



# Department of Environmental Protection

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## **Guidance on expiration of the 2018 US Army Corps of Engineer Massachusetts General Permit and associated MassDEP 401 Water Quality Certification March 23, 2023**

### **I. Background**

The United States Army Corps of Engineers (USACE) 2018 Massachusetts General Permit (2018 MA GP) and its related Water Quality Certification by MassDEP (2018 WQC), expire on April 5, 2023. Following the expiration of the 2018 MA GP, a new five-year MA GP (2023 MA GP) will be issued by the USACE subject to MassDEP certification that the new 2023 MA GP complies with the Massachusetts Surface Water Quality Standards (2023 WQC).<sup>1</sup> This Guidance explains how the expiration of the 2018 MA GP and the 2018 WQC, both issued on April 5, 2018, will affect current projects authorized pursuant to them.

The 2018 MA GP described certain activities, and/or associated resource impact limits, that are authorized without requiring an individual permit. Activities included in the MA GP are eligible for either “self-verification” (SV) or “pre-construction notification” (PCN) review by the USACE.

In the 2018 WQC, MassDEP certified that the Self Verification activities of the 2018 MA GP as well as the PCN activities for GP 20 (agriculture) and GP 22 (aquaculture) included in the 2018 MA GP comply with the Massachusetts Surface Water Quality Standards and other applicable requirements of state law, provided all terms and conditions of the 2018 WQC are met. Activities not certified in the 2018 WQC (i.e., all PCN’s except for GP 20 and 22 for agriculture and aquaculture and any other projects that do not meet the terms and conditions of the 2018 WQC) require an individual application for Water Quality Certification from MassDEP.

The paragraphs below describe the process proponents with existing projects covered by the 2018 MA GP should go through to obtain continued coverage and continued certification.

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<sup>1</sup> The authorization of the 2023 MA GP includes the publication of a public notice and a comment period which ended on February 9, 2023. The authorization of the 2023 WQC also includes the publication of a public notice and a comment period ending on March 28, 2023.

**II. Projects Authorized Under the 2018 MA GP that Qualify for an Extension of Time to Complete Construction:**

Pursuant to the 2018 MA GP General Condition 44, projects that have commenced or are under contract to commence before April 5, 2023, have until April 5, 2024 to complete the activity under the terms and conditions of the 2018 MA GP. Such projects, whether certified under the 2018 WQC or by an individual WQC, will continue to be certified so long as the activity is completed by April 5, 2024, in accordance with the terms and conditions of the 2018 WQC or an individual WQC, whichever applies. As soon as possible, proponents should submit information to MassDEP demonstrating that the project has commenced or is under contract to commence before April 5, 2023, along with information identifying the project (i.e., the WQC Authorization #, the USACE Project Number, the project name and location, and the applicants name). No further information is needed by MassDEP.

After April 5, 2024: Projects that qualify for the General Condition 44 extension of time to complete construction, but that are not complete by April 5, 2024, must obtain USACE reverification or a new authorization under the 2023 MA GP (see Section III, below). Such projects may be certified under the 2023 WQC issued for the 2023 MA GP or may require an individual WQC (see Sections III.a.ii and III.b., below), depending on whether the project is eligible for coverage under the 2023 WQC.

**III. Projects Authorized Under the 2018 MA GP that Do Not Qualify for an Extension of Time to Complete Construction**

- a. Permit Reverification or Authorization Under the 2023 MA GP and Recertification Under the 2023 WQC: Projects that were authorized under the 2018 MA GP but do not meet the criteria in General Condition 44 may be reverified by the USACE under the 2023 MA GP and may be recertified under the 2023 WQC, without additional public notice, provided the following criteria are met:
  - i. 2023 MA GP Reverification or Authorization: Previously authorized SVs and PCNs not eligible for a one-year extension of time to complete construction expire on April 5, 2023, and the USACE will require a new permit application. Also, previously authorized SVs and PCNs eligible for the one-year extension but not complete by the extension deadline will require a new permit application. The application will be reevaluated under the SV or PCN standards adopted in the new 2023 MA GP. If the scope of the project has not changed and it comports with the terms of the updated 2023 MA GP, the USACE will “reverify” the application. Reverified projects will not require additional public notice by the USACE since the activities will have been subject to the public notice conducted during the adoption of the 2023 MA GP. Projects not meeting the same SV or PCN standards under the terms of the 2023 MA GP will need a new authorization under the 2023 MA GP or an Individual Permit approval by the USACE. Please contact the USACE for further guidance.
  - ii. 2023 WQC Recertification: USACE reverified projects are certified under the 2023 WQC, without additional public notice, if the project is eligible for certification under the 2023 WQC. Note this would apply only to activities

that are described in 314 CMR 9.03, and that are not activities described in 314 CMR 9.04, and to emergency activities described in GP 25 that obtain an emergency certification pursuant to 314 CMR 9.12 or qualify under an emergency declaration pursuant to 310 CMR 10.06(8) issued by the Department, so long as the activity meets all other requirements, terms and conditions of the 2023 WQC.

- b. Permit Reverification or Authorization Under the 2023 MA GP and Issuance or Reissuance of an Individual WQC: Some projects that were authorized under the 2018 MA GP and do not meet the criteria in General Condition 44 may be reverified or authorized by the USACE under the 2023 MA GP but will not be eligible for certification under the 2023 WQC. Such projects will require issuance of an individual WQC (if previously certified by the 2018 WQC) or reissuance of an individual WQC (if previously certified under an individual WQC). Projects will require an application for an individual WQC if the project qualifies as SV or PCN under the 2023 MA GP but is not eligible for certification under the 2023 WQC. Note this would apply to activities that do not meet the criteria of 314 CMR 9.03, or that are described in 314 CMR 9.04, as well as activities that do not meet all other requirements, terms and conditions of the 2023 WQC. Proponents seeking an individual WQC should submit an application to MassDEP, however, for proponents who had a prior individual WQC, the application can be similar to the original provided the details remain the same. Public notice also is needed for the WQC.
  - c. Timeframes: All WQCs (whether the 2018 WQC, the 2023 WQC or an individual WQC) remain in effect for the same duration as the federal permit that requires it.
- IV. **New Projects after April 5, 2023**: New applications will follow the directions of the 2023 MA GP and the 2023 WQC to determine how activities can be approved. Those meeting the 2023 MA GP criteria for coverage (whether certified by the 2023 WQC or an individual WQC) will be certified for five years from the date of the 2023 MA GP.
- V. **Individual Permits (IP)**: IPs issued by the USACE (404) are not subject to the terms of the MA GP. Unlike the standard April 5, 2023 expiration of MA GP projects, the term of Individual Permits varies and is established by the Individual Permit but is typically 5-10 years from the date the Individual Permit is issued.