



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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April 5, 2017

Norfolk District Corps of Engineers
C/o Melissa Nash
803 Front Street
Norfolk Virginia 23510

RE: Federal Consistency Determination for the Reissuance and Modification of the Nationwide Permits and Virginia Regional Conditions, Norfolk District U.S. Army Corps of Engineers, DEQ 17-021F.

Dear Ms. Nash:

The Commonwealth of Virginia has completed its review of the Federal Consistency Determination (FCD) submitted for the reissuance and modification of the Nationwide Permits for 2017 and the Regional Conditions applicable in Virginia. The Department of Environmental Quality (DEQ) is responsible for coordinating Virginia's review of federal consistency documents submitted under the Coastal Zone Management Act (CZMA) and responding to appropriate officials on behalf of the Commonwealth. This letter is in response to the FCD received on February 3, 2017 requesting concurrence with the U.S. Army Corps of Engineers Norfolk District's finding of consistency. The following agencies participated in this review:

Department of Environmental Quality
Department of Conservation and Recreation
Department of Game and Inland Fisheries
Virginia Marine Resources Commission

In addition, the Department of Health, Department of Historic Resources, and the Virginia Institute of Marine Sciences were invited to comment on the proposal.

PROJECT DESCRIPTION

The U.S. Army Corps of Engineers (Corps) issues nationwide permits (NWP) to authorize certain activities that require Department of the Army permits under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. The purpose of this regulatory action is to reissue 50 existing NWPs and to issue two

new NWP's. In addition, one new general condition is being issued. The NWP's can only be issued for a period of no more than five years and cannot be extended. These 52 NWP's went into effect on March 19, 2017 and will expire on March 18, 2022.

The NWP's authorize activities that have no more than minimal individual and cumulative adverse environmental effects. The NWP's authorize a variety of activities, such as aids to navigation, utility line crossings, erosion control activities, road crossings, stream and wetland restoration activities, residential developments, mining activities, commercial shellfish aquaculture activities, and agricultural activities. The two new NWP's authorize the removal of low-head dams (NWP 53) and the construction and maintenance of living shorelines (NWP 54).

Some NWP activities may proceed without notifying the Corps, as long as those activities comply with all applicable terms and conditions of the NWP's, including regional conditions imposed by division engineers. Other NWP activities cannot proceed until the project proponent has submitted a pre-construction notification to the Corps, and for most NWP's that require pre-construction notifications the Corps has 45 days to notify the project proponent whether the activity is authorized by NWP.

Corps Districts may add, after public review and consultation, regional conditions (RCs) to nationwide permits in order to protect local aquatic ecosystems, or to minimize adverse effects on fish or shellfish spawning, wildlife nesting or other ecologically critical areas. Accordingly, the regional conditions developed by the Corps Norfolk District are included in this review. Furthermore, the Baltimore District is proposing to adopt the Norfolk District's RCs in certain military installations of northern Virginia within the regulatory geographic boundaries of the Baltimore District (i.e., Fort Belvoir, Fort Myer, and the Pentagon). However, the Baltimore District will not suspend NWP's 14 and 29 for use in Fort Belvoir, Fort Myer, or the Pentagon because the current State Program General Permit (SPGP01) in Virginia is not applicable to these military installations. Therefore, the Baltimore District is proposing to add the same RCs to NWP 14 and 29 for use in Fort Belvoir, Fort Myer, and the Pentagon as those proposed in the District of Columbia.

PUBLIC PARTICIPATION

In accordance with 15 CFR §930.2, the public was invited to participate in the review of the FCD. Public notice of this proposed action was published in the OEIR Program Newsletter and on the DEQ website from February 9, 2017 through March 6, 2017. No public comments were received in response to the notice.

FEDERAL CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT

Pursuant to the Coastal Zone Management Act of 1972 (§ 1456(c)), as amended, and the federal consistency regulations implementing the CZMA (15 CFR Part 930, Subpart C, § 930.30 *et seq.*) federal actions that can have reasonably foreseeable effects on Virginia's coastal uses or resources must be conducted in a manner which is consistent

to the maximum extent practicable with the Virginia Coastal Zone Management (CZM) Program. The Virginia CZM Program is comprised of a network of programs administered by several agencies. In order to be consistent with the Virginia CZM Program, the federal agency action must be consistent with all the applicable enforceable policies of the Virginia CZM Program prior to commencing the project.

FEDERAL CONSISTENCY CONDITIONAL CONCURRENCE

Based on the comments submitted by the agencies administering the enforceable policies of the Virginia CZM Program, DEQ concurs that the 2017 NWP's and Virginia RCs, as proposed, are consistent with the Virginia CZM Program provided the following conditions, discussed below, are satisfied:

- 1) Prior to construction, applicants shall obtain all required permits and approvals for activities to be performed that are applicable to the Virginia CZM Program's enforceable policies, and that applicants adhere to all the conditions contained therein.

The Virginia Marine Resources Commission's (VMRC) concurrence of consistency with regard to the fisheries management, subaqueous lands management, wetlands management, and dunes management enforceable policies is based on the recognition that prospective permittees may be required to obtain additional state and/or local approvals from the VMRC and/or the local wetlands board prior to commencement of work in both tidal and nontidal waters under the agency's jurisdiction. Such approvals must precede implementation of the projects.

- 2) The DEQ Office of Wetlands and Stream Protection (OWSP) is currently conducting a §401 Clean Water Act (CWA) Water Quality Certification for the 2017 NWP's and RCs, which is applicable to the wetlands management and point source pollution control enforceable policies of the Virginia CZM Program. The activities that qualify for the NWP's must meet the requirements of DEQ's Virginia Water Protection Permit Regulation (9 VAC 25-210-130) and the permittee must abide by the conditions of the NWP. DEQ-OWSP will identify any specific NWP exceptions and conditions upon completion of the certification process. DEQ will process an individual application for a permit or a certificate or otherwise take action pursuant to 9 VAC 25-210-80 *et seq.* for those activities covered by an NWP's that have not received blanket §401 CWA Water Quality Certification. The Corps should forward pre-construction notifications to DEQ for applicants that do not comply with or cannot meet the conditions of the §401 CWA Water Quality Certification. Further, the Commonwealth reserves its right to require an individual application for a permit or a certificate or otherwise take action on any specific project that could otherwise be covered under any of the NWP's when it determines on a case-by-case basis that concerns for water quality and the aquatic environment so indicate.

In accordance with the *Federal Consistency Regulations* at 15 CFR Part 930, section 930.4, this conditional concurrence is based on the applicants demonstrating to the Corps that they have obtained, or will obtain, all necessary authorizations prior to implementing a project which qualifies for a NWP. If the requirements of section 930.4, sub-paragraphs (a)(1) through (a)(3) are not met, this conditional concurrence becomes an objection under 15 CFR Part 930, section 940.43.

FEDERAL CONSISTENCY ANALYSIS

According to information in the FCD, the proposed NWP's affect the enforceable policies of the Virginia CZM Program with the exception of the dunes management enforceable policy. The agencies responsible for the administration of the enforceable policies of the Virginia CZM Program generally agree with the determination. The Corps must ensure that the NWP's are administered in a manner that is consistent with the aforementioned policies. In addition, DEQ encourages the Corps to consider the advisory policies (Attachment 2) of the Virginia CZM Program. The analysis which follows responds to the discussion of the enforceable policies of the Virginia CZM Program that apply to this action and review comments submitted by agencies that administer the enforceable policies.

1. Fisheries Management. According to the FCD (page 2), NWP's 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 5, 16, 18, 19, 20, 22, 23, 24, 25, 27, 28, 31, 32, 33, 35, 36, 37, 38, 45, 48, 52, 53, and 54 have the potential to affect the fisheries management enforceable policy, because the activities will occur in tidal waters that are also regulated by the State. All applicable NWP verification letters will state: "A permit may be required from the Virginia Marine Resources Commission and/or your local wetlands board, and this verification is not valid until you obtain their approval, if necessary." The proposed NWP's will not authorize the introduction of any non-native species (shell or finfish). The FCD further states that NWP's 8, 17, 21, 29, 30, 34, 39, 40, 41, 42, 43, 44, 46, 49, 50 and 51 will not have any impacts to fisheries management, because they are limited to nontidal waters.

1(a) Agency Jurisdiction. The Department of Game and Inland Fisheries (Virginia Code 29.1-100 to 29.1-570) and Virginia Marine Resources Commission (Virginia Code 28.2-200 to 28.2-713) have management authority for the conservation and enhancement of finfish and shellfish resources in the Commonwealth. In addition, the Virginia Department of Health (VDH) Division of Shellfish Sanitation (DSS) is responsible for protecting the health of the consumers of molluscan shellfish and crustacea by ensuring that shellfish growing waters are properly classified for harvesting.

1(b) Agency Findings.

(i) Virginia Department of Game and Inland Fisheries

The Virginia Department of Game and Inland Fisheries (DGIF) finds the 2017 NWP's consistent with the fisheries management enforceable policy under its jurisdiction, provided all issued NWP's include the required RCs, as appropriate.

(ii) Virginia Marine Resources Commission

VMRC notes that, although a project may qualify under the NWP program, authorization may be required from VMRC for projects that involve encroachments both channelward of mean low water along tidal waters and channelward of ordinary high water along **nontidal** rivers and streams. VMRC supports the language to be included in Corps verification letters stating that "A permit may be required from the Virginia Marine Resources Commission and/or your local wetlands board, and this verification is not valid until you obtain their approval, if necessary."

1(c) Requirement. In addition to tidal waters, the verification letters should include a statement indicating that a permit may be required from the VMRC for any NWP's involving nontidal rivers and streams in accordance with Virginia Code 28.2-200 to 28.2-713.

1(d) Conclusion. The 2017 NWP's and RCs are consistent to the maximum extent practicable with the fisheries management enforceable policy of the Virginia CZM Program provided applicant coordination with VMRC is included in verification letters for all NWP's with the potential to impact state fisheries in both tidal and nontidal waters.

For additional information regarding the above comments, contact DGIF, Amy Ewing at (804) 367-2211 and/or VMRC, Robert Neikirk at (757) 247-2254.

2. Subaqueous Lands Management. According to the FCD (page 3), NWP's 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 24, 25, 27, 28, 31, 32, 33, 35, 36, 37, 38, 45, 48, 52, 53, and 54 have the potential to affect the subaqueous lands management enforceable policy, because the activities may occur in subaqueous lands. The Norfolk District's verification letters for the above-referenced NWP's include language that directs the permittee to VMRC. In addition, the document states that NWP's 8, 17, 21, 29, 30, 34, 39, 40, 41, 42, 43, 44, 46, 49, 50, and 51 will not have any impacts to subaqueous lands management, because these NWP's are limited to nontidal waters.

2(a) Agency Jurisdiction. The management program for subaqueous lands establishes conditions for granting or denying permits to use state-owned bottomlands based on considerations of potential effects on marine and fisheries resources, tidal wetlands, adjacent or nearby properties, anticipated public and private benefits, and water quality standards established by the Department of Environmental Quality. The

program is administered by the Virginia Marine Resources Commission (Virginia Code §28.2-1200 to §28.2-1213).

2(b) Agency Findings. VMRC notes that authorization for impacts to state subaqueous lands may be required from the agency for projects covered under the NWPS that involve encroachments both channelward of mean low water along tidal waters and channelward of ordinary high water along *nontidal* rivers and streams.

2(c) Requirement. In addition to tidal waters, the verification letters for any NWP's involving potential impacts to subaqueous lands on nontidal rivers and streams should include a statement indicating that a permit may be required from the VMRC in accordance with Virginia Code 28.2-200 to 28.2-713.

2(d) Conclusion. The 2017 NWP's and RCs are consistent to the maximum extent practicable with the subaqueous lands management enforceable policy of the Virginia CZM Program provided applicant coordination with VMRC is included in verification letters for all NWP's with the potential to impact state subaqueous lands in tidal and nontidal waters.

For additional information, contact VRMC, Robert Neikirk at (757) 247-2254.

3. Wetlands Management. The FCD (page 4) states that NWP's 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 5, 16, 18, 19, 20, 22, 23, 24, 25, 27, 28, 31, 32, 33, 35, 36, 37, 38, 45, 48, 52, 53, and 54 authorize activities that occur in tidal waters. The Norfolk District believes that the specific NWP conditions, the general conditions and the Norfolk District's RCs will ensure that impacts to wetlands are not more than minimal. The FCD asserts that NWP's 8, 17, 21, 29, 30, 34, 39, 40, 41, 42, 43, 44, 46, 49, 50, and 51 will not have any impacts to wetlands management, because they are limited to nontidal waters. In addition, the document notes that State §401 Water Quality Certification of the NWP's, pursuant to Virginia Water Protection (VWP) Permit Regulation (9 VAC 25-210-130H), will authorize impacts to nontidal waters. Corps NWP Verification letters and enclosures will include any conditions that are identified through the §401 Water Quality Certification review.

3(a) Agency Jurisdiction. The wetlands management enforceable policy is administered by the Virginia Marine Resources Commission (tidal wetlands) (Virginia Code §28.2-1301 through 28.2-1320) and the Department of Environmental Quality through the Virginia Water Protection (VWP) Permit program (tidal and non-tidal wetlands) (Virginia Code §62.1-44.15:20 and Water Quality Certification pursuant to §401 of the Clean Water Act (CWA)).

3(b) Agency Findings.

(i) Virginia Marine Resources Commission

VMRC notes that projects that involve encroachments in tidal wetlands may require authorization by a local wetlands board or the VMRC. In such cases, additional conditions or requirements may be imposed, if warranted.

(ii) Department of Environmental Quality

The DEQ Office of Wetlands and Stream Protection has not completed the Commonwealth's §401 CWA Water Quality Certification review and approval process at this time. However, in the interim, DEQ-OWSP finds that the 2017 NWP's and RCs will be consistent with the wetlands management enforceable policy of the Virginia CZM Program provided the NWP receives a Section 401 water quality certificate or a project receives a Virginia Water Protection Permit, and permittees comply with all conditions contained therein, the projects will be consistent with the nontidal wetland enforceable policy.

3(c) Conclusion. The 2017 NWP's and RCs are consistent to the maximum extent practicable with the wetlands management enforceable policy of the Virginia CZM Program provided applicant coordination with VMRC is included in verification letters for all NWP's and the NWP receives a Section 401 water quality certificate or a project receives a Virginia Water Protection Permit, and permittees comply with all conditions contained therein, the projects will be consistent with the nontidal wetland enforceable policy.

For additional information regarding the above comments, contact VRMC, Robert Neikirk at (757) 247-2254 and/or DEQ-OWSP, David Davis at (804) 698-4105.

4. Dunes Management. According to the FCD (page 4), the NWP's do not impact the dunes management enforceable policy, since the NWP's authorize work in Waters of the U.S. The Corps does not have jurisdiction over destruction or alteration of primary dunes.

4(a) Agency Jurisdiction. Dune protection is carried out pursuant to the Coastal Primary Sand Dune Protection Act and is intended to prevent destruction or alteration of primary dunes and beaches. This program is administered by the Marine Resources Commission (Virginia Code §28.2-1400 through §28.2-1420).

4(b) Agency Findings. VMRC finds that NWP-authorized projects that involve encroachments on dunes or beaches may require authorization by VMRC or local wetlands board where additional conditions or requirements may be imposed, if warranted.

4(c) Conclusion. The 2017 NWP and RCs are consistent to the maximum extent practicable with the dunes management enforceable policy of the Virginia CZM Program provided applicants coordination with VMRC or local wetlands board, when applicable.

For additional information, contact VMRC, Robert Neikirk at (757) 247-2254.

5. Nonpoint Source Pollution Control. According to the FCD (pages 3-4), NWP 3, 4, 6, 7, 12, 13, 14, 18, 19, 20, 21, 23, 25, 27, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, and 54 may authorize activities that result in the creation of nonpoint source runoff from land disturbance and development. However, the NWP General Condition 12 for Soil Erosion and Sediment Controls, specifies that "Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

5(a) Agency Jurisdiction. The DEQ Office of Stormwater Management (OSWM) administers the nonpoint source pollution control enforceable policy of the Virginia CZM Program through Virginia Erosion and Sediment Control Law and *Regulations (VESCL&R)* and Virginia Stormwater Management Law and *Regulations (VSWML&R)*. In addition, DEQ is responsible for the issuance, denial, revocation, termination and enforcement of the Virginia Stormwater Management Program (VSMP) General Permit for Stormwater Discharges from Construction Activities related to municipal separate storm sewer systems (MS4s) and construction activities for the control of stormwater discharges from MS4s and land disturbing activities under the Virginia Stormwater Management Program.

5(b) Agency Findings.

(i) Erosion and Sediment Control Plan

The applicant is responsible for submitting a project-specific erosion and sediment control (ESC) plan to the appropriate locality for review and approval pursuant to the local ESC requirements, should the project involve a land-disturbing activity equal to or greater than 10,000 square feet (2,500 square feet or more in Chesapeake Bay Preservation Area). Depending on local requirements, the area of land disturbance requiring an ESC plan may be less. The ESC plan must be approved prior to any land-disturbing activity at the project site. All regulated land-disturbing activities associated with the project, including on and off site access roads, staging areas, borrow areas, stockpiles, and soil intentionally transported from the project, must be covered by the project specific ESC plan. Local ESC program requirements must be requested through the local government. [Reference: Virginia Erosion and Sediment Control Law §62.1-44.15 *et seq.*; Virginia Erosion and Sediment Control Regulations 9 VAC 25-840-30 *et seq.*].

(ii) Stormwater Management Plan

Depending on local requirements, a Stormwater Management (SWM) plan may be required. Local SWM program requirements must be requested through the governing locality. [Reference: Virginia Stormwater Management Act §62.1-44.15 *et seq.*; *Virginia Stormwater Management (VSMP) Permit Regulations* 9 VAC 25-870-54 *et seq.*]

(iii) General VPDES Permit for Discharges of Stormwater from Construction Activities (VAR10)

The operator or owner of a construction project involving land-disturbing activities equal to or greater than one acre is required to register for coverage under the VAR10 permit and develop a project-specific stormwater pollution prevention plan (SWPPP). The SWPPP must be prepared prior to submission of the registration statement for coverage under the general permit, and it must address water quality and quantity in accordance with the *VSMP Permit Regulations*. If required, the applicant should submit a Registration Statement for a Construction General Permit to the appropriate local government as the Virginia stormwater management authority for private and public construction projects. General information and registration forms for the General Permit are available on DEQ's website at

<http://www.deq.virginia.gov/Programs/Water/StormwaterManagement/VSMPPPermits/ConstructionGeneralPermit.aspx>. [Reference: Virginia Stormwater Management Act 62.1-§44.15 *et seq.*] *VSMP Permit Regulations* 9 VAC 25-870-10 *et seq.*]

5(c) Conclusion. The 2017 NWP's and RCs are consistent to the maximum extent practicable with the nonpoint source pollution control enforceable policy of the Virginia CZM Program provided applicants obtain and comply with applicable ESC and SWM requirements.

6. Point Source Pollution Control. According to the FCD (page 5), the Corps is requesting §401 Water Quality Certification from the State Water Control Board pursuant to VWP Permit Regulation 9 VAC 25-210-130H. Corps NWP Verification letters and enclosures will include any conditions that are identified through the §401 Water Quality Certification review.

6(a) Agency Jurisdiction. The point source program is administered by the State Water Control Board (DEQ) pursuant to Virginia Code §62.1-44.15. Point source pollution control is accomplished through the implementation of: (1) the National Pollutant Discharge Elimination System (NPDES) permit program established pursuant to Section 402 of the federal Clean Water Act and administered in Virginia as the Virginia Pollutant Discharge Elimination System (VPDES) permit program; and (2) the Virginia Water Protection Permit program administered by DEQ (Virginia Code §62.1-44.15:20 *et seq.*) and Water Quality Certification pursuant to Section 401 of the Clean Water Act.

6(b) Agency Findings. As previously discussed in the wetlands management section, the DEQ-OWSP has not completed the §401 CWA Water Quality Certification process for the 2017 NWP's and RCs. However, in the interim, DEQ-OWSP finds that the 2017 NWP's and RCs will be consistent with the point source pollution control enforceable policy of the Virginia CZM Program provided the NWP's receive §401 CWA Water Quality Certification or a VWP Individual Permit is issued to applicants for the NWP's that do not receive blanket certification. Permittees must comply with all conditions contained in any VWP Individual Permit issued.

6(c) Conclusion. The 2017 NWP's and RCs are consistent to the maximum extent practicable with the point source pollution control enforceable policy of the Virginia CZM Program provided the NWP receives a Section 401 water quality certificate or a project receives a Virginia Water Protection Permit, and permittees comply with all conditions contained therein.

For additional information, contact DEQ-OWSP, David Davis at (804) 698-4105.

7. Air Pollution Control. The FCD (pages 5-6) states that the NWP's have been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under the NWP's will not exceed *de minimis* levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153.

7(a) Agency Jurisdiction. DEQ's Air Division implements the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the attainment and maintenance of the National Ambient Air Quality Standards. This program is administered by the State Air Pollution Control Board (DEQ) (Virginia Code §10-1.1300 through §10.1-1320).

7(b) Agency Findings. The DEQ Air Division finds that activities authorized under the NWP's may occur in designated ozone (O₃) attainment/maintenance areas, ozone nonattainment areas, and emission control areas for oxides of nitrogen (NO_x) and volatile organic compounds (VOCs).

7(c) Recommendations. Applicants should take all reasonable precautions to limit emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x), principally by controlling or limiting the burning of fossil fuels.

7(d) Requirements.

(i) Fugitive Dust

During construction, fugitive dust must be kept to a minimum by using control methods outlined in 9 VAC 5-50-60 *et seq.* of the *Regulations for the Control and Abatement of Air Pollution*. These precautions include, but are not limited to, the following:

- Use, where possible, of water or chemicals for dust control;
- Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;
- Covering of open equipment for conveying materials; and
- Prompt removal of spilled or tracked dirt or other materials from paved streets and removal of dried sediments resulting from soil erosion.

(ii) Open Burning

If project activities include the open burning or use of special incineration devices for the disposal of land clearing debris, this activity must meet the requirements of 9 VAC 5-130 *et seq.* of the *Regulations* for open burning and it may require a permit. The *Regulations* provide for, but do not require, the local adoption of a model ordinance concerning open burning. Project applicants should contact local officials to determine what local requirements, if any, exist.

7(e) Conclusion. The 2017 NWP and RCs are consistent to the maximum extent practicable with the air pollution control enforceable policy of the Virginia CZM Program provided project proponents obtain and comply with any necessary authorizations.

For additional information, contact the DEQ Air Division, Kotur Narasimhan at (804) 698-4415.

8. Coastal Lands Management. According to the FCD (page 6), the NWP may overlap in some areas where the Chesapeake Bay Preservation Act is applicable. However, the NWP are separate and distinct from the actions required under the Chesapeake Bay Preservation Act and the Norfolk District's NWP verification letters state, "This authorization does not relieve your responsibility to comply with local requirements pursuant to the Chesapeake Bay Preservation Act (CBPA), nor does it supersede local government authority and responsibilities pursuant to the Act. You should contact your local government before you begin work to find out how the CBPA applies to your project."

8(a) Agency Jurisdiction. The DEQ Office of Local Government Programs (OLGP) administers the coastal lands management enforceable policy of the Virginia CZM Program which is governed by the Chesapeake Bay Preservation Act (Bay Act) (Virginia Code §62.1-44.15 *et seq.*) and *Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations)* (9 VAC 25-830-10 *et seq.*).

8(b) Agency Findings. DEQ-OLGP notes that in Tidewater Virginia, the 84 localities subject to and protected by the Bay Act, as locally implemented, require conformance with performance criteria. These areas include Resource Protection Areas (RPAs) and Resource Management Areas (RMAs) as designated by the local government. RPAs include:

- tidal wetlands;
- certain non-tidal wetlands;
- tidal shores; and
- a minimum 100-foot vegetated buffer located adjacent to and landward of these features and along both sides of any water body with perennial flow.

RMA's, which require less stringent performance criteria and vary in size from locality to locality (most locally-designated RMA's being jurisdiction-wide), include:

- 100-year floodplains;
- highly erodible soils;
- highly permeable soils;
- steep slopes;
- non-tidal wetlands not included in the RMA; and
- such other lands considered by a local government to be necessary to protect the quality of state waters.

8(c) Requirements. Projects that include land-disturbing activity must adhere to the general performance criteria as specified in 9 VAC 25-830-130 of the *Regulations*, especially with respect to:

- minimizing land disturbance (including access and staging areas);
- retaining existing vegetation; and
- minimizing impervious cover.

For land disturbance over 2,500 square feet, the project must comply with the requirements of the *Virginia Erosion and Sediment Control Handbook*, Third Edition, 1992. Additionally, stormwater management criteria consistent with water quality protection provisions of the *Virginia Stormwater Management Regulations*, § 9 VAC 25-870-10, shall be satisfied

8(d) Conclusion. Provided the above conditions are met, the 2017 NWP's are consistent to the maximum extent practicable with the coastal lands management enforceable policy of the Virginia CZM Program.

For additional information, contact DEQ-OLGP, Daniel Moore at (804) 698-4520.

ADDITIONAL ENVIRONMENTAL CONSIDERATIONS

In addition to the enforceable policies of the Virginia CZM Program, comments were provided with respect to other applicable requirements and recommendations. The applicant must ensure that the project is constructed and operated in accordance with all applicable federal, state, and local laws and regulations.

1. Solid and Hazardous Wastes.

1(a) Agency Jurisdiction. On behalf of the Virginia Waste Management Board, the DEQ Division of Land Protection and Revitalization (DLPR) is responsible for carrying out the mandates of the Virginia Waste Management Act (Virginia Code §10.1-1400 *et seq.*), as well as meeting Virginia's federal obligations under the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation Liability Act, commonly known as Superfund.

Virginia:

- Virginia Waste Management Act, Virginia Code § 10.1-1400 *et seq.*
- *Virginia Solid Waste Management Regulations*, 9 VAC 20-81
 - (9 VAC 20-81-620 applies to asbestos-containing materials)
- *Virginia Hazardous Waste Management Regulations*, 9 VAC 20-60
 - (9 VAC 20-60-261 applies to lead-based paints)
- *Virginia Regulations for the Transportation of Hazardous Materials*, 9 VAC 20-110.

Federal:

- Resource Conservation and Recovery Act (RCRA), 42 U.S. Code sections 6901 *et seq.*
- U.S. Department of Transportation *Rules for Transportation of Hazardous Materials*, 49 Code of Federal Regulations, Part 107
- Applicable rules contained in Title 40, *Code of Federal Regulations*.

DEQ-DLPR also administers laws and regulations on behalf of the State Water Control Board governing Petroleum Storage Tanks (Virginia Code § 62.1-44.34:8 *et seq.*), including Aboveground Storage Tanks (9 VAC 25-91 *et seq.*) and Underground Storage Tanks (9 VAC 25-580 *et seq.* and 9 VAC 25-580-370 *et seq.*), also known as 'Virginia Tank Regulations' and § 62.1-44.34:14 *et seq.* which covers oil spills.

1(b) Requirements. Any soil that is suspected of contamination or wastes that are generated during construction-related activities must be tested and disposed of in accordance with applicable federal, state, and local laws and regulations.

1(c) Recommendation. DEQ recommends that project proponents conduct an environmental investigation on and near the property to identify any solid or hazardous waste sites or issues before work begins. This investigation should include a search of waste-related databases (see detailed comments attached).

For additional information, contact DEQ-DLPR, Katy Dacey at (804) 698-4274.

2. Natural Heritage Resources.

2(a) Agency Jurisdiction.

The Virginia Department of Conservation and Recreation's (DCR) Division of Natural Heritage (DNH). DNH's mission is conserving Virginia's biodiversity through inventory, protection and stewardship. The Virginia Natural Area Preserves Act (Virginia Code §10.1-209 through 217), authorizes DCR to maintain a statewide database for conservation planning and project review, protect land for the conservation of biodiversity, and protect and ecologically manage the natural heritage resources of Virginia (the habitats of rare, threatened and endangered species, significant natural communities, geologic sites, and other natural features).

The Virginia Department of Agriculture and Consumer Services (VDACS). The Endangered Plant and Insect Species Act of 1979 (Virginia Code Chapter 39 §3.1-1020 through 1030) authorizes VDACS to conserve, protect and manage endangered and threatened species of plants and insects. Under a Memorandum of Agreement established between VDACS and the DCR, DCR represents VDACS in comments regarding potential impacts on state-listed threatened and endangered plant and insect species.

2(b) Agency Findings. DCR has reviewed the 2017 NWP's and RCs and offers the following permit-specific comments:

7. Conditions Regarding Invasive Species

The plant species listed in the most current *Virginia Department of Conservation and Recreation's Invasive Alien Plant List* shall not be used for re-vegetation for activities authorized by any NWP. The list of invasive plants in Virginia may be found at <http://www.dcr.virginia.gov/natural-heritage/invspdflist>.

NWP-12 Utility Line Activities b.ii

DCR-DNH supports selection of an alignment, which avoids fragmenting large tracts of forested wetlands by routing utility lines outside of forested tracts or on the edges of forested tracts.

NWP 54 Living Shorelines

DCR-DNH notes that conditions 11 and 13 are the same.

2(c) Recommendations.

4. Conditions for Federally-Listed Species and Designated Critical Habitat

DCR-DNH recommends the applicant obtain information on state-listed or other rare species by contacting DGIF and DCR-DNH per the U.S. Fish and Wildlife online project review webpage
https://www.fws.gov/northeast/virginiafield/endangered/projectreviews_step3.html.

7. Conditions Regarding Invasive Species

DCR recommends the use of regional native species for re-vegetation as identified in the DCR *Native Plants for Conservation, Restoration and Landscaping* brochures for the coastal, piedmont and mountain regions (<http://www.dcr.virginia.gov/natural-heritage/nativeplants#brochure>).

NWP 12-Utility Line Activities b.i

DCR-DNH recommends that directional drilling not be used in karst areas due to frac-out potential.

NWP-12 Utility Line Activities b.ii

DCR-DNH recommends consulting the Virginia Conservation Vision, a GIS analysis for identifying and prioritizing areas of un-fragmented natural cover in Virginia
<http://www.dcr.virginia.gov/natural-heritage/vaconvision>.

NWP 54- Living Shorelines

DCR-DNH recommends NWP permits not be issued for beach nourishment projects where known populations of endangered species including the Northeastern tiger beetles have been documented due to the potential impacts.

Contact DCR-DNH, Rene Hypes at (804) 371-2807, for additional information.

Thank you for the opportunity to review and respond to the FCD submitted for the Reissuance and Modification of the Nationwide Permits and Virginia Regional Conditions. The detailed comments of reviewing agencies are attached for your review. Please contact me at (804) 698-4204 or John Fisher at (804) 698-4339 for clarification of these comments.

Sincerely,

A handwritten signature in black ink that reads "Bettina Sullivan". The signature is fluid and cursive, with the first name "Bettina" being larger and more prominent than the last name "Sullivan".

Bettina Sullivan, Program Manager
Environmental Impact Review and Long-Range
Priorities

Enclosures

Ec: David Davis, DEQ-OWSP
Tony Watkinson, VMRC
Robbie Rhur, DCR
Amy Ewing, DGIF
Susan Douglas, VDH
Roger Kirchen, DHR
Emily Hein, VIMS
Melissa Nash, Norfolk District Corps
Jack Dinne, Baltimore District Corps



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4020
1-800-592-5482

Attachment 2

Advisory Policies for Geographic Areas of Particular Concern

- a. Coastal Natural Resource Areas - These areas are vital to estuarine and marine ecosystems and/or are of great importance to areas immediately inland of the shoreline. Such areas receive special attention from the Commonwealth because of their conservation, recreational, ecological, and aesthetic values. These areas are worthy of special consideration in any planning or resources management process and include the following resources:
 - a) Wetlands
 - b) Aquatic Spawning, Nursery, and Feeding Grounds
 - c) Coastal Primary Sand Dunes
 - d) Barrier Islands
 - e) Significant Wildlife Habitat Areas
 - f) Public Recreation Areas
 - g) Sand and Gravel Resources
 - h) Underwater Historic Sites.

- b. Coastal Natural Hazard Areas - This policy covers areas vulnerable to continuing and severe erosion and areas susceptible to potential damage from wind, tidal, and storm related events including flooding. New buildings and other structures should be designed and sited to minimize the potential for property damage due to storms or shoreline erosion. The areas of concern are as follows:
 - i) Highly Erodible Areas
 - ii) Coastal High Hazard Areas, including flood plains.

- c. Waterfront Development Areas - These areas are vital to the Commonwealth because of the limited number of areas suitable for waterfront activities. The areas of concern are as follows:
 - i) Commercial Ports
 - ii) Commercial Fishing Piers
 - iii) Community Waterfronts

Although the management of such areas is the responsibility of local government and some regional authorities, designation of these areas as Waterfront Development Areas of Particular Concern (APC) under the VCP is encouraged.

Designation will allow the use of federal CZMA funds to be used to assist planning for such areas and the implementation of such plans. The VCP recognizes two broad classes of priority uses for waterfront development APC:

- i) water access dependent activities;
- ii) activities significantly enhanced by the waterfront location and complementary to other existing and/or planned activities in a given waterfront area.

Advisory Policies for Shorefront Access Planning and Protection

- a. Virginia Public Beaches - Approximately 25 miles of public beaches are located in the cities, counties, and towns of Virginia exclusive of public beaches on state and federal land. These public shoreline areas will be maintained to allow public access to recreational resources.
- b. Virginia Outdoors Plan - Planning for coastal access is provided by the Department of Conservation and Recreation in cooperation with other state and local government agencies. The Virginia Outdoors Plan (VOP), which is published by the Department, identifies recreational facilities in the Commonwealth that provide recreational access. The VOP also serves to identify future needs of the Commonwealth in relation to the provision of recreational opportunities and shoreline access. Prior to initiating any project, consideration should be given to the proximity of the project site to recreational resources identified in the VOP.
- c. Parks, Natural Areas, and Wildlife Management Areas - Parks, Wildlife Management Areas, and Natural Areas are provided for the recreational pleasure of the citizens of the Commonwealth and the nation by local, state, and federal agencies. The recreational values of these areas should be protected and maintained.
- d. Waterfront Recreational Land Acquisition - It is the policy of the Commonwealth to protect areas, properties, lands, or any estate or interest therein, of scenic beauty, recreational utility, historical interest, or unusual features which may be acquired, preserved, and maintained for the citizens of the Commonwealth.
- e. Waterfront Recreational Facilities - This policy applies to the provision of boat ramps, public landings, and bridges which provide water access to the citizens of the Commonwealth. These facilities shall be designed, constructed, and maintained to provide points of water access when and where practicable.
- f. Waterfront Historic Properties - The Commonwealth has a long history of settlement and development, and much of that history has involved both shorelines and near-shore areas. The protection and preservation of historic shorefront properties is primarily the responsibility of the Department of Historic Resources. Buildings, structures, and sites of historical, architectural, and/or archaeological interest are significant resources for the citizens of the Commonwealth. It is the policy of the Commonwealth and the VCP to enhance the protection of buildings, structures, and sites of historical, architectural, and archaeological significance from damage or destruction when practicable.



RECEIVED

FEB 14 2017

DEQ-Office of Environmental
Impact Review

COMMONWEALTH of VIRGINIA

Marine Resources Commission
2600 Washington Avenue
Third Floor
Newport News, Virginia 23607

Molly Joseph Ward
Secretary of Natural Resources

John M.R. Bull
Commissioner

February 10, 2017

Mr. John Fisher
Department of Environmental Quality
Office of Environmental Impact Review
629 East Main Street, 6th Floor
Richmond, Virginia 23219

Re: U. S. Army Corps of Engineers,
2017 Nationwide Permit
Project Number 17-021F

Dear Mr. Fisher:

We have reviewed the Consistency Determination provided by the Norfolk District Corps of Engineers for the revision and reissuance of the 2017 Nationwide Permits. We previously provided comments on July 20, 2016 concerning the draft Nationwide Permits.

The Marine Resources Commission, pursuant to Chapter 12 of Title 28.2 of the Code of Virginia, is responsible for issuing permits for encroachments in, on, or over State-owned submerged lands throughout the Commonwealth. Accordingly, it is important to note that although a project may qualify under the Nationwide Permit program, authorization may still be required from the Marine Resources Commission for projects that involve encroachments channelward of mean low water along tidal waters and channelward of ordinary high water along nontidal rivers and streams. In addition, projects that involve encroachments in tidal wetlands or on dunes or beaches may require authorization by a Local Wetlands Board or the Marine Resources Commission. In such cases, our agency or a local wetlands board may impose additional conditions or requirements if warranted.

In the Fisheries Management section the Corps states: "All applicable NWP verification letters will state: 'A permit may be required from the Virginia Marine Resources Commission and/or your local wetlands board, and this verification is not valid until you obtain their approval, if necessary.'" We feel this same language should also be noted in the Wetlands and Subaqueous Lands Management sections. The document incorrectly states that NWPs 8, 17, 21, 29, 30, 34, 39, 40, 41, 42, 43, 44, 46, 49, 50, and 51 will not have any impacts to submerged lands management, because these NWPs are limited to nontidal waters. VMRC has management responsibility in nontidal rivers and streams through the Commonwealth. Accordingly, we are of the opinion that verification letters for any of these Nationwide permits involving nontidal rivers and streams should include a statement indicating that a permit may be required from the Virginia Marine Resources Commission.

An Agency of the Natural Resources Secretariat

www.mrc.virginia.gov

Telephone (757) 247-2200 (757) 247-2292 V/TDD Information and Emergency Hotline 1-800-541-4646 V/TDD

Department of Environmental Quality

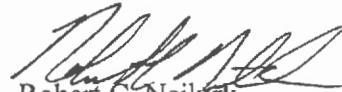
February 10, 2017

Page 2

With the inclusion of these recommendations, we concur with the consistency determination regarding the programs falling under the jurisdiction of the Marine Resources Commission.

Thank you for the opportunity to comment on this project. If we may be of further assistance, please do not hesitate to give me a call at (757) 247-2254.

Sincerely,



Robert C. Neikirk

Deputy Chief, Habitat Management

RCN/and
HM

Fisher, John (DEQ)

From: Ewing, Amy (DGIF)
Sent: Friday, March 24, 2017 3:13 PM
To: Fisher, John (DEQ)
Subject: ESSLog# 37019(37758)_17-021F_ACOE2017NWPRReissuance_DGIF_AME20170324

Assuming all NWP's issued in Virginia include required adherence to Norfolk District Regional Conditions, as appropriate, we find the 2017 Nationwide Permits consistent with the Fisheries Management Enforceable Policy of the CZMA.

Thanks, Amy

Amy M. Ewing

Environmental Services Biologist/FWIS Program Manager

Chair, Team WILD (Work, Innovate, Lead and Develop)

VA Department of Game and Inland Fisheries

7870 Villa Park Dr., Suite 400, PO Box 90778, Henrico, VA 23228

804-367-2211 ☺ www.dgif.virginia.gov

"That land is a community is the basic concept of ecology, but that land is to be loved and respected is an extension of ethics" Aldo Leopold, 1948

Fisher, John (DEQ)

From: Davis, Dave (DEQ)
Sent: Friday, March 31, 2017 3:00 PM
To: Fisher, John (DEQ)
Cc: Sullivan, Bettina (DEQ)

Provided the Corps of Engineers 2017 Nationwide Permits receive Section 401 water quality certificate or a project receives a Virginia Water Protection Permit, and permittees comply with all conditions contained therein, the projects will be consistent with the nontidal wetland enforceable policy.

Dave

David L. Davis, CPWD, PWS
Director, Office of Wetlands & Stream Protection
Virginia Department of Environmental Quality
629 East Main Street, 9th Floor
Richmond, Virginia 23219
804.698.4105
www.deq.virginia.gov

DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF AIR PROGRAM COORDINATION

ENVIRONMENTAL REVIEW COMMENTS APPLICABLE TO AIR QUALITY

TO: John E. Fisher

DEQ - OEIA PROJECT NUMBER: DEQ #17-021F

PROJECT TYPE: STATE EA / EIR FEDERAL EA / EIS SCC

CONSISTENCY DETERMINATION

PROJECT TITLE: Revision and Reissuance of the 2017 Nationwide Permits

PROJECT SPONSOR: U.S. Army Corps of Engineers

PROJECT LOCATION: OZONE ATTAINMENT/MAINTENANCE/NONATTAINMENT
AND EMISSION CONTROL AREA FOR NOX & VOC

REGULATORY REQUIREMENTS MAY BE APPLICABLE TO: PERMIT REISSUANCE
 OPERATION

STATE AIR POLLUTION CONTROL BOARD REGULATIONS THAT MAY APPLY:

1. 9 VAC 5-40-5200 C & 9 VAC 5-40-5220 E – STAGE I
2. 9 VAC 5-45-760 et seq. – Asphalt Paving operations
3. 9 VAC 5-130 et seq. – Open Burning
4. 9 VAC 5-50-60 et seq. Fugitive Dust Emissions
5. 9 VAC 5-50-130 et seq. - Odorous Emissions; Applicable to _____
6. 9 VAC 5-60-300 et seq. – Standards of Performance for Toxic Pollutants
7. 9 VAC 5-50-400 Subpart _____, Standards of Performance for New Stationary Sources, designates standards of performance for the _____
8. 9 VAC 5-80-1100 et seq. of the regulations – Permits for Stationary Sources
9. 9 VAC 5-80-1605 et seq. Of the regulations – Major or Modified Sources located in PSD areas. This rule may be applicable to the _____
10. 9 VAC 5-80-2000 et seq. of the regulations – New and modified sources located in non-attainment areas
11. 9 VAC 5-80-800 et seq. Of the regulations – State Operating Permits. This rule may be applicable to _____

COMMENTS SPECIFIC TO THE PROJECT:

All precautions are necessary to restrict the emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO_x) (Applicable to specific areas and will be addressed as and when individual projects are reviewed)



(Kotur S. Narasimhan)
Office of Air Data Analysis

DATE: February 8, 2017



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4020
1-800-592-5482

MEMORANDUM

TO: John Fisher, DEQ Environmental Impact Review Coordinator

FROM: Daniel Moore, DEQ Principal Environmental Planner

DATE: March 30, 2017

SUBJECT: DEQ # 17-021F: US Army Corps of Engineers – Revision and Reissuance of 2017 Nationwide Permits

We have reviewed the Federal Consistency Determination for the proposed project and offer the following comments regarding consistency with the provisions of the *Chesapeake Bay Preservation Area Designation and Management Regulations* (Regulations):

In Tidewater Virginia, the 84 localities subject to and protected by the Chesapeake Bay Preservation Act, as locally implemented, require conformance with performance criteria. These areas include Resource Protection Areas (RPAs) and Resource Management Areas (RMAs) as designated by the local government. RPAs include tidal wetlands, certain non-tidal wetlands and tidal shores, and a minimum 100-foot vegetated buffer located adjacent to and landward of these features and along both sides of any water body with perennial flow. RMAs, which require less stringent performance criteria and vary in size from locality to locality (most locally-designated RMAs being jurisdiction-wide), include 100-year floodplains, highly erodible and highly permeable soils, steep slopes and non-tidal wetlands not included in the RMA and such other lands considered by a local government to be necessary to protect the quality of state waters.

Pursuant to the *Coastal Zone Management Act of 1972*, as amended, federal activities affecting Virginia's coastal resources or coastal uses must be consistent with Virginia's Coastal Zone Management Program (CZM Program) (see § 307(c)(1) of the Coastal Zone Management Act and 15 CFR Part 930, sub-part C of the *Federal Consistency Regulations*).

While Chesapeake Bay Preservation Areas (CBPAs) are not locally designated on federal lands, this does not relieve federal agencies of their responsibility to be consistent with the provisions of the Regulations, § 9 VAC25-830-10 et seq., as one of the enforceable programs of the CZM

Program. Federal actions on installations located within Tidewater Virginia are required to be consistent with the performance criteria of the Regulations on lands analogous to locally designated CBPAs. Projects that include land disturbing activity must adhere to the general performance criteria, especially with respect to minimizing land disturbance (including access and staging areas), retaining indigenous vegetation and minimizing impervious cover. For land disturbance over 2,500 square feet, the project must comply with the requirements of the *Virginia Erosion and Sediment Control Handbook*, Third Edition, 1992. Additionally, stormwater management criteria consistent with water quality protection provisions of the *Virginia Stormwater Management Regulations*, § 4 VAC 50-60-10, shall be satisfied.

Page 6 of the submitted CZM Consistency for NWP states that the DCR Department of Chesapeake Bay Local Assistance (DCBLA) administers the coastal lands management enforceable policy of the VCP. The DCBLA has been eliminated and, since June 2013, staff of the DEQ Office of Local Government Programs have administered the coastal lands management enforceable policy of the VCP, governed by The Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830-10 et seq.)

Provided adherence to the above requirements, the proposed regional permit re-issuance would be consistent with the Chesapeake Bay Preservation Act and the Regulations.

*Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas provided such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and its attendant regulations, and provided that (i) the local government has conclusively established that location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-870-92 of the Virginia Stormwater Management Program (VSMP) regulations; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.



MEMORANDUM

TO: John Fisher, DEQ/EIR Environmental Program Planner

FROM: Katy Dacey, Division of Land Protection & Revitalization Review Coordinator

DATE: March 1, 2017

COPIES: Sanjay Thirunagari, Division of Land Protection & Revitalization Review Manager; file

SUBJECT: Environmental Impact Review: EIR Project No 17-021F Revision and Reissuance of the 2017 Nationwide Permits

The Division of Land Protection & Revitalization (DLPR) has completed its review of the Environmental Impact Review as to the U.S. Army Corps of Engineers (Corps) Norfolk District revision and reissuance of the 2017 Nationwide Permits (NWP) as published in the *Federal Register*. The *Federal Register* publication is the Corps determination of Coastal Zone Management Act (CZMA) section 307(c)(1) [or (2)] and 15 CFR Part 930, subpart C, for the revision and reissuance of the 2017 NWP.

DLPR staff has the following comments concerning the waste issues associated with such projects:

As no projects are actually planned at this time, neither solid nor hazardous waste issues were addressed in the submittal. Without specific project sites, the report did not indicate a search of waste-related databases. A GIS database search could not be completed by DLPR staff without specific project sites to determine whether any waste sites might impact a project site(s). As projects are identified by the Corps, DLPR staff recommends a review of its data files to determine if there are any waste sites located in close proximity to the project site(s). Site searches would include the following categories: CERCLIS, RCRA/Hazardous Waste, Solid Waste, Voluntary Remediation Program (VRP) sites, Formerly Used Defense Sites (FUDS), and Petroleum Release sites.

The following websites would prove helpful in locating additional information as projects are identified:

<https://www3.epa.gov/enviro/>
<https://rcrainfopreprod.epa.gov/rcrainfoweb/action/main-menu/view>
<https://www.epa.gov/superfund>
<http://www.deq.virginia.gov/ConnectWithDEQ/VEGIS.aspx>

GENERAL COMMENTS

Soil, Sediment, Groundwater, and Waste Management

Any soil, sediment or groundwater that is suspected of contamination or wastes that are generated must be tested and disposed of in accordance with applicable Federal, State, and local laws and regulations. Some of the applicable state laws and regulations are: Virginia Waste Management Act, Code of Virginia Section 10.1-1400 *et seq.*; Virginia Hazardous Waste Management Regulations (VHWMR) (9VAC 20-60); Virginia Solid Waste Management Regulations (VSWMR) (9VAC 20-81); Virginia Regulations for the Transportation of Hazardous Materials (9VAC 20-110). Some of the applicable Federal laws and regulations are: the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 *et seq.*, and the applicable regulations contained in Title 40 of the Code of Federal Regulations; and the U.S. Department of Transportation Rules for Transportation of Hazardous Materials, 49 CFR Part 107.

Asbestos and/or Lead-based Paint

All structures being demolished/renovated/removed should be checked for asbestos-containing materials (ACM) and lead-based paint (LBP) prior to demolition. If ACM or LBP are found, in addition to the federal waste-related regulations mentioned above, State regulations 9VAC 20-81-620 for ACM and 9VAC 20-60-261 for LBP must be followed.

Pollution Prevention – Reuse - Recycling

Please note that DEQ encourages all construction projects and facilities to implement pollution prevention principles, including the reduction, reuse, and recycling of all solid wastes generated. All generation of hazardous wastes should be minimized and handled appropriately.

If you have any questions or need further information, please contact Katy Dacey at (804) 698-4274.

Molly Joseph Ward
Secretary of Natural Resources

Clyde E. Cristman
Director



Rochelle Altholz
Deputy Director of
Administration and Finance

David C. Dowling
Deputy Director of
Soil and Water Conservation
and Dam Safety

Thomas L. Smith
Deputy Director of Operations

COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

MEMORANDUM

DATE: March 1, 2017
TO: John Fisher, DEQ
FROM: Roberta Rhur, Environmental Impact Review Coordinator
SUBJECT: DEQ 17-021F, Revision and reissuance of the 2017 Nationwide Permits

Division of Natural Heritage

The Department of Conservation and Recreation's Division of Natural Heritage's (DCR-DNH) mission is conserving Virginia's biodiversity through inventory, protection, and stewardship. Natural heritage resources are defined as the habitat of rare, threatened, or endangered plant and animal, unique or exemplary natural communities, and significant geologic formations.

DCR-DNH has reviewed the reissuance of the nationwide permits (NWPs) and would like to provide the following comments at this time:

- **4. Conditions for Federally Listed Species and Designated Critical Habitat-** DCR-DNH recommends the applicant obtain information on state listed or other rare species by contacting the Virginia Department of Game and Inland Fisheries ([VDGIF](#)) and the Virginia Department of Conservation and Recreation-Division of Natural Heritage ([VDCR-DNH](#))" as stated on the U.S. Fish and Wildlife online project review webpage
- https://www.fws.gov/northeast/virginiafield/endangered/projectreviews_step3.html
- **7. Conditions Regarding Invasive Species -** DCR-DNH supports plant species listed by the most current *Virginia Department of Conservation and Recreation's Invasive Alien Plant List* shall not be used for re-vegetation for activities authorized by **any NWP**. The list of invasive plants in Virginia may be found at <http://www.dcr.virginia.gov/natural-heritage/invspdflist>. We recommend the use of regional native species for re-vegetation as identified in the *DCR Native Plants for Conservation, Restoration and Landscaping* brochures for the coastal, piedmont and mountain regions <http://www.dcr.virginia.gov/natural-heritage/nativeplants#brochure>.
- **NWP 12-Utility Line Activities b.i-**DCR-DNH recommends directional drilling not be used in karst areas due to frac-out potential.
- **NWP-12 Utility Line Activities b.ii-**DCR-DNH supports selection of an alignment, which avoids fragmenting large tracts of forested wetlands by routing utility lines outside of forested tracts or on the edges of forested tracts. We recommend consulting the Virginia Conservation Vision, a

GIS analysis for identifying and prioritizing areas of un-fragmented natural cover in Virginia <http://www.dcr.virginia.gov/natural-heritage/vaconvision>.

- **NWP 54- Living Shorelines-** Please note conditions 11 & 13 are the same condition. DCR-DNH recommends NWP permits not be issued for beach nourishment projects where known populations of endangered species including the Northeastern tiger beetles have been documented due to the potential impacts.

The remaining DCR divisions have no comments regarding the reissuance of the nationwide permits. Thank you for the opportunity to comment.