



Maryland

Department of the Environment

Wes Moore, Governor
Aruna Miller, Lt. Governor

Serena McIlwain, Secretary
Suzanne E. Dorsey, Deputy Secretary

December 22, 2023

Baltimore-Washington Rapid Rail
6 South Gay Street
Baltimore, MD 21202
Attn. Mr. Neb Sertsu

Via email to: NSertsu@bwrapidrail.com

Re: Agency Interest Number: 170244
Tracking Number: 202061983
Water Quality Certification Number: 23-WQC-0007

Dear Mr. Sertsu:

On February 7, 2023, the Maryland Department of the Environment (MDE or Department) received a request for a Clean Water Act, Section 401 Water Quality Certification (Certification or WQC) from Baltimore-Washington Rapid Rail (BWRR) for a dedicated alignment and structures associated with a high-speed superconducting magnetic levitation (SCMAGLEV) transportation system between Washington, DC, and Baltimore, MD. The proposed SCMAGLEV alignment consists of both below ground and elevated rail on viaduct, with an intermediate stop at Baltimore/Washington International Thurgood Marshall (BWI) Airport.

As stated in previous correspondence, a WQC is required for discharges associated with US Army Corps of Engineers (Corps) permit application CENAB-OPR-MN NAB-2016-01622. The Federal Railroad Administration (FRA) and the Maryland Department of Transportation are also developing an Environmental Impact Statement in compliance with the National Environmental Policy Act of 1969 (NEPA), 42 USC 4321 et seq. The Department notes that the alignment proposed in the WQC request (known as J-03) has not yet been accepted as the preferred alignment under NEPA, and the NEPA process has been paused by FRA; however, as noted previously, the Department's decisions on any WQC request are limited to the project description contained in that request.

The Department must take action on a Certification request within the reasonable period of time (RPOT) per Section 401 of the Clean Water Act. For this project, the RPOT for MDE to act is within one year of the date of receipt, or on or before February 7, 2024. In order to certify a project, the Department must verify that the associated discharges will not violate Maryland's water quality standards or limitations (COMAR 26.08.02.10). To complete its review, the

Department requested additional information necessary to inform a decision on September 8, 2023, with a November 16, 2023 submission deadline in order to meet the required timeframe. A response from BWRR was received on November 16, 2023, with additional information provided to MDE on December 4, 2023. Meetings between MDE staff, BWRR and BWRR's consultant, WSP USA Inc., were also held on September 29, October 31, November 1, November 8, November 14, November 30, and December 13, 2023 to provide guidance on information needed as well as feedback on draft materials.

After reviewing all information provided in the most recent submissions, the Department has determined that it does not have reasonable assurance that this project will comply with water quality standards, and it therefore intends to deny without prejudice BWRR's request for Certification within the RPOT, or on or before February 7, 2024. The Department has determined that the following information is insufficient to certify the project within the reasonable period of time:

- As stated throughout the plans and materials submitted to the Department, the project layout is still conceptual and a final design is not anticipated until a later date. The Department would not be able to determine the full impact to water quality, and whether sufficient measures have been taken to ensure compliance with water quality standards, until a more detailed design is available.
- Some additional discharges related to project construction and operation were identified in recent submissions, but detailed information about these discharges has yet to be developed. Associated resource impacts would need to be quantified and may be different from impacts included in the public notice for the project. For example, project impacts that may change or alter the FEMA 100-year boundaries or elevations have not been determined. Where additional information such as maintenance roads for the viaduct portion have now been depicted on plan revisions, these would need further evaluation to determine the amount of impact to regulated resources that is actually permanent and details for proposed culvert crossings. New unavoidable impacts to wetlands and waterways would be subject to compensatory mitigation requirements.
- Several deficiencies are noted in the approach to providing concept stormwater design to determine compliance with Maryland's stormwater requirements. The concept design does not provide any details on quantity management beyond a statement that it will be addressed through underground storage, which in some areas may be challenging or infeasible. The design treats the required Environmental Site Design (ESD) volume using a combination of ESD and non-ESD practices, but the requisite portion of ESD volume required to be treated by small scale ESD practices is not being met. A variance would need to be approved by MDE for using non-ESD practices to meet water quality and ESD volume. Lastly, the concept design would need to identify and consider any special Erosion and Sediment Control (ESC)

considerations, especially with regard to drilling operations. A letter summarizing outstanding items which will be needed for future concept approval was provided to BWRR by MDE's Sediment and Stormwater Plan Review Division (SSPRD) on December 21, 2023.

- Minimization of impacts to Tier II watersheds is inadequate, with no erosion and sediment control plans provided to identify Best Management Practices (BMPs). Current plans identify less than ~50% ESD treatment for stormwater, which is significantly less than the 100% ESD treatment BWRR committed to in the Social and Economic Justification (SEJ) provided for public review. Mitigation offered in Tier II watersheds is also insufficient to offset impacts, and the SEJ was inadequate to justify the project on an economic or social basis to allow the proposed impacts to Tier II watersheds.
- BWRR provided updated information on the proposed compensatory mitigation plan, but responses to previous agency comments on the plan and functional assessments of impacted resources are not anticipated until later in the design phase. As noted above, changes to proposed impacts may affect overall mitigation requirements.
- This project as proposed may have impacts to a number of sensitive species, including aquatic species such as fish and freshwater mussels as well as wetland-dependent species; although a summary of proposed and/or planned studies was provided in the November 16, 2023 submission, detailed information on potential impacts to species and any required approvals or protection measures is not currently available.
- Impacts to groundwater must be considered for this project due to the proposed activities and potential impact to surface waters, especially as it relates to drinking water. Sample specifications for groundwater protection during tunnel construction were provided but Attachment E states that detailed studies (including hydrogeochemical investigations) to determine site-specific conditions or protection measures will not be conducted until detailed design of the project. As noted above, dewatering operations and soil disposal associated with tunneling have the potential for surface discharges which may impact water quality, and are proposed to be addressed in future submittals for the project.

Given that MDE's additional information submission deadline has passed, and in light of the the relevant RPOT remaining for MDE to act and prepare its decision, and in consideration of the substantive nature of the above-noted minimally required information necessary to gather and review, BWRR is advised that further submissions relative to this WQC request will not be reviewed or considered as part of this WQC decision. MDE intends to act based on the information it has received from BWRR to date and comments provided during the open public comment period. As stated above MDE will render a final decision on or before February 7, 2024 and will provide such a decision to BWRR as required under Section 401 of the Clean Act and Maryland regulation.

The Department sincerely appreciates BWRR's efforts to provide additional information as well as the coordination that has occurred during review of this WQC request. If you have any questions or if I can assist you in any way, please do not hesitate to contact me by telephone at (410) 537-4023 or by email at danielle.spendiff1@maryland.gov. Please refer to the above referenced WQC Number when corresponding with this office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Danielle Spendiff', written in a cursive style.

Danielle A. Spendiff, Chief
Regulatory and Customer Service Division

Cc: (via electronic mail)
Joe DaVia, US Army Corps of Engineers
Matt Hynson, US Army Corps of Engineers
Tony Redman, DNR
Gwen Gibson, DNR
Heather Nelson, MDE
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