State Water Alteration Program
Advance Notice of Proposed Rulemaking and Request for Stakeholder Input

January 5, 2026

The Mississippi Department of Environmental Quality (MDEQ) proposed rules in January 2025 for the State Water Alteration Program (SWAP), which is designed to regulate certain impacts to waters of the State (WOTS). The draft rules did not yet include the full program framework. During the public comment period for the proposed rules, including a hearing held on April 17, 2025, many stakeholders expressed concern that they could not give full feedback without seeing the entire program, including how mitigation would be incorporated into SWAP. MDEQ agreed with these comments and decided not to finalize the January 2025 proposal.

MDEQ is working on a complete set of SWAP rules addressing program components such as how WOTS will be identified (delineation), how permits will be issued, and what compensatory mitigation may be required. In July 2025, MDEQ published several "Frequently Asked Questions and Answers" and indicated that there would be additional opportunities for public input both before and after MDEQ proposes new SWAP rules.

Today's advance notice of proposed rulemaking serves three purposes:

(1) Notifying the public that MDEQ intends to propose and finalize a full set of rules for SWAP in calendar year 2026;

(2) Informing stakeholders of MDEQ's current thinking regarding key SWAP components and program implementation prior to formal rule proposal and public comment; and

(3) Soliciting stakeholder input through specific questions about the structure and implementation of SWAP to help inform final draft program regulations.

Today's notice is not a formal notice of proposed rules and does not initiate a formal public comment period. MDEQ anticipates proposing draft rules with an opportunity for formal public comment later in 2026. The notice includes a summary of each key SWAP component along with questions for stakeholder input. The notice also provides draft rule text for some program components to give stakeholders additional details about how MDEQ is approaching SWAP development and implementation. MDEQ will consider input from stakeholders in response to this notice as it refines the draft rule text provided and continues developing draft rules for additional program components.

In building SWAP, MDEQ's objective is to protect Mississippi's aquatic resources while providing stakeholders with as much **certainty, clarity, efficiency**, **and flexibility** as

possible in program implementation. Key means of meeting these objectives are clearly defining the relationship between SWAP and programs under Clean Water Act (CWA) Sections 404 and 401 and minimizing duplication of effort when implementing these programs so as to minimize regulatory burden. The final section of this notice provides an overview of MDEQ's current framework for the SWAP permitting process and discusses the relationships between SWAP, the CWA Section 404 permitting process, and the CWA Section 401 Water Quality Certification (WQC) process.

In response to the questions posed in this notice, any interested party may submit written comments to:

Mississippi Department of Environmental Quality
Attention: Waters of the State
P.O. Box 2261
Jackson, MS 39225

Comments may also be submitted via e-mail to

WOTS@mdeq.ms.gov

All comments should be delivered by the end of business on **April 6, 2026**.

In addition, MDEQ will hold four in-person **listening sessions** for the public to provide further input on the details of the program as MDEQ prepares to propose draft SWAP regulations:

Grenada: February 19, 2026; 2:00 pm

Mississippi State Extension Office - Grenada County
1240 Fairground Road, Suite E
Grenada, MS 38901

Biloxi: February 23, 2026; 2:00 pm

Mississippi Gulf Coast Community College
Hospitality Resort Management Center (HRM)
420 Debuys Road
Biloxi, MS 39531

Hattiesburg: February 24, 2026; 10:00 am

Jones Companies Headquarters
G30 Training Room
306 Chevy Chase Drive
Hattiesburg, MS 39401

Jackson: February 25, 2026; 10:00 am

Mississippi Department of Environmental Quality
Commission Hearing Room
515 East Amite Street
Jackson, MS 39201

Click here to register to virtually attend the February 25th SWAP listening session in Jackson.

STATE WATER ALTERATION PROGRAM (SWAP)

General Requirements

As with any regulatory program, the SWAP regulations will include some important general requirements. For SWAP, these general requirements will include provisions that define key terms, indicate when SWAP is applicable, and establish conditions applicable to all SWAP actions.

Definitions in Subchapter 1

The SWAP regulations will define key terms in two sections of Title 11, Part 6, Chapter 1. In Subchapter 1, MDEQ will propose to clarify the definition of "waters of the State." The existing definition is broad and includes most surface waters and groundwaters, including some waters that are also waters of the United States as well as waters that are WOTS-only (i.e., no federal jurisdiction). MDEQ is considering two specific exclusions to the definition of WOTS, one for isolated ponds (which is part of the current definition but will be further clarified), and one for artificial basins or wetlands constructed entirely in upland areas and used primarily for stormwater or wastewater storage, treatment, or flow control as long as they were not constructed for wetland mitigation purposes.

Click the link below to view the draft clarified definition of waters of the State at:

11 Miss. Admin. Code Pt. 6, R. 1.1.1.A(85)

SWAP Definitions in Subchapter 4

The "General Requirements" in Subchapter 4 will include definitions that apply specifically to SWAP. These definitions help clarify what activities SWAP regulates and how to determine when exemptions or various permitting options apply.

Commenters on the January 2025 proposal asked for clarification of the difference between "activities" and "impacts" in the SWAP regulations. To address this concern, MDEQ would define "activity" as any and all work or acts associated with performing or carrying out a project or plan or constructing a structure. The SWAP regulations would apply to activities, often grouping activities into categories for purposes of regulation. For example, the Development Activities category would include certain agricultural, commercial, institutional, recreational, residential, linear transportation, and utility line activities, among others. The definitions would distinguish activities from "impacts" by providing specific definitions of "initial impact" and "secondary impact." SWAP would regulate activities with initial impacts to WOTS, where "initial impact" is defined as the

permanent or temporary physical alteration of WOTS located within the boundaries of a proposed project, plan, or construction site and as a direct result of the proposed activity. An example of an initial impact is discharge of clean fill material. “Secondary impacts” are effects on the physical, chemical, or biological integrity of waters of the State resulting from the initial impacts of a proposed activity. While SWAP would not directly address secondary impacts, SWAP requirements regulating activities with initial impacts would have the effect of reducing secondary impacts to WOTS within and, potentially, outside the boundaries of the project site where the regulated activities take place.

Other definitions MDEQ is presenting in Subchapter 4 are definitions of a “single and complete project,” both for linear and non-linear projects, and definitions of specific aquatic resources, including “wetland;” “linear watercourses;” “non-linear open waters;” and “perennial;” “intermittent;” and “ephemeral” streams. SWAP regulations will include exemptions and several permitting paths, but the availability of these options depends on the degree of impact to WOTS from a single and complete project. MDEQ’s objective in defining various types of waters and defining what constitutes a single and complete project is to provide stakeholders with a clear set of expectations for determining which of the applicable SWAP regulatory paths apply to regulated activities.

In addition to program definitions, the “General Conditions” section of the SWAP regulations would include an “Applicability” section that builds on the program definitions. This section would specify that SWAP applies to activities with initial impacts to WOTS and that, after the effective date of the regulations, such activities must comply with the regulations.

Conditions Appliable to All SWAP Actions

Finally, the “General Requirements” for SWAP would include several “Conditions Applicable to All SWAP Actions” that clarify the relationship of SWAP to other state and federal law and regulations. For example, while SWAP does not relieve a person from requirements under the CWA, one provision would specify that, for initial impacts to WOTS that are also waters of the United States, a Water Quality Certification (WQC) under Section 401 of the CWA fulfills the statutory and regulatory requirements for obtaining a SWAP permit.

Click the link below to view “SWAP General Requirements” draft regulatory text:

11 Miss. Admin. Code Pt. 6, R. 1.4.1

Questions for Stakeholder Input:

1. Are there terms that MDEQ is not proposing to define in Subchapter 4 or elsewhere in MDEQ regulations that should be defined?

2. Are there other definitions that should be further clarified?

SWAP Exemptions

MDEQ has identified SWAP exemptions (i.e., exemptions from the requirement to apply for a SWAP permit) for low impact activities and activities that historically have been exempted from regulation. For purposes of the proposed activity, a SWAP exemption would satisfy the requirements of Miss. Code Ann. § 49-17-29 (2), which prohibits "any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state" unless that person holds a current permit from the Permit Board or is exempted from holding a permit by a regulation. In addition, one key provision of the regulations would clarify that a SWAP exemption is not available if the activity requires an individual CWA Section 401 WQC. Obtaining a WQC under Section 401 of the CWA would fulfill the statutory and regulatory requirements for obtaining a SWAP permit.

MDEQ's January 2025 proposed regulations included several exemptions. As MDEQ has further developed SWAP, the Department is considering adding one exemption category and moving one exemption category from the January 2025 proposal to be covered by the "permit by rule" regulations (formerly called "conditional exemptions.") Categories of activities eligible for an exemption from SWAP would include:

- Constructed Ditch Maintenance
- Emergency Watershed Protection and Rehabilitation Activities
- Established and Ongoing Farming, Ranching, and Silviculture Activities
- Response Operations for Oil and Hazardous Substances

The January 2025 proposed rules included an exemption for activities that could be categorized as "Reshaping Existing Drainage and Irrigation Ditches for Water Quality Improvement." After further consideration, MDEQ has determined that activities in this category could have more than de minimis impacts on WOTS and has decided to address these activities under a permit by rule. This approach is consistent with the approach taken by the U.S. Army Corps of Engineers (USACE) for waters of the United States (WOTUS).

USACE covers these activities under a Nationwide Permit (NWP), specifically NWP 41 – Reshaping Existing Drainage and Irrigation Ditches.

MDEQ would also add a category of activities to the exemptions from SWAP. "Emergency Watershed Protection and Rehabilitation Activities" applies to emergency watershed protection or rehabilitation activities to be completed by or funded by a federal or state department or agency. Although USACE covers this category of activities under a NWP, specifically NWP 37 – Emergency Watershed Protection and Rehabilitation, MDEQ has determined that the nature of the activities (emergency protection and rehabilitation funded by another agency) provides sufficient safeguards for potential initial impacts to WOTS and would not require separate regulatory action on the part of MDEQ.

MDEQ is making minor changes to the "Established and Ongoing Farming, Ranching, and Silviculture Activities" exemption, revising the description of activities for ***clarity*** and adding "bank stabilization" to the list of covered activities under this category. MDEQ also is amending the "Response Operations for Oil and Hazardous Substances" exemption to add requirements for cleanup of oil releases from electrical equipment governed by the polychlorinated biphenyl spill response regulations.

Click the link below to view "SWAP Exemptions" draft regulatory text:

11 Miss. Admin. Code Pt. 6, R. 1.4.2

Questions for Stakeholder Input:

1. Are there additional activity categories that include activities with no more than de minimis impacts on WOTS that MDEQ should consider for a SWAP exemption?

2. Should any of the categories or specific activities within those categories MDEQ has considered for SWAP exemption be required to obtain a SWAP permit instead (i.e., permit by rule, general permit or individual permit)?

3. For each SWAP exemption category MDEQ is considering, are there activities included that should be more clearly described to avoid confusion or additional activities closely related to a category that should be added? Please identify the exemption and provide examples.

4. Are any proposed activity descriptions within the SWAP exemptions overly broad? If so, which ones and how should they be refined or made more specific?

SWAP Permitting Framework

Similar to the permitting framework in the January 2025 proposed rules, MDEQ is considering a permitting approach where the permitting path for an activity would be based on the degree of potential initial impacts to WOTS. The approach would include three permitting tiers: 1) SWAP permits by rule; 2) SWAP general permits; and 3) SWAP individual permits. MDEQ is developing a modular "Consolidated SWAP Form" that would be used for all SWAP permitting paths. The sections of the form that an applicant would complete and electronically submit to MDEQ would depend on the permitting path for the proposed activity (described in more detail below).

SWAP Permits by Rule

The SWAP permit by rule path was called "conditional exemptions" in the January 2025 proposal. The term "permit by rule" more accurately reflects the general approach being proposed. The "permit by rule" path would be similar to the "conditional exemption" approach in the January 2025 proposal, but with several key changes.

First, MDEQ is considering a requirement to fully execute a complete Consolidated SWAP Form to certify eligibility for a permit by rule. For a permit by rule, a complete Consolidated SWAP Form consists of a SWAP Permit by Rule Certification Form (a section of the modular Consolidated SWAP Form), a desktop delineation or field delineation (as appropriate), and a site map. (See "Delineation" below for delineation requirements.) The Consolidated SWAP Form would be fully executed and effective when all required components are received by MDEQ. ***No further regulatory action would be required by either the applicant or MDEQ***.

A permit by rule would expire five years after the date the SWAP Permit by Rule Certification is fully executed. Continuation of the eligible activities subject to an expiring permit by rule would require submission of a new certification. This approach differs from the January 2025 proposal for "Conditional Exemptions," which would have required completion but not submission of a certification form, site map, and delineation. As under the previously proposed conditional exemptions, an action on the part of MDEQ would not be needed for an activity to be covered under a permit by rule; however, by receiving SWAP Permit by Rule Certifications, MDEQ will be able to know the number and locations of projects with activities covered under permit by rule and be aware of the potential for cumulative impacts.

Second, MDEQ also is considering expanding the list of activity categories eligible for permit by rule, expanding the specific activities covered under some categories compared

to the January 2025 proposal, and combining activities that were included under separate "conditional exemptions" in the January 2025 proposal into a single permit by rule. The categories of activities eligible for permit by rule are based on similar activity categories or combinations of categories defined in USACE NWPs issued under CWA Section 404 as well as MDEQ's determination that a streamlined permit mechanism with no requirements for compensatory mitigation would be sufficiently protective when initial impacts to WOTS are below specified thresholds. It is important to note that, as with SWAP exemptions, if an activity requires an individual CWA Section 401 WQC it would not be eligible for a SWAP permit by rule. The individual WQC would fulfill the requirement to obtain a SWAP individual permit.

Third, in addition to an expanded number of activities and activity categories, MDEQ would modify the initial impact thresholds proposed in January 2025. Some activities (Ecosystem and Watershed Restoration Activities and Miscellaneous Low-Impact Activities) would have no thresholds. Some activities (Minor Discharges and Minor Dredging) would have thresholds based on the number of cubic yards of material moved rather than the number of acres or linear feet of waters impacted. For activities subject to thresholds based on the magnitude of initial impacts to WOTS, MDEQ would specify that ***a project may impact any number of linear feet of ephemeral watercourses and still qualify for a permit by rule***. All conditions of the applicable permit by rule would apply to activities with initial impacts to WOTS, including ephemeral watercourses.

Categories of activities for permit by rule and the proposed initial impact[1] thresholds are summarized in the table below.

SWAP Permit by Rule Activity Categories and Initial Impact Thresholds

<table>
<tr><th>SWAP Permit by Rule Category</th><th>SWAP Applicability Threshold</th></tr>
<tr><td>Ecosystem and Watershed Restoration Activities
• Aquatic Ecosystem Restoration, Establishment, and Enhancement Activities
• Repair of Uplands Damaged by Discrete Events
• Reshaping Existing Drainage and Irrigation Ditches for Water Quality Improvement</td><td rowspan="4">No initial impact thresholds

500 linear ft. of perennial streams, intermittent streams, and other non-ephemeral linear watercourses

and

0.5 acres of non-linear open waters and wetlands

and

any number of linear ft. of ephemeral streams and other ephemeral linear watercourses</td></tr>
<tr><td>Miscellaneous Low-Impact Activities
• Fish and Wildlife Management and Harvesting Activities
• Stormwater Management Maintenance Activities
• Structural Maintenance Activities
• Survey Activities
• Temporary Placement of Scientific Devices</td></tr>
<tr><td>Development Activities
• Agricultural Development Activities
• Commercial Development Activities
• Institutional Development Activities
• Recreational Development Activities
• Residential Development Activities
• Linear Transportation Activities
• Utility Line Activities
• Structural Discharges
• Attendant features and temporary work</td></tr>
<tr><td>Water and Waste Management Activities
• Cleanup of Hazardous and Toxic Waste
• Outfall Structures and Associated Intake Structures
• Stormwater Management Facility Construction
• Water Reclamation and Reuse Facilities</td></tr>
<tr><td>Minor Discharges and Minor Dredging
• Minor Discharges
• Minor Dredging</td><td>10 cubic yards of material</td></tr>
</table>

[1] *"initial impact" is defined as the permanent or temporary physical alteration of WOTS located within the boundaries of a proposed project, plan, or construction site and as a direct result of the proposed activity. An example of an initial impact is discharge of clean fill material*.

Finally, as shown in the table above, MDEQ is combining some categories of activities previously proposed for separate "conditional exemptions" into a single permit by rule (e.g., one permit by rule for Development Activities) and is considering comparing cumulative initial impacts from all activities that are part of a single and complete project to the permit by rule initial impact thresholds. This approach represents a change from the January 2025 proposed rules, which spread similar activities across several "conditional exemptions" and would have allowed application of multiple "conditional exemptions" and their thresholds to a single and complete project. MDEQ found that the January 2025 proposed approach of separate "conditional exemptions" (now permits by rule) for similar activities and allowing application of more than one "conditional exemption" to a single and complete project was unclear and would be difficult to implement. Furthermore, the revised approach, combined with putting no restriction on the number of linear feet of ephemeral linear watercourses impacted under a permit by rule, will allow lower-impact projects to proceed in a ***streamlined*** manner while providing a more protective overall permitting framework than the framework outlined in the January 2025 proposal.

Examples applying initial impact thresholds under this permit by rule framework are shown below.

Examples of Applying SWAP Permit by Rule Initial Impact Thresholds

Project Activities	**Example Initial Impacts**	**Are initial impacts below the permit by rule initial impact thresholds?**

Development Activities
• *Residential Development Activities*
• *Commercial Development Activities*
	• *Residential Development Activities*
	  ○ 150 linear feet of intermittent streams and
	  ○ 0.25 acres of wetlands and
	  ○ 300 feet of ephemeral streams
	• *Commercial Development Activities*
	  ○ 50 linear feet of intermittent streams and
	  ○ 0.20 acres of wetlands and
	  ○ 200 feet of ephemeral streams
	• **Cumulative Initial Impacts**
	  ○ 150 + 50 = **200 linear feet of intermittent streams** and
	  ○ 0.25 + 0.20 = **0.45 acres of wetlands** and
	  ○ 300 + 200 = **500 feet of ephemeral streams**
		Yes – Cumulative initial impacts from the single and complete project are below the initial impact threshold requirements for permit by rule.

Development Activities
• *Industrial Development Activities*
• *Utility Line Activities*
	• *Industrial Development Activities*
	  ○ 50 linear feet of intermittent streams and
	  ○ 0.45 acres of wetlands and
	  ○ 100 feet of ephemeral streams
	• *Utility Line Activities*
	  ○ 25 linear feet of intermittent streams and
	  ○ 0.15 acres of wetlands and
	  ○ 25 feet of ephemeral streams
	• **Cumulative Initial Impacts**
	  ○ 50 + 25 = **75 linear feet of intermittent stream** and
	  ○ 0.45 + 0.15 = **0.60 acres of wetlands** and
	  ○ 100 + 25 = **125 feet of ephemeral streams**
		No – Cumulative initial impacts from the single and complete project to non-ephemeral linear watercourses and to ephemeral linear watercourses are below permit by rule thresholds; however, this is not the case for initial impacts to wetlands. While initial impacts to wetlands from each activity category (0.45 acres for Industrial Development Activities and 0.15 acres from Utility Line Activities) are below the permit by rule initial impact threshold of 0.5 acres of non-linear open waters and wetlands, the cumulative initial impacts to wetlands from the single and complete project exceed this threshold. <u>The applicant would apply for coverage under the applicable SWAP general permit.</u>

Click the link below to view "SWAP Permits by Rule" draft regulatory text:

11 Miss. Admin. Code Pt. 6, R. 1.4.3

Questions for Stakeholder Input:

1. Are there additional activity categories MDEQ should consider for eligibility for SWAP permit by rule?

2. Should any of the categories MDEQ has considered for SWAP permit by rule eligibility be removed from consideration so that those activities would be required to follow a different permitting path (i.e., general permit or individual permit)?

3. For each SWAP permit by rule category MDEQ is considering, are there activities included that should be more clearly described to avoid confusion or activities closely related to a category that should be added? Please identify the permit by rule and provide examples.

4. Are any proposed activity descriptions within the SWAP permits by rule overly broad? If so, which ones and how should they be refined or made more specific?

5. The SWAP permit by rule initial impact thresholds MDEQ is considering are 500 linear feet of non-ephemeral streams and 0.5 acres of wetlands. Do you have alternative recommendations for the SWAP permit by rule thresholds and, if so, what data and information support those recommendations?

SWAP General Permits

The second SWAP permitting path is coverage under a SWAP general permit. The SWAP general permit path has some elements in common with SWAP permit by rule. To apply for coverage under a SWAP general permit, applicants would be required to fully execute a Consolidated SWAP Form. The form would be fully executed when all applicable sections of the form (e.g., the appropriate Notice of Intent), a site map, and a field delineation identifying all aquatic resources on site are received by MDEQ.

Like the permit by rule requirements, categories of activities identified for coverage under a SWAP general permit are based on similar activity categories or combinations of categories defined in USACE NWPs. Eligibility for coverage under a SWAP general permit would be based on the activity category and on meeting specified initial impact thresholds.

Cumulative initial impacts from all activities that are part of a single and complete project would be compared to the initial impact thresholds for the applicable SWAP general permit. The initial impact thresholds for linear watercourses, non-linear open waters, and wetlands are higher than the corresponding initial impact thresholds for permit by rule. As with the permit by rule thresholds, there is no limit on the linear feet of ephemeral watercourses, but conditions of the applicable general permit would apply to activities with initial impacts to any WOTS within the project boundaries, including ephemeral watercourses. General permits would expire five years after their effective date. An applicant would be required to submit the SWAP General Permit Continuing Coverage section of the Consolidated SWAP Form for coverage of ongoing activities under an administratively continued or reissued SWAP general permit. Finally, as with both exemptions and permits by rule, if an activity requires an individual CWA Section 401 WQC it would not be eligible for a SWAP general permit.

There are also significant differences between the permit by rule path and the general permit path. Perhaps most importantly, unlike a permit by rule, coverage under a SWAP general permit typically would require an action on the part of MDEQ to issue a Certificate of Coverage. An exception to this typical general permitting process that MDEQ is considering is coverage for Minor Discharges and Minor Dredging. For these activities, the applicable general permit would state that the applicant is covered by the general permit a specified number of days after the applicant fully executes a Consolidated SWAP Form unless MDEQ notifies the applicant otherwise. Other important differences between SWAP general permits and SWAP permits by rule are inclusion of additional activity categories for general permits not considered for permit by rule, the higher initial impact thresholds for general permit eligibility than for permit by rule, and compensatory mitigation requirements as conditions of general permits (see “Compensatory Mitigation” below).

Categories of activities for general permits and the proposed initial impact[2] thresholds are summarized in the table below.

SWAP General Permit Activity Categories and Initial Impact Thresholds

SWAP General Permit Category	SWAP Applicability Threshold
Bank Stabilization Activities **Does not include:** • Exempted activities related to stabilization of agricultural drainage or irrigation ditches • Activities related to drainage or irrigation ditches covered by the Ecosystem and Watershed Restoration Activities—Reshaping Existing Drainage and Irrigation Ditches for Water Quality Improvement Conditional Exemption • Bank stabilization associated with a Linear Transportation Project covered by the Development Activities Conditional Exemption	1,500 linear ft. of perennial streams, intermittent streams, and other non-ephemeral linear watercourses **and** 2.0 acres of non-linear open waters and wetlands **and** any number of linear ft. of ephemeral streams and other ephemeral linear watercourses
Development Activities • Agricultural Development Activities • Commercial Development Activities • Institutional Development Activities • Recreational Development Activities • Residential Development Activities • Linear Transportation Activities • Utility Line Activities • Structural Discharges • Attendant features and temporary work	
Mining Activities **Does not include:** • Coal Surface Mining Activities	
Reshaping Existing Drainage and Irrigation Ditches for Purposes Other Than Water Quality Improvement	
Water and Waste Management Activities • Cleanup of Hazardous and Toxic Waste • Outfall Structures and Associated Intake Structures • Stormwater Management Facility Construction • Water Reclamation and Reuse Facilities	
Minor Discharges and Minor Dredging • Minor Discharges • Minor Dredging	25 cubic yards of material

[2] *"initial impact" is defined as the permanent or temporary physical alteration of WOTS located within the boundaries of a proposed project, plan, or construction site and as a direct result of the proposed activity. An example of an initial impact is discharge of clean fill material*.

Click the link below to view "SWAP General and Individual Permits" draft regulatory text:

11 Miss. Admin. Code Pt. 6, R. 1.4.4

Questions for Stakeholder Input:

1. Are there additional activity categories MDEQ should consider for SWAP general permits?

2. Should any of the categories MDEQ has considered for SWAP general permits be removed from consideration so that those activities would be required to apply for a SWAP individual permit?

3. For each SWAP general permit category MDEQ is considering, are there activities included that should be more clearly described to avoid confusion, or activities closely related to a category that should be added? Please identify the general permit and provide examples.

4. Are any proposed activity descriptions within the SWAP general permits overly broad? If so, which ones and how should they be refined?

5. The SWAP general permit initial impact thresholds MDEQ is considering are 1,500 linear feet of non-ephemeral streams and 2.0 acres of wetlands. These thresholds are similar to thresholds used in WOTS programs MDEQ has reviewed, such as programs in Tennessee and Virginia. Do you have alternative recommendations for the SWAP general permit thresholds and, if so, what data and information support those recommendations?

SWAP Individual Permits

Under the SWAP regulations, the applicable permitting path for some activities will be a SWAP individual permit. Applicants would submit a Consolidated SWAP Form with a site map and full delineation to apply for a SWAP individual permit for:

- Activities with initial impacts to WOTS exceeding the thresholds established as applicability criteria for that category of activities under the regulations for permit by rule and general permits

- Activities in categories not addressed by the permit by rule or in a general permit
- Any activity that requires an individual CWA Section 401 WQC, regardless of the SWAP permit by rule and general permit thresholds

Issuing a SWAP individual permit provides MDEQ the opportunity to develop more tailored, site-specific permit conditions for larger projects with potentially greater impacts to WOTS.

A WQC under CWA Section 401 fulfills the statutory and regulatory requirements for obtaining a SWAP permit for initial impacts to WOTS that are also WOTUS. Therefore, components of the SWAP Consolidated Form for SWAP individual permits would include the information needed for MDEQ to complete its WQC review. Incorporating the information specified in 11 Miss. Admin. Code, Part 6, Rule 1.3.2.A and the information that addresses the water-quality related factors in the "Scope of Review for Application Decisions" in 11 Miss. Admin. Code, Part 6 Rule 1.3.4.A (Factors) and Rule 1.3.4.B (Basis for Denial) into the Consolidated SWAP Form will provide ***clarity*** in the permitting process, lead to more consistency in requests for a WQC, facilitate more ***efficient*** review and response to WQC requests, and allow MDEQ to issue a single document that serves as both a WQC and SWAP individual permit.

For SWAP individual permits for impacts to WOTS only, the individual permits would expire five years after their effective date. Continuation of activities subject to an expiring individual permit would require a new, fully executed Consolidated SWAP Form, which may include an updated site map and delineation, no later than 90 days prior to the expiration date of the permit. For SWAP individual permits tied to a CWA Section 404 permit (SWAP permits that are also WQCs for WOTS that are also WOTUS), the expiration date for the SWAP permit would be the same as the expiration date of the CWA section 404 permit.

SWAP individual permits also would include compensatory mitigation requirements, though with more limited mitigation options than what would be available under SWAP general permits (see "Compensatory Mitigation" below).

Click the link below to view "SWAP General and Individual Permits" draft regulatory text:

11 Miss. Admin. Code Pt. 6, R. 1.4.4

Delineation

Delineating aquatic resources within a project site and understanding the potential initial impacts on those aquatic resources from the proposed activities is essential to the SWAP permitting process. In developing regulations for delineation under SWAP, MDEQ is considering a two-tiered process in its "Waters of the State of Mississippi Delineation and Functional Assessment Manual":

(1) **A desktop delineation** using publicly available data sources—used as a screening tool and potentially to identify projects that would qualify for a SWAP permit by rule and
(2) **A full field delineation** —required as part of SWAP general permit applications and SWAP individual permit applications.

Under either approach, the applicant would be required to capture all aquatic resources within the boundaries of the site where proposed activities would occur, including aquatic resources that are excluded from the definition of WOTS. The desktop or field delineation would be submitted to MDEQ as part of a fully executed Consolidated SWAP Form.

A desktop delineation would provide a quick, ***cost-effective*** review of a project area using an online tool that accesses publicly available data sources to aid in the determination of the presence or absence of WOTS. Data sources would include:

- **The National Hydrography Dataset (NHD)** (accessing and analyzing water drainage networks; identifying streams, rivers, lakes, and related aquatic features)
- **United States Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI)** (locating and mapping aquatic features and obtaining standardized wetland data for the study area)
- **United States Geological Survey (USGS) Data** (obtaining soil maps and classifications; accessing groundwater and surface water data; using elevation and land cover data for environmental assessments)
- **LiDAR-derived Digital Elevation Models (DEM)** (conducting high-resolution terrain analysis; performing hydrologic modeling and watershed delineation)
- **Federal Emergency Management Agency (FEMA) Floodplain Maps** (assessing flood risk zones; evaluating potential aquatic connectivity and floodplain extent)
- **Land Use and Land Cover Data** (evaluating human impacts on the landscape; understanding ecological settings and habitat conditions)
- **Historical and Current Aerial Imagery** (detecting changes in hydrology over time; observing vegetation patterns and disturbances; monitoring land use changes and habitat alterations).

In addition, MDEQ is investigating a methodology for developing a predictive model that would provide users with a conservative estimate of on-site aquatic resources as part of the desktop delineation tool.

The desktop delineation tool would help applicants identify potential aquatic resources within the proposed project site boundaries. Applicants could use the desktop delineation as a screening tool to identify a likely SWAP permitting path by comparing cumulative sizes of all WOTS within the proposed project site boundaries to the applicable SWAP permit by rule and SWAP general permit initial impact thresholds. For example:

- A desktop delineation indicates that there are 800 linear feet of perennial stream and 0.6 acres of wetlands within the project site boundaries that may be subject to initial impacts from a proposed Stormwater Management Facility Construction project. Because the potential initial impacts to WOTS within the project boundaries appear to exceed the applicable SWAP permit by rule thresholds but fall below the applicable SWAP general permit thresholds, the results of this screening-level analysis indicate that the applicant may qualify for a SWAP general permit. If the applicant pursues coverage under a SWAP general permit, the application process would then include a full field delineation of the site.
- A desktop delineation indicates that there is a total of 0.3 acres of wetlands within the project site boundaries for a proposed Development Activities project. The applicant might conclude that there are no circumstances under which proposed activities would have initial impacts exceeding the 0.5 wetland acre initial impact threshold for a SWAP permit by rule. The applicant could then follow the process for obtaining coverage under the applicable SWAP permit by rule without completing a full field delineation. As part of the SWAP permitting process, the applicant would be required to submit the results of its desktop delineation to MDEQ along with the appropriate section(s) of the Consolidated SWAP Form (i.e., the SWAP Permit by Rule Certification form) and a site map. The applicant could then proceed without any action from MDEQ. However, the applicant would, in this scenario, be accepting the risk that a full field delineation would reveal greater initial impacts.

A full field delineation would be required as part of the application for a SWAP general permit or SWAP individual permit. In cases where a screening using the desktop delineation tool indicates that a full field delineation is needed (i.e., WOTS on site may exceed the permit by rule thresholds), SWAP permit applicants would complete and submit the results of a full field delineation with the Consolidated SWAP Form. Delineations for SWAP would use a field delineation process that parallels USACE's

delineation process. In developing a "Waters of the State of Mississippi Delineation and Functional Assessment Manual," MDEQ is considering procedures based on:

- USACE's Wetlands Delineation Manual (1987)
- USACE's Atlantic and Gulf Coastal Plain Regional Supplement
- USEPA's Streamflow Duration Assessment Method (SDAM) and
- USACE's National Ordinary High-Water Mark (OHWM) Field Delineation Manual.

SWAP regulations would require that all delineations submitted to MDEQ for SWAP be completed by a Mississippi Certified Delineator but would not require MDEQ approval of the delineation to proceed with the SWAP permitting process. MDEQ plans to propose regulations governing the Mississippi Certified Delineator Program (see below).

Delineation draft regulations are under development.

Questions for Stakeholder Input:

1. Are there additional factors, datasets, or parameters (e.g., hydrology, soils, topography, imagery, mapping tools) not listed above that should be considered as part of the desktop delineation tool? Are there particular tools or methods you recommend including in order to access or interpret these factors, datasets, or parameters?

2. In promulgating regulations governing field delineations of WOTS (where a desktop delineation is not sufficient) and in developing the "Waters of the State of Mississippi Delineation and Functional Assessment Manual" MDEQ is planning to standardize the data forms submitted as part of a full delineation.

    a. *For wetlands*: At a minimum, MDEQ would require submission, but not MDEQ approval, of the information required on USACE's Wetland Determination Data Form to proceed with the SWAP permitting process. Is there supplemental information that MDEQ should require in addition to the Wetland Determination Data Form?

    b. *For linear watercourses and non-linear open waters*: At a minimum, MDEQ would require submission, but not MDEQ approval, of the same information required to complete the Rapid Ordinary High Water Mark Field Identification Data Sheet from USACE's Ordinary High Water Mark Field Delineation Manual and the USEPA's SDAM field form to proceed with the SWAP permitting process. Is there supplemental information that MDEQ should require in addition to this information?

Mississippi Certified Delineator Program

MDEQ plans to develop a Mississippi Certified Delineator Program that would allow individuals to become certified to delineate aquatic resources in Mississippi under SWAP. For purposes of SWAP, all field delineations submitted to MDEQ would need to be completed by a Mississippi Certified Delineator using the procedures in the "Waters of the State of Mississippi Delineation and Functional Assessment Manual" (see "Delineation" above) but would not require MDEQ approval in order to proceed with the SWAP permitting process. MDEQ is considering options for components of the Mississippi Certified Delineator Program, including:

- Qualifications to register for certified delineator training and sit for a certified delineator exam (e.g., education, years of experience)
- Completing MDEQ's Mississippi Certified Delineator Training Course, including classroom and field training and passing MDEQ's Mississippi Certified Delineator Exam as prerequisites to certification
- Certification fees
- Recertification requirements
- Provisions for suspension or revocation of certification
- Enforcement provisions

Professional certifications often incorporate reciprocity provisions for certifications from other states. MDEQ is not considering developing a reciprocity program for delineators certified in other states. Delineator knowledge of and experience with ecosystems and aquatic resources that are specific to Mississippi and familiarity with SWAP requirements are necessary for a robust, successful delineation program.

Mississippi Certified Delineator Program draft regulations are under development.

Questions for Stakeholder Input:

1. Do you agree with the proposed training structure of classroom study, field practice, and an exam? Are there other components that should be included?

2. In addition to testing, what qualifications should be in place for becoming a certified delineator (e.g., level of experience, specific experience in Mississippi, education)?

3. MDEQ is considering requiring a refresher course and re-testing once every three years to maintain certified delineator status (i.e., recertification), consistent with other MDEQ

certification programs and delineator certification programs in other states (e.g., Tennessee). Is this an appropriate timeframe for requiring recertification? Should the recertification process include elements other than a refresher course and retesting?

SWAP Compensatory Mitigation

SWAP requirements will emphasize and incentivize avoiding and minimizing impacts to WOTS whenever practicable. In addition, compensatory mitigation for unavoidable impacts to aquatic resources will be an important feature of the program implemented through SWAP permit requirements. The goal of compensatory mitigation under SWAP is to replace the functions and values of lost aquatic resources. The four allowable compensatory mitigation methods would include: (1) restoration of a previously existing wetland or other aquatic site, (2) enhancement of an existing aquatic site's functions, (3) establishment (i.e., creation) of a new aquatic site, and (4) preservation of an existing aquatic site.

MDEQ is considering different mechanisms for implementing compensatory mitigation methods under SWAP, including permittee responsible mitigation (PRM), in-lieu fee programs, and mitigation banks.

- **PRM** means that the permittee (or an authorized agent or contractor) undertakes aquatic resource restoration, establishment, enhancement, and/or preservation activities to provide compensatory mitigation for initial impacts to WOTS. The permittee retains full responsibility for the compensatory mitigation activities.
- **In-lieu fee programs** involve restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a third party (often a non-profit entity) to satisfy compensatory mitigation requirements for initial impacts to WOTS. The in-lieu fee program sells compensatory mitigation credits to permittees, and the obligation to provide compensatory mitigation is transferred to the in-lieu fee program sponsor.
- **Mitigation banks** are large-scale sites where aquatic resources are restored, established, enhanced, and/or preserved to provide compensatory mitigation for initial impacts to WOTS. A mitigation bank sponsor may be a public agency, non-profit entity, or private company. A mitigation bank sells compensatory mitigation credits to permittees, and the obligation to provide compensatory mitigation is transferred to the mitigation bank sponsor. Mitigation banks are approved by the Mississippi Mitigation Bank Interagency Review Team, and their establishment, operation, and use are governed by a legal document called a "mitigation banking instrument."

These mechanisms are similar to the long-standing mechanisms for compensatory mitigation under USACE's CWA Section 404 permitting program, with some differences intended to ensure that the SWAP permitting process is as ***streamlined*** as possible. For SWAP, the available mechanisms for any given activity would depend on the type of SWAP permit that applies to the activity. Unlike the USACE compensatory mitigation program, there may be compensatory mitigation mechanisms available under SWAP for activities with initial impacts to state-only waters that would not be available for the same activities if they impact WOTUS.

Compensatory Mitigation Mechanisms by SWAP Permit Type for WOTS-Only Waters

Compensatory Mitigation Mechanisms	SWAP Permit Type
No compensatory mitigation required	• Exemption (no SWAP permit) • SWAP Permit by Rule
Permittee responsible mitigation (PRM)	• SWAP General Permit • SWAP Individual Permit
In-lieu fee programs	• SWAP General Permit
Mitigation banks	• SWAP General Permit • SWAP Individual Permit

A common feature of all available compensatory mitigation mechanisms is that they would be expected to include the same 12 fundamental planning and documentation components included in the federal mitigation requirements at 33 C.F.R. §332.4(c), as applicable to the compensatory mitigation method used and the scale of the compensatory mitigation activities. For example, the components applicable to a preservation plan may be different from those applicable to a restoration plan. Consistency with existing compensatory mitigation programs in this regard provides greater predictability for both permit applicants and MDEQ, as well as ***certainty*** of outcomes for SWAP compensatory mitigation. Mitigation plans for existing compensatory mitigation banks or in-lieu fee programs will have already incorporated the 12 components. MDEQ would work with any future banks or in-lieu fee programs being established for SWAP and assist applicants pursuing PRM to ensure that their mitigation plans adequately address applicable planning and documentation components.

Permittee Responsible Mitigation (PRM)

As shown in the table above, MDEQ is considering providing SWAP permittees with the option of using permittee responsible mitigation (PRM) to fulfill compensatory mitigation

requirements under a SWAP general permit or SWAP individual permit. MDEQ is considering a PRM approach with the following elements:

- PRM may be used to accomplish up to 100% of required compensatory mitigation.
- Up to 50% of PRM may be accomplished through preservation, provided the preservation includes a protective instrument (e.g., conservation easement).
- A PRM site must be located within the State of Mississippi and within the same Mississippi Major River Basin as the initial impacts (see https://www.mdeq.ms.gov/water/surface-water/watershed-management/basin-management-approach/basin-listing/).
- The amount of required compensatory mitigation for PRM could be calculated using the same approach as the USACE District where the project is located or an alternative approach that would be developed specifically for SWAP.

MDEQ is seeking stakeholder input on the availability of PRM as an option for compensatory mitigation under SWAP and on the components of a PRM program outlined above.

In-Lieu Fee Programs

MDEQ is considering in-lieu fee programs as a mechanism that would be available for meeting compensatory mitigation requirements under general permits. In-lieu fees could be calculated using the same approach as the USACE District where the project is located or an alternative approach that would be developed specifically for SWAP.

MDEQ is considering partnering with third-party environmental stewardship organizations such as the Mississippi Outdoor Stewardship Trust Fund to explore funding SWAP compensatory mitigation projects through in-lieu fees paid to such organizations. Because a single organization may have limited capacity for receiving in-lieu fees, MDEQ is interested in identifying multiple third-party environmental stewardship organizations that might serve as potential partners for an in-lieu fee program.

Mitigation Banks

Mitigation bank credits would be available to meet compensatory mitigation requirements under both SWAP general permits and SWAP individual permits. MDEQ is working with existing mitigation bankers and USACE to allow purchase of SWAP compensatory mitigation credits through existing mitigation banks. MDEQ and USACE are considering

how such purchases would affect compensatory mitigation programs under USACE's CWA Section 404 permitting program and whether there might be a need for establishing new mitigation banks. MDEQ is also considering using the same methodologies used by USACE Districts and established mitigation banking instruments to calculate the number of compensatory mitigation credits required.

***SWAP Compensatory Mitigation draft regulations are under development*.**

Questions for Stakeholder Input:

1. MDEQ is considering allowing permittee responsible mitigation (PRM) as an option for meeting up to 100% of compensatory mitigation requirements, with up to 50% of PRM permitted to be accomplished through preservation.

    a. Do you generally agree with allowing PRM as an option for meeting up to 100% of compensatory mitigation requirements under SWAP? Are there any specific situations where PRM would not be an appropriate option for meeting 100% of compensatory mitigation requirements under SWAP?

    b. Do you agree with allowing up to 50% of PRM to be accomplished through preservation? If not, what other percentage should be considered?

    c. Should MDEQ follow the same approach as the USACE District where a project is located to calculate the amount of compensatory mitigation required for PRM? If not, what methodology should MDEQ employ?

2. MDEQ is considering allowing in-lieu fees for compensatory mitigation for permittees covered under any SWAP general permit.

    a. Do you agree with allowing in-lieu fees for compensatory mitigation under any general permit? If not, which permittees/categories/activities/permit types should have the option of using in-lieu fees for compensatory mitigation?

    b. What third-party environmental stewardship organizations should MDEQ consider as partners for receiving in-lieu fees from SWAP compensatory mitigation requirements?

c. Should MDEQ follow the same approach as the USACE District where a project is located to calculate in-lieu fees? If not, what methodology should MDEQ employ?

3. MDEQ is considering allowing compensatory to be accomplished through the use of existing, approved mitigation banks under both SWAP general permits and SWAP individual permits.

   a. What challenges do you anticipate if existing mitigation banks are opened to be used for compensatory mitigation under SWAP?

   b. Should MDEQ use the same methodologies used by USACE Districts and established mitigation banking instruments to calculate the number of compensatory mitigation credits required?

SWAP Efficiencies

During the comment period on the January 2025 draft rules, MDEQ received comments indicating concerns about the additional workload required for MDEQ to implement SWAP. MDEQ is working strategically to build efficiencies into SWAP processes and protocols to streamline the program. For example:

1. Developing a desktop delineation approach to give applicants a screening tool to identify the likely SWAP permitting path and, in some cases, avoid the need for a full field delineation
2. A Mississippi Certified Delineator Program, which would allow MDEQ to receive certified delineations and proceed along the applicable SWAP permitting path without the need for time-consuming independent verification (see "Delineation" and "Mississippi Certified Delineator Program" below)
3. Developing an electronically submitted, modular Consolidated SWAP Form with clear requirements for each permitting path to improve the quality of applications and reduce the need for MDEQ to request additional information from applicants in order to review and process an application
4. Facilitating a more predictable, efficient permitting process than the current approach of requiring an antidegradation analysis through the Construction Stormwater General Permit to address impacts to WOTS
5. A SWAP permit by rule permitting path, which provides permit coverage upon submission of a complete Permit by Rule Certification without the need for MDEQ action

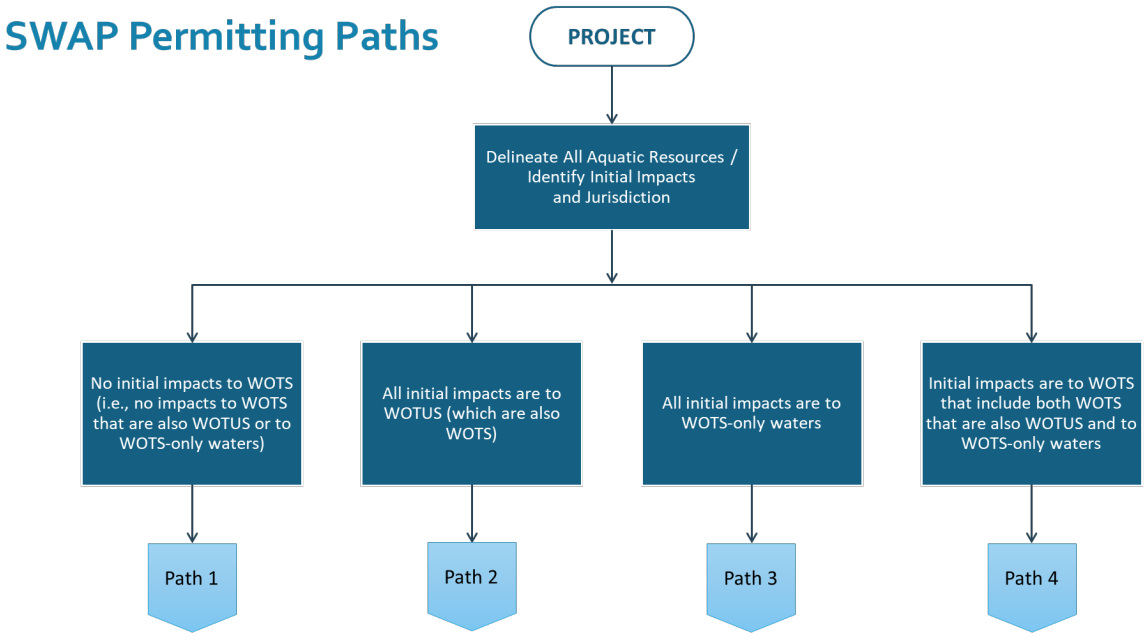
6. Addition of categories and activities eligible for permit by rule and general permits and development of thresholds that will maximize the number of projects covered through permit by rule or general permits while assuring minimal impacts to WOTS
7. Putting no restriction on the number of linear feet of ephemeral linear watercourses that may be impacted under a permit by rule or general permit, providing a pathway for lower-impact projects to proceed in a streamlined manner
8. Reducing duplication of effort on the part of the applicant and MDEQ by incorporating the information required for a CWA Section 401 WQC request into the Consolidated SWAP Form and allowing a single document to serve as both a WQC and SWAP permit for impacts to WOTS that are also WOTUS
9. Flexible compensatory mitigation options, including options that may not always be available under current compensatory mitigation programs
10. Investigating the use of artificial intelligence and machine learning tools to assist MDEQ with reviewing key components of SWAP permit applications.

Incorporating these program components will streamline the SWAP permitting process for both applicants and MDEQ and shorten the time needed to obtain permit coverage. MDEQ continues working to identify ways to build ***certainty, clarity, efficiency, and flexibility*** into the program and welcomes input from stakeholders on additional means of achieving these objectives.

Overview of SWAP and Relationship to CWA Section 404 and 401 Programs

The SWAP permitting process applies to activities with initial impacts to WOTS and will be defined through State regulations, policy, and guidance. Because the definition of WOTS includes aquatic resources that are also WOTUS, requirements under both SWAP and CWA Section 404 and 401 programs will apply to some projects. ***MDEQ's objective is to develop a framework for SWAP that provides certainty, clarity, efficiency, and flexibility*** to permittees navigating the SWAP permitting process and to other stakeholders with an interest in the outcome for a particular project. MDEQ developed a series of flowcharts illustrating the "permitting paths" that a proposed project might follow, including when and how SWAP permitting and CWA Section 404 permitting may intersect. These paths reflect MDEQ's proposed approach to address concerns that have been raised regarding the structure of SWAP and its relationship to CWA Section 404 and 401 programs.

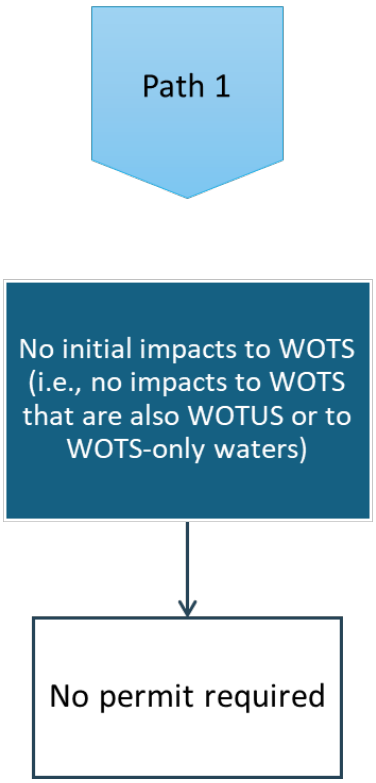
For any project, the first step in the SWAP process is delineating aquatic resources within a project site and understanding the potential initial impacts on those aquatic resources from the proposed activities. Whether conducting a desktop delineation or full field delineation, applicants would identify all aquatic resources, including those that are excluded from the definition of WOTS. Based on the information about aquatic resources that may be subject to initial impacts from the proposed activities and any potential for subsequent determination of federal jurisdiction by USACE (i.e., are aquatic resources WOTS only, WOTUS only, or a combination of WOTS-only waters and WOTUS?), an applicant could pursue one of four different permitting paths.



Path 1 – No initial impacts to WOTS (i.e., no initial impacts to WOTS that are WOTUS or to WOTS-only waters)

If the proposed activities have no initial impacts to WOTS (i.e., no initial impacts to WOTS that are also WOTUS or to WOTS-only waters), no permit would be required.

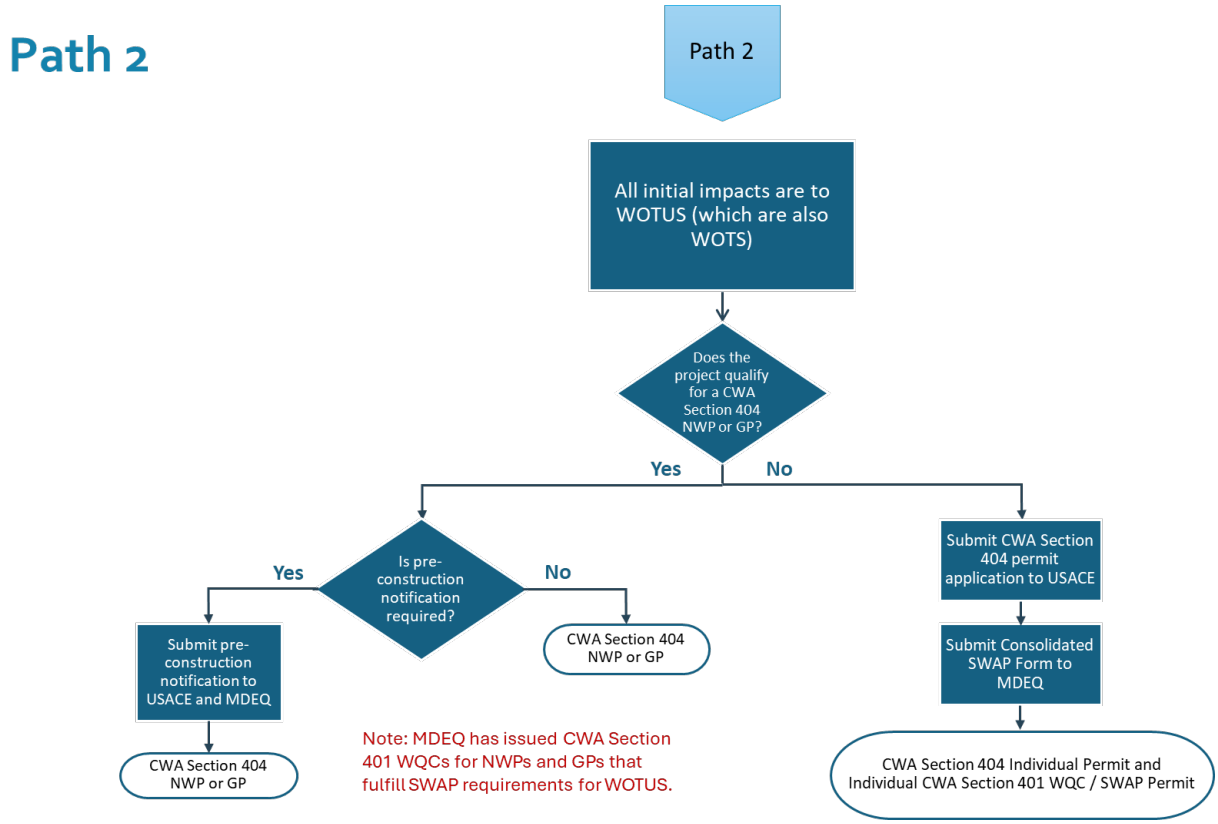
Path 1



Path 2 – All initial impacts are to WOTUS (which are also WOTS)

Path 2 would apply where an applicant 1) applies for a CWA Section 404 permit or requests an Approved Jurisdictional Determination (AJD) from USACE, and USACE determines that all waters impacted by the proposed activities are WOTUS or 2) requests a Preliminary Jurisdictional Determination (PJD) from USACE, treating all waters impacted as WOTUS. Under SWAP, this path would be, procedurally, essentially the same as the current CWA Section 401 Water Quality Certification process.

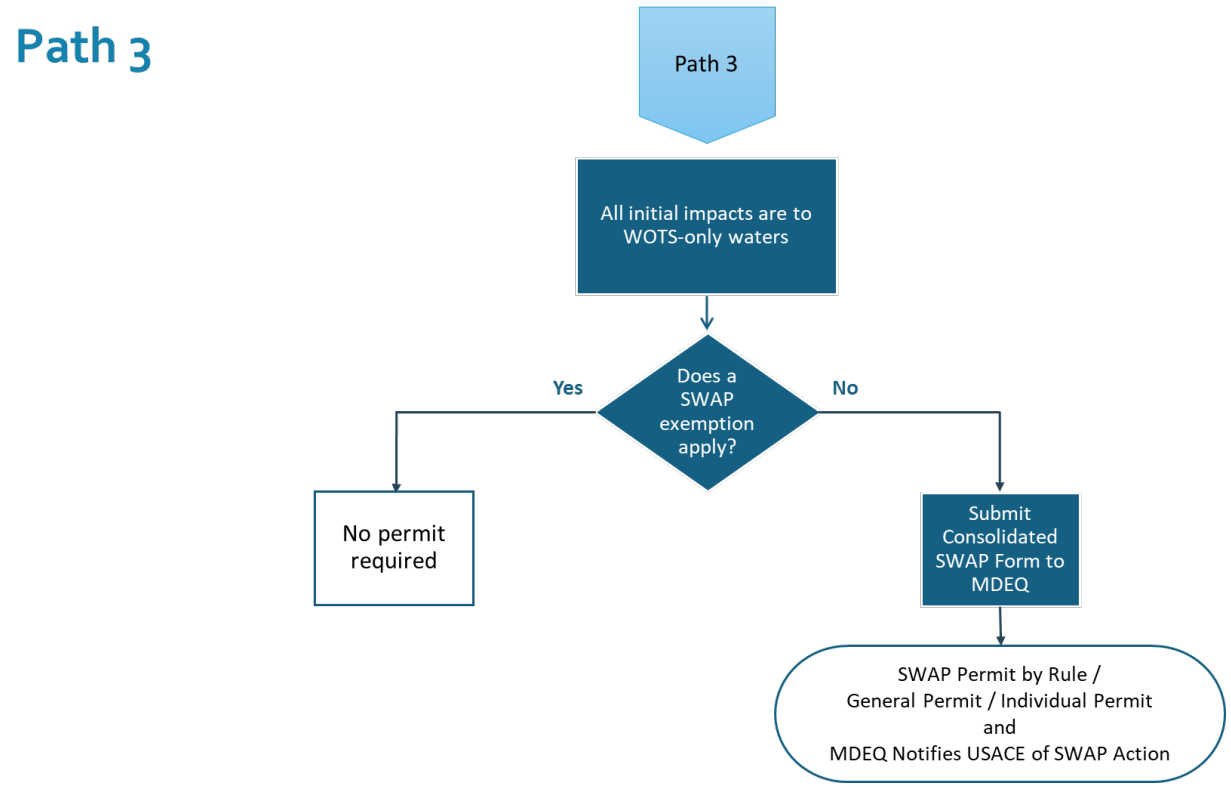
If the proposed activities are covered under a Section 404 Nationwide Permit (NWP) or General Permit (GP), the project would already have SWAP coverage through the applicable MDEQ WQC for the NWP or GP. If an individual CWA Section 404 permit is required, the applicant would apply to USACE for a Section 404 permit and submit a Consolidated SWAP Form to MDEQ to request an individual CWA Section 401 WQC that would also fulfill the SWAP permitting requirements.



Path 3 – All initial impacts are to WOTS-only waters

An applicant follows Path 3 if proposed activities have initial impact only to WOTS that are not also WOTUS (i.e., WOTS-only waters). Applicants would have the most certainty in following this path if USACE has provided an AJD indicating there would be no impacts to WOTUS.

Apart from an AJD, if an applicant is confident that the proposed activities would have initial impacts only on WOTS, and no impacts to WOTUS, the applicant could submit a Consolidated SWAP Form to MDEQ (unless a SWAP exemption applies) without engaging USACE. MDEQ would take the appropriate permitting action under SWAP. In this scenario, the applicant assumes the risk that, if USACE later determines that the activities impact WOTUS, there may be additional permitting requirements, additional compensatory mitigation requirements, and, potentially, enforcement actions.



Path 4 – Initial impacts are to WOTS that include both WOTUS and WOTS-only waters

An applicant follows Path 4 when the proposed activities would have initial impacts to WOTS that include both WOTUS and WOTS-only waters. This path requires the applicant to engage with USACE as needed for a CWA Section 404 permit and to engage with MDEQ as needed for a SWAP permit.

If the proposed activities with initial impacts to WOTS that are also WOTUS are eligible for coverage under a Section 404 NWP or GP, the applicable MDEQ WQC for that NWP or GP would provide SWAP coverage, but only for WOTS that are also WOTUS. To address initial impacts to the remaining affected WOTS (i.e., WOTS that are not also WOTUS), a separate SWAP permit would be required unless the activities qualify for a SWAP exemption. The applicant would submit a Consolidated SWAP Form to MDEQ. Where SWAP initial impact thresholds apply, the appropriate type of SWAP permit (i.e., SWAP permit by rule, SWAP general permit, or SWAP individual permit) would be based on **a comparison of the cumulative initial impacts to WOTS, including both WOTS that are also WOTUS and WOTS-only waters, to the relevant initial impact thresholds**.

If the proposed activities with initial impacts to WOTS that are also WOTUS require an individual CWA Section 404 permit, the applicant would apply to USACE for an individual Section 404 permit and submit a Consolidated SWAP Form to MDEQ to request a CWA Section 401 WQC and SWAP individual permit. ***Any permit issued by MDEQ would fulfill both the CWA Section 401 WQC and SWAP permitting requirements***.