

## DRAFT - 17-SPGP-01 Questions and Answers

*This document has been developed by the Norfolk District of the U.S. Army Corps of Engineers and Department of Environmental Quality to serve as a planning tool for the public and DEQ during the transition between 12-SPGP-01 and 17-SPGP-01. The questions and answers below are based on the current draft 17-SPGP-01 and Standard Operating Procedures (SOP), and the information may change out of necessity in response to the final SPGP and SOP.*

**Q. If the project is under construction or under contract and will not be completed by the U.S. Army Corps of Engineers' (COE) 2012 State Program General Permit (12-SPGP-01) expiration date of May 31, 2017, but will be completed by May 31, 2018, will the permittee have to submit anything to verify that they are covered by the 12-SPGP-01 until May 31, 2018?**

In accordance with 12-SPGP-01 General Condition No. 45, activities authorized under 12-SPGP-01 and which have commenced (i.e., are under construction) or are under contract to commence construction prior to May 31, 2017, may continue work under 12-SPGP-01 until May 31, 2018. The permittee does not have to submit any information to proceed with impacts authorized under 12-SPGP-01 in accordance with General Condition Number 45.

Please note that the permittee will be asked for evidence of the contract to commence construction during compliance reviews or inspections; however, it is not required to be submitted prior to working under General Condition 45.

If the project will not be under construction or contract to commence construction prior to May 31, 2017, work may not commence in Waters of the U.S. after May 31, 2017, until 17-SPGP-01 verification has been issued for the project by DEQ.

If work must continue beyond May 31, 2018, reapplication must occur with sufficient time to obtain authorization under 17-SPGP-01 before May 31, 2018.

**Q. What qualifies as “under contract to commence construction”?**

What constitutes under contract to commence construction may vary depending on the type of project. Generally, a contract with a company to complete the land disturbance or construction activity associated with the work in Waters of the U.S. will satisfy this requirement.

**Q. If the project will not be completed by May 31, 2018, or did not qualify for continuation beyond May 31, 2017, (in accordance with the questions above), what information must be submitted by the permittee to apply for verification under 17-SPGP-01?**

A Joint Permit Application is required; however, **if there are no changes to the project** the permittee may “resubmit” the original JPA by providing the below information:

1. A letter signed by the applicant (current permittee) requesting that DEQ consider the application previously submitted as a new application for verification under 17-SPGP-01. The letter must specifically identify the date, title and number of the previous JPA.
2. A revised impact table totaling impacts to all Waters of the U.S. (WOUS) in acreage. Stream channels must also be included in linear feet. The 12-SPGP-01 acreage threshold was not calculated using the acreage of stream impacts. The 17-SPGP-01 acreage threshold includes the acreage of all WOUS, including stream channels. It is unlikely, but possible that the acreage of stream impacts could result in coordination or permit threshold change.

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3. The applicant should provide any new information relating to threatened or endangered species and historic resources.

If the project includes any tree clearing, the verification requires Section 7 coordination with Fish and Wildlife Service (FWS) for the federally threatened Northern Long-eared Bat (NLEB). The applicant must notify DEQ of the following:

- 1) The acreage of tree clearing associated with the proposed project.
- 2) Which of the following two options they wish to pursue (choosing option 1 eliminates the need to pursue option 2):

### **Option 1: Time-of-Year Restriction (TOYR)**

Applicant is to complete the self-certification letter with the project name and date filled-out, and a TOYR will be incorporated into the permit authorization as the authorization note in the permit coverage letter.

Furthermore, permittees are encouraged to implement the voluntary conservation measures.

### **Option 2: Consultation and Adherence to the Programmatic Biological Opinion**

DEQ will initiate consultation with the FWS once the applicant has provided DEQ the written self-certification letter with the project name and date filled-out, and confirmation of understanding of and adherence to the programmatic biological opinion for the final 4(d) rule.

**The Programmatic Biological Opinion is located here:**

<http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/BOnlebFinal4d.pdf>

### **Q. What if certain portions of the original JPA are outdated?**

Threatened or Endangered Species Surveys:

If the original project required a threatened or endangered species survey and the survey has expired, a new survey will generally be required. However, if authorized activities have removed the potential habitat then a new survey will not be required.

Mitigation Bank Letters:

If the letter of credit availability in the original application is no longer valid, an updated letter of credit availability is required.

### **Q. What if a project has changes that modify impact quantities, locations, or project boundaries, and requires verification of coverage under 17-SPGP-01?**

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The applicant should submit all the information required for a notice of planned change (NOPC) in accordance with the regulations (9 VAC-25-690 (680, 670, 660)-80.B), and the informational requirements to request verification under the 17-SPGP-01. Once this information is received DEQ will process a NOPC of the VWP General Permit Authorization or Coverage and verification of the modified project under 17-SPGP-01.

### **Q. How soon can a verification request for the 17-SPGP-01 be submitted to DEQ?**

A. DEQ will receive verification requests at this time; however, DEQ cannot commence processing the request until the effective date of 17-SPGP-01. DEQ recommends that permittee wait until 17-SPGP-01 is final before submitting the request.

If an application for coverage under 12-SPGP-01 is submitted prior to May 31, 2017 but the coverage has not yet been issued, the applicant can send DEQ an email requesting that the processing be suspended until the effective date of 17-SPGP-01. After the effective date, DEQ will initiate 17-SPGP-01 process.

Any COE, Fish and Wildlife, Section 106, or Environmental Protection Agency coordination completed under the 12-SPGP-01 application review, will be repeated as deemed necessary by COE and/or DEQ.

### **Q. Is there a deadline for submitting a verification request?**

If work must continue beyond May 31, 2018, the permittee must reapply with sufficient time to obtain authorization under 17-SPGP-01 before May 31, 2018. The request should be submitted as soon as possible after the effective date of 17-SPGP-01 to ensure sufficient time to authorize the verification prior to May 31, 2018.

### **Q. How will DEQ process a 17-SPGP-01 verification?**

DEQ will process the request for verification in a manner similar to new applications under 17-SPGP-01.

For each project staff will use the 17-SPGP-01 application checklist to ensure that the JPA includes all the required information.

- For projects impacting less than ½ acre and 300 linear feet, DEQ will screen for federal threatened and endangered species and send the COE necessary information for Section 106. If coordination with Fish and Wildlife Service (FWS) is required, DEQ will provide FWS coordination information from the previous SPGP process to assist in their review. Similarly, DEQ will provide the COE any previous Section 106 coordination information.
- For projects impacting greater than ½ acre and 300 linear feet, DEQ will complete the same coordination listed above with the addition of coordinating with the Environmental Protection Agency, FWS, and the COE for federal review. Again, DEQ will provide the agencies with previous correspondence to assist in their review of the project. The agencies have 15 days to respond.

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SPGP verification cannot be provided until Section 106, Section 7 and, as applicable, Section 408 are cleared. Once all required coordination is complete, DEQ will provide a 17-SPGP-01 verification letter.

### **Q. What will happen to the DEQ Virginia Water Protection (VWP) Permit when the verification of 17-SPGP-01 occurs?**

VWP Permits have historically referenced 12-SPGP-01 in the coverage letter or permit cover page, when applicable. DEQ will provide a letter that indicates the 17-SPGP-01 verification supersedes the 12-SPGP-01 statement in the coverage letter or permit cover page. The permittee must keep this letter with their original VWP permit. A notice of planned change (NOPC) or modification to the VWP permit will not be required to update references to 12-SPGP-01 within the permit.