



Howard Soil Conservation District

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MEMORANDUM

TO: Engineers and Consultants

FROM: David Plummer, District Manager
Geoffrey Schoming, Engineer
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DATE: November 17, 2022

SUBJECT: New MDE Small Pond Policy

SUMMARY:

The Maryland Department of the Environment (MDE) has finalized a new small pond approval policy that adds several new requirements to the review and approval process for regulated small ponds in Maryland. This policy will take effect starting January 1, 2023 and must be followed by all Maryland soil conservation districts, including the Howard Soil Conservation District. All ponds approved by the Howard SCD after this date must meet the new policy. Engineers that design small ponds in Howard County should familiarize themselves and their clients with the policy to have a smooth transition to the new requirements.

BACKGROUND:

Maryland state law and regulations require that anyone who proposes to construct, modify, repair, or remove a dam must obtain approval from the MDE Dam Safety Permits Division. However, certain small ponds, typically low hazard agricultural ponds and urban stormwater management ponds, may instead be approved by the local soil conservation district (SCD). These ponds must be designed and constructed in accordance with the Natural Resource Conservation Service (NRCS) Pond Code MD-378.

For many years, SCDs have reviewed and approved small ponds with the technical support of NRCS, who provided technical assistance during the review process and performed spot checks of approved ponds for compliance with Pond Code MD-378. On January 29, 2021, the NRCS MD state office issued Bulletin 210-21-01, declaring that NRCS will no longer provide such technical support for urban (i.e., non-agricultural) small ponds beginning January 1, 2022. To fill this technical gap, MDE began coordinating with SCDs and other stakeholders to develop a new small pond approval policy, such that SCDs may be able to approve small ponds with the technical support of the MDE Dam Safety Permits Division. This new policy was released on September 8, 2022 and will take effect on January 1, 2023. To the Howard SCD's knowledge, no 'grandfathering' of ponds currently under design or review will be allowed.

POLICY:

The new small pond approval policy makes several changes to the requirements currently provided in Pond Code MD-378 and is attached to this memorandum. The major changes that affect Howard County small ponds are listed below:

- 1. MDE Dam Safety Guidelines and Policies:** All small ponds must now meet the MDE Dam Safety Guidelines and Policies, which are intended to supplement the requirements of Pond Code MD-378. These policies may be viewed at: <https://mde.maryland.gov/programs/water/DamSafety/Pages/guidelines.aspx>
- 2. New Breach Analysis Guidance:** Instead of using the dam breach analysis guidelines in Pond Code MD-378, engineers must now follow the MDE "Guidance for Completing a Dam Breach Analysis for Small Ponds and

Dams in Maryland” (2018), available at:

<https://mde.maryland.gov/programs/water/DamSafety/Pages/dambreakguidelines.aspx>.

3. **New Guidelines for Small Ponds in Use Class III and Coldwater Resource Watersheds:** Previously, small ponds in Use Class III and III-P watersheds that met certain criteria could not be reviewed by SCDs and instead had to be reviewed by the MDE Dam Safety Permits Division. This was due to MDE and Maryland Department of Natural Resources (DNR) concerns about potential thermal impacts that small ponds could have on trout and other coldwater species that inhabit Use Class III streams. Under the new policy, SCDs will now be able to review all small ponds in Use Class III and III-P watersheds. If a small pond is proposed in a Use Class III or III-P watershed, or is in a coldwater resource watershed as defined by DNR (see: <https://maryland.maps.arcgis.com/apps/webappviewer/index.html?id=dc5100c0266d4ce89df813f34678944a>), then the small pond must be designed in accordance with newly-released MDE thermal design guidance, which in turn references the DNR “Guidance for Reviewing Stormwater Management Practices in Use III and IV Watersheds” (see: https://dnr.maryland.gov/fisheries/Documents/UseIIISWMGuidance_2021.pdf).
4. **New Guidelines for Small Pond Repairs and Removals:** The Howard SCD currently performs reviews of major pond rehabilitations and pond removals that disturb a threshold area or volume of earth to require submission of plans. Under this new policy, pond repairs and removals will now be held to the same review process, standards, and recordkeeping requirements as new small ponds. Plans for repair of a small pond must be submitted to the Howard SCD unless the repair is an eligible maintenance activity outlined in “MDE Dam Safety Policy Memorandum #11: Activities Not Requiring a Dam Safety Permit” (see: <https://mde.maryland.gov/programs/water/DamSafety/Documents/Policy%20Memorandum%20No.%2011%20-%20Activities%20Not%20Requiring%20Dam%20Safety%20Permit%20%28new%29.pdf>). Additionally, plans must be submitted for all small pond removals, which must be designed in accordance with “MDE Dam Safety Policy Memorandum #6: Dam Decommissioning” (see: <https://mde.maryland.gov/programs/water/DamSafety/Documents/Policy%20Memorandum%20No.%206%20-%20Dam%20Decommissioning%20%28new%29.pdf>).
5. **Filter Diaphragms Required:** Under Pond Code MD-378, either anti-seep collars or filter diaphragms could be used as seepage control measures in earth embankments. **However, under this new policy, anti-seep collars will no longer be permitted.** All small ponds will require filter diagrams designed and constructed in accordance with the new MDE Small Pond Review Checklist and the NRCS National Engineering Handbook, Part 628, Chapter 45, available at: <https://directives.sc.egov.usda.gov/viewerFS.aspx?id=3201>
6. **Construction Progress Reports:** To ensure that small ponds are constructed, modified, repaired, or removed in accordance with Pond Code MD-378, MDE policies, and COMAR, the engineer responsible for design of the small pond must now submit regular construction progress reports to the Howard SCD. The frequency and contents of these progress reports are described in the new “As-Built Submission Checklist” and shall include, at a minimum: description of work completed, soil compaction and moisture test results, laboratory test results, gradation and/or USCS soil classification of embankment and impervious core/cutoff materials, gradation of filter diaphragm material, video inspection of all pipes 48 inches or less in diameter, and photographs of the work.
7. **New As-Built Submission Deadline:** Within 60 days of completion of small pond construction, as-built plans must be submitted to the Howard SCD for review. A project completion affidavit, as-built checklist, and pond summary sheet must be prepared by the design engineer and accompany the as-built plans. After approval by the Howard SCD and within 90 days of construction completion, copies of these documents will be forwarded to MDE. If as-builts are not submitted within 90 days of construction completion, the Howard SCD must notify MDE for enforcement action.
8. **New Checklists and Other Documents:** In addition to the new as-built documents described previously, a new “Pond Code 378 Checklist for Small Pond Approval” must accompany all pond designs submitted to the Howard SCD. If the pond design is approved, the Howard SCD will issue a new, formal small pond approval letter to the owner, which must be signed to indicate acceptance of the approval’s conditions.

It is anticipated that these new requirements will likely increase the cost and time to both design and review small ponds.

Small pond owners and engineers are encouraged to consider these new requirements when estimating engineering services.

FUTURE DEVELOPMENTS:

MDE is planning to hold training sessions for SCDs to familiarize them with the new policy. At these training sessions, it is assumed that MDE will make clarifications on the implementation of the policy. MDE has already confirmed that some wording in the policy will be changed to specifically exclude agricultural ponds. If any engineering consultants have questions about the new policy, please send them to the Howard SCD so they can be forwarded to MDE. The Howard SCD will do our best to keep our local engineering community apprised of any changes to the policy.

The Howard SCD will post links to the MDE policy documents on our website. Thank you for your patience and understanding as we endeavor to implement these policy changes and provide service to stakeholders.

Attachment: MDE Small Pond Approval Policy and Supporting Documents

Links: NRCS Pond Code MD-378

<https://mde.maryland.gov/programs/water/DamSafety/Documents/www.mde.state.md.us/assets/document/damsafety/MD378%202000%20Ponds.pdf>

NRCS National Engineering Handbook, Part 628, Chapter 45

<https://directives.sc.egov.usda.gov/viewerFS.aspx?id=3201>

MDE Dam Safety Guidelines and Policies

<https://mde.maryland.gov/programs/water/DamSafety/Pages/guidelines.aspx>

MDE Guidance for Completing a Dam Breach Analysis for Small Ponds and Dams in Maryland

<https://mde.maryland.gov/programs/water/DamSafety/Documents/Dam-Breach-Analysis/2018-05-15-Breach-Analysis-Guidance.pdf>

MDE Designated Use Classes for Maryland's Surface Waters

<https://mdewin64.mde.state.md.us/WSA/DesigUse/index.html>

DNR Coldwater Resources Mapping Tool

<https://maryland.maps.arcgis.com/apps/webappviewer/index.html?id=dc5100c0266d4ce89df813f34678944a>

DNR Guidance for Reviewing Stormwater Management Practices in Use III and IV Watersheds

https://dnr.maryland.gov/fisheries/Documents/UseIIISWMMGuidance_2021.pdf