended for approval by the person or entity that signs the Small Pond Approval.
  5. The Soil Conservation District or Department's designee will only approve construction, reconstruction, alteration, removal, or repair of any Small Pond located in a Maryland cold water watershed as identified on the [Cold Water Resources Mapping Tool](#) as a Maryland Trout Watershed; Benthic Coldwater Macroinvertebrate Watershed; or, Put and Grow Trout Watershed; in accordance with MDE Design Guidance.
  6. Upon receipt of the Technical Review Affidavit, the Soil Conservation District or Department's designee may issue a Small Pond Approval. The Department has provided a template Small Pond Approval [Appendix C]. The Soil Conservation District or Department's designee may use an alternate document, provided the conditions in the Small Pond Approval meet or exceed those in the template.
  7. A Soil Conservation District may enter into an agreement ("Review Agency Agreement") with a Maryland County or municipality or third-party engineering firm with a Maryland registered professional engineer to perform the technical review of plans and specifications of Small Ponds (collectively referred to as the Review Agency). Under this agreement, the Maryland registered professional engineer performs the small pond plan Technical Reviewer responsibilities. The Soil Conservation District retains the responsibility for approval of the plans and specifications for Small Ponds.
    - a. The Soil Conservation District must provide MDE an opportunity to review and make comments on the Review Agency Agreement between the District and the Review Agency prior to its execution.
    - b. The Soil Conservation District must submit to MDE a list of all staff charged with review of Small Ponds within each Review Agency (the Technical Reviewers"). The Soil Conservation District must submit an updated list to MDE as staff changes occur.
    - c. The Technical Reviewers must meet the minimum qualifications described in Item 1. above.
    - d. The Review Agency will assign reviews to Technical Reviewers who have no

- contractual, financial, or personal interest that would impair their independent review of the project.
- e. The Soil Conservation District may approve the plans and specifications and design computations for Small Ponds upon receiving Technical Review Affidavits described in 4. above.
  - f. The Soil Conservation District must provide a copy of the Review Agency Agreement, and any amendments, modifications, or extensions made thereto, to MDE.
8. The Soil Conservation District or Department's designee must notify MDE of all plans and specifications for Small Ponds approved in accordance with COMAR 26.17.04.05G. The notification shall include a copy of the Small Pond approval letter and a small pond summary sheet form supplied by MDE [Appendix F]. The notification shall be submitted to MDE via email: [MDE.PondApprovals@Maryland.gov](mailto:MDE.PondApprovals@Maryland.gov) or by mail (Maryland Department of the Environment, Attn: Chief, Dam Safety Permits Division, 1800 Washington Boulevard, Suite 440, Baltimore, MD 21230) within 30 days of the end of each quarter (September 30, December 31, March 31, and June 30) in which the approval was granted.
  9. The Soil Conservation District or Department's designee shall inform the owner of their responsibility to ensure that the construction, reconstruction, removal, change or repairs to any Small Pond are carried out in accordance with COMAR 26.17.04.05, MD-378 Standards, and MDE's policies and procedures either by direct observation of the work, by review of construction progress reports submitted by the engineer responsible for design of the Small Pond, or a combination of both.
  10. The Soil Conservation District or Department's designee will require and must hold on file, approved "as-built" Small Pond plans and specifications for a minimum of twenty years.
  11. The Soil Conservation District or Department's designee must certify that the subject pond was constructed in conformance with the approved plans and specifications and the "as-built" plans are true and accurate and within acceptable deviation tolerance. The as-built certification statement must appear on the as-built plan set, and in the form of the Project Completion / As Built Submission Affidavit which shall accompany the as-built package. The as-built certification and the Project Completion / As Built Submission Affidavit must be signed by a Maryland registered professional engineer who performed either direct observation of the construction, received progress reports from qualified professionals, or a combination of both in sufficient detail to enable them to certify the construction. A certification by the Design Engineer shall be acceptable instead of a certification by the Soil Conservation District or Department's designee. If there are deficiencies that prevent the certification of the pond construction, they shall be brought to the attention of the Design Engineer and Owner and corrected in a prompt manner. If a certification cannot be made, the Soil Conservation District or Department's designee shall notify the Department.
  12. Within 90 days after the completion of construction, the Soil Conservation District or Department's designee shall submit the following to the Department:
    - Project Completion / As Built Submission Affidavit
    - Completed As-Built Checklist
    - As-Built Small Pond Summary Sheet Form

MDE will provide technical assistance to the Soil Conservation District or Department's designee for review of Small Ponds as time and personnel are available. Where the District requests MDE to provide complete technical review and concurrence, MDE will instead issue a Small Pond Approval. Where necessary, MDE will take appropriate enforcement action when notified by the District of any Small Pond completed for which the appropriate "as-built" drawings have not been submitted within the required 90 days of pond completion.

## **APPENDICES**

- Appendix A. Technical Reviewer Affidavit
- Appendix B. Design Review Checklist
- Appendix C. Small Pond Approval Template
- Appendix D. Project Completion / As Built Submission Affidavit
- Appendix E. As-Built Checklist
- Appendix F. Small Pond Summary Sheet Form
- Appendix G. MDE Design Guidance for small ponds in cold water watersheds