

STATE WATER CONTROL BOARD
NOTICE OF INTENT REGARDING SECTION 401 WATER QUALITY CERTIFICATION
OF NORFOLK DISTRICT ARMY CORPS OF ENGINEERS 2017 NATIONWIDE PERMITS

February 15, 2017

Pursuant to Virginia Water Protection (VWP) Permit Regulation 9 VAC 25-210-130 H, the Department of Environmental Quality (DEQ), under the authority of the State Water Control Board (Board), is giving notice of its intent to provide Section 401 Water Quality Certification, as detailed in this notice, for activities authorized by the U.S. Army Corps of Engineers (USACE) Norfolk District Regional 2017 Nationwide Permits (NWP) listed in this notice, after considering public comment for a 30-day period starting February 15, 2017.

On January 6, 2017, the USACE Norfolk District published a notice in the Federal Register announcing the reissuance of all 50 existing nationwide permits (NWP), general conditions, and definitions with some modifications. The Corps also issued two new NWP, one new general condition, and five new definitions. The 2017 NWP will go into effect on March 19, 2017, and will expire on March 18, 2022.

DEQ, under the authority of the Board, may only issue final Section 401 Certification decisions on a Nationwide or Regional USACE permit if the permit meets the requirements of the VWP regulation, as well as having advertised and accepted public comment for 30 days on its intent to provide, deny, or condition the certification. Therefore, DEQ will issue its final Section 401 Water Quality Certification decision on the NWP at the end of the public comment process. The details of the DEQ's preliminary decision are attached to this notice.

Written comments, including those by email, must be received no later than 11:59 p.m. on **March 17, 2017**, and should be submitted to Steven Hardwick at the address given below. Only those comments received within this period will be considered by DEQ. Written comments shall include the name, address, and telephone number of the writer, and shall contain a complete, concise statement of the factual basis for comments. **CONTACT PERSON:** For additional information, contact: Steven Hardwick, Office of Wetlands & Stream Protection - Department of Environmental Quality, P. O. Box 1105, Richmond, Virginia 23218, Phone (804) 698-4168, or e-mail steven.hardwick@deq.virginia.gov.

Nationwide Permit	Tentative §401 Certification (* indicates a change from existing certification)	Conditions (<u>underline indicates a change</u>)
NWP 1 – Aids to Navigation	Unconditional	
NWP 2 – Structures in Artificial Canals	Unconditional	
NWP 3 – Maintenance	Conditional*	provided that: (1) the deviations from the original configuration or filled area do not change the character, scope, or size of the original design or DEQ-approved alternative design; (2) the discharge does not: a) include <u>changes to water withdrawal structures, such as the maintenance of an intake, weir, or water diversion structure, that could increase the withdrawal</u> ; b) increase the capacity of an impoundment; or c) alter instream flows; (3) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	Unconditional	
NWP 5 – Scientific Measurement Devices	Unconditional	
NWP 6 – Survey Activities	Unconditional	
NWP 7 – Outfall Structures and Associated Intake Structures	Conditional	provided that: (1) the structure or maintenance is not associated with intake structures; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 8 – Oil and Gas Structures on the Outer Continental Shelf	Unconditional	
NWP 9 – Structures in Fleeting and Anchorage Areas	Unconditional	
NWP 10 – Mooring Buoys	Unconditional	
NWP 11 – Temporary Recreational Structures	Unconditional	
NWP 12 – Utility Line Activities	Conditional	provided that: (1) the activities are not associated with <u>a surface water withdrawal or the transport of non-potable raw surface water, except for the purpose of hydrostatic testing and when the associated discharges are authorized by a VPDES permit, if required</u> ; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia</u> ; (3) temporary diversions of surface water associated with “pump arounds” during the construction of utility crossings are specifically allowed.

Nationwide Permit	Tentative §401 Certification (* indicates a change from existing certification)	Conditions (<u>underline indicates a change</u>)
NWP 13 – Bank Stabilization	Conditional*	<u>provided that: (1) the stabilization activities do not permanently impact more than 1,500 linear feet of any type of nontidal stream bed, regardless of any waiver decision made by the USACE; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 14 – Linear Transportation Projects	Conditional	<u>(1) unless otherwise covered under of the Norfolk District State Program General Permit SPGP-01, or other subsequent SPGPs; (2) provided that any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 15 – U.S. Coast Guard Approved Bridges	Unconditional	
NWP 16 – Return Water From Upland Contained Disposal Areas	Conditional	provided that: <u>(1) the associated dredging does not otherwise require issuance of an a Virginia Water Protection Individual permit or General Virginia Water Protection Permit permit coverage from VDEQ; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.</u>
NWP 17 – Hydropower Projects	Denied	
NWP 18 – Minor Discharges	Conditional	provided that: <u>(1) the discharge does not include water withdrawals, such as the construction of an intake structure, weir, or water diversion structure, or other structure transporting non-potable raw surface water; (2) a Virginia Pollutant Discharge Elimination System (VPDES) permit is obtained prior to the placement of any alternative septic system discharging into Virginia Department of Health (VDH) designated shellfish waters; (3) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 19 – Minor Dredging	Conditional	provided that: <u>(1) the dredging is not used to create a deep space for water withdrawal; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 20 – Response Operations for Oil or Hazardous Substances	Unconditional	
NWP 21 – Surface Coal Mining Activities	Conditional	<u>(1) unless otherwise covered under of the Norfolk District State Program General Permit SPGP-01, or other subsequent SPGPs; (2) provided that any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.</u>
NWP 22 – Removal of Vessels	Unconditional	

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NWP 23 – Approved Categorical Exclusions	Conditional*	<u>provided that: (1) the discharge does not include water withdrawals, such as the construction of an intake structure, weir, or water diversion structure; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 24 – Indian Tribe or State Administered Section 404 Program	Not Applicable in VA	
NWP 25 – Structural Discharges	Conditional	provided that: <u>(1) the discharge does not include structures such as pilings to construct a platform to mount a pump for water withdrawals;</u> <u>(2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 27 – Aquatic Habitat Restoration, Enhancement, and Establishment Activities	Conditional	provided that: (1) when used to permit a wetland or stream mitigation bank or in-lieu fee mitigation site, compensation for any surface water impacts shall be debited from the bank or in-lieu fee credits; (2) natural stream channel design shall be used for stream restoration projects; (3) monitoring for performance of these sites shall be conducted including submittal of as-built plans, surveys, and photographs and reports submitted at the as-built and post-construction monitoring years, at a frequency and duration adequate to observe performance according to project objectives. If there is no monitoring schedule otherwise specified, then an as-built and a minimum of five years of post-construction monitoring will be required. The as-built report may include final grade topographic surveys (plan, profile, and cross sections, as appropriate), final location of all planted riparian buffer vegetation (as appropriate), site photographs, and a discussion of project design versus as-built conditions. Each post-construction monitoring report may include comparison of as-built to monitoring year surveys and (plan, profile, and cross sections, as appropriate), vegetation surveys (as appropriate), site photographs, and a discussion of project performance; (4) Dam removal for those dams meeting the following limits: a) less than 25 feet in height with a maximum impoundment capacity of less than 15 acre-feet or b) less than six feet in height with a maximum impounding capacity less than 50 acre-feet, or c) dams operated primarily for agricultural purposes which are less than 25 feet in height or which create a maximum impoundment capacity smaller than 100 acre-feet. temporary diversions of surface water associated with “pump arounds” during the construction of stream or wetland restoration and/or creation areas are specifically allowed; (5) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.
NWP 28 – Modifications of Existing Marinas	Unconditional	
NWP 29 – Residential Developments	Conditional	<u>(1) unless otherwise covered under of the Norfolk District State Program General Permit SPGP-01, or other subsequent SPGPs;</u> <u>(2) provided that any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>

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NWP 30 – Moist Soil Management for Wildlife	Unconditional	
NWP 31 – Maintenance of Existing Flood Control Facilities	Unconditional	
NWP 32 – Completed Enforcement Actions	Conditional	provided that: <u>(1)</u> the impact does not exceed 2 acres of wetlands or 1,500 linear feet of stream bed and only past unauthorized impacts are addressed; <u>(2)</u> any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 33 – Temporary Construction, Access, and Dewatering	Unconditional	
NWP 34 – Cranberry Production Activities	Unconditional	
NWP 35 – Maintenance Dredging of Existing Basins	Unconditional	
NWP 36 – Boat Ramps	Unconditional	
NWP 37 – Emergency Watershed Protection and Rehabilitation	Unconditional	
NWP 38 – Cleanup of Hazardous and Toxic Waste	Unconditional	
NWP 39 – Commercial and Institutional Developments	Suspended for use in VA	
NWP 40 – Agricultural Activities	Conditional	<u>(1)</u> except for the location of concentrated animal feeding operations or waste storage facilities in surface waters; <u>(2)</u> except for activities associated with intake structures or impoundments in surface waters; <u>(3)</u> provided that any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.
NWP 41 – Reshaping Existing Drainage Ditches	Conditional	provided that: <u>(1)</u> the impact does not exceed 2 acres of wetlands or 1,500 linear feet of stream bed; <u>(2)</u> any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 42 – Recreational Facilities	Conditional	provided that: (1) the facility does not include an impoundment for irrigation; (2) compensation is required for wetland and/or or stream loss due to direct impacts and or permanent back flooding; (3) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.
NWP 43 – Stormwater Management Facilities	Conditional	provided that: <u>(1)</u> the facility is not associated with a water withdrawal; <u>(2)</u> any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 44 – Mining Activities	Conditional	provided that: <u>(1)</u> the activity is not for hydraulic dredging; <u>(2)</u> any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.
NWP 45 – Repair of Uplands Damaged by Discrete Events	Unconditional	

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NWP 46 – Discharges in Ditches	Unconditional	
NWP 48 – Existing Commercial Shellfish Aquaculture Activities	Conditional	provided that: <u>(1) the activity complies with the conditions of any Virginia Pollutant Discharge Elimination System (VPDES) permit issued for the facility, and provided that;</u> (2) the associated activities do not include a surface water withdrawal or diversion; (3) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.
NWP 49 – Coal Remining Activities	Unconditional	
NWP 50 – Underground Coal Mining Activities	Unconditional	
NWP 51 – Land-Based Renewable Energy Generation Facilities	Conditional	provided that: (1) the discharge does not include water withdrawals, such as the construction of an intake structure, weir, or water diversion structure, <u>or other structure transporting non-potable raw surface water;</u> (2) the impact does not exceed 2 acres of wetlands or 1,500 linear feet of stream bed; (3) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 52 – Water-Based Renewable Energy Generation Pilot Projects	Conditional	provided that: (1) the discharge does not include water withdrawals, such as the construction of an intake structure, weir, or water diversion structure, <u>or other structure transporting non-potable raw surface water;</u> (2) the impact does not exceed 2 acres of wetlands or 1,500 linear feet of stream bed; (3) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C, <u>except in the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.</u>
NWP 53 – Removal of Low-Head Dams	Unconditional	
NWP 54 – Living Shorelines	Unconditional	