

# Section 401 Certifications of 2017 Nationwide Permits

Dave Davis

Va. Dept. of Environmental Quality



# Overview

Pursuant to 40 CFR 121.2 (a)(2) and (3), the State Water Control Board (the Board):

- i. examined the NWPs, the Norfolk District Regional Conditions, and
- ii. other decision documents provided by the Corps to base its certification.

The Board found that there is a reasonable assurance that the activities permitted under the Corps' NWP program, including the Norfolk District Regional Conditions, will be conducted in a manner which will not violate applicable water quality standards, provided permittees comply with all applicable Section 401 conditions.



# No - Corps changes to 17-NWPs

## No - DEQ changes to certification

NWP 1 – Aids to Navigation

NWP 2 – Structures in Artificial Canals

NWP 4 – Fish/Wildlife Harvesting, Enhancement, & Attraction Devices & Activities

NWP 5 – Scientific Measurement Devices

NWP 6 – Survey Activities

NWP 8 – Oil and Gas Structures on the Outer Continental Shelf

NWP 10 – Mooring Buoys

NWP 11 – Temporary Recreational Structures

NWP 15 – U.S. Coast Guard Approved Bridges

NWP 17 – Hydropower Projects

NWP 24 – Indian Tribe or State Administered Section 404 Program

NWP 28 – Modifications of Existing Marinas

NWP 30 – Moist Soil Management for Wildlife

NWP 34 – Cranberry Production Activities

NWP 36 – Boat Ramps

NWP 37 – Emergency Watershed Protection and Rehabilitation

NWP 38 – Cleanup of Hazardous and Toxic Waste

NWP 46 – Discharges in Ditches

- NWP 49 – Coal Remining Activities



## **Yes - Corps changes 17-NWPs**

### **No - DEQ changes to certification**

NWP 9 – Structures in Fleeting and Anchorage Areas

NWP 20 – Response Operations for Oil or Hazardous Substances

NWP 22 – Removal of Vessels

NWP 31 – Maintenance of Existing Flood Control Facilities

NWP 33 – Temporary Construction, Access, and Dewatering

NWP 35 – Maintenance Dredging of Existing Basins

NWP 45 – Repair of Uplands Damaged by Discrete Events

NWP 50 – Underground Coal Mining Activities



**No - Corps changes 17-NWPs**  
**Yes - DEQ changes to certification**

NWP 7 – Outfall Structures and Associated Intake Structures

NWP 25 – Structural Discharges

NWP 16 – Return Water From Upland Contained Disposal Areas

***NWP 18 – Minor Discharges***



**Yes - Corps & DEQ changes to 17-NWPs**  
**Yes - DEQ changes to certification**

***NWP 3 – Maintenance***

***NWP 12 – Utility Line Activities***

NWP 13 – Bank Stabilization

NWP 14 – Linear Transportation Projects

NWP 19 – Minor Dredging

NWP 21 – Surface Coal Mining Activities

***NWP 23 – Approved Categorical Exclusions***

NWP 27 – Aquatic Habitat Restoration, enhancement, and Establishment Activities

NWP 29 – Residential Developments

NWP 32 – Completed Enforcement Actions

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**Yes - Corps & DEQ changes to 17-NWPs**  
**Yes - DEQ changes to certification**

***NWP 39 – Commercial and Institutional Developments***

NWP 40 – Agricultural Activities

NWP 41 – Reshaping Existing Drainage Ditches

***NWP 42 – Recreational Facilities***

***NWP 43 – Stormwater Management Facilities***

NWP 44 – Mining Activities

NWP 48 – Existing Commercial Shellfish Aquaculture  
Activities

NWP 51 – Land-Based Renewable Energy Generation  
Facilities

NWP 52 – Water-Based Renewable Energy Generation  
Pilot Projects



# New to 17-NWPs

NWP 53 – Removal of Low-Head Dams

NWP 54 – Living Shorelines

- First-time unconditional certification from DEQ
  - Not certain how many projects would use NWP53
  - VMRC has GP for living shorelines



# Certification Conditions

## ***NWP 3 – Maintenance***

- Clarified intent of maintenance related to surface water withdrawal structures
- Revised compensation provision for certain areas of Eastern Shore
- *Changes from tentative cert:*
  - *Clarified Corps can do the alternative design approval when applicable*
  - *Added annual reporting by Corps for physical changes to water withdrawal structures*

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# Certification Conditions

## *NWP 12 – Utility Line Activities*

- Clarified intent for surface water withdrawals and associated structures
- Revised compensation provision for certain areas of Eastern Shore
- Added allowance for temporary surface water diversions (“pump arounds”)



# Certification Conditions

## *NWP 18 – Minor Discharges*

- Revised compensation provision for certain areas of Eastern Shore
- *Change from tentative cert:*
  - *Added annual reporting by Corps for physical changes to water withdrawal structures*

# Certification Conditions

## *NWP 39 – Commercial and Institutional Developments*

- *Changes from tentative cert:*
  - *Revised compensation provision for certain areas of Eastern Shore*
  - *Added same condition as exists in NWP14, -21,-29 about SPGP coverage*
  - *Made in response to Corps' intent to allow use of NWP39 for non-SPGP projects*



# Certification Conditions

## *NWP 42 – Recreational Facilities*

- *Change from tentative cert:*
  - Clarified existing procedures and processes to specify when compensation triggered*



# Certification Conditions

*NWP 23 – Approved Categorical Exclusions*

*NWP 43 – Stormwater Management Facilities*

- Revised compensation provision for certain areas of Eastern Shore
- *Change from tentative 401 cert:*
  - Removed condition related to surface water withdrawals or associated structures, as activities precluded from coverage under these NWPs*



# Discussion Topics

- Reason for annual report from Corps to DEQ?  
(included in NWP #3 and #18):
  - Added in response to public comments requesting removal of condition associated with water withdrawals
  - We have very little direct data on the numbers/types of projects using NWP 3 and 18 for activities involving a water intake/water withdrawal.

# Discussion Topics

- *NWP #27*

- i. What is the process for DEQ monitoring plan approval?*

Intent is for applicant to provide a monitoring plan appropriate for the restoration activity being permitted. DEQ process is intended to be simple email (approving) or request for additional monitoring plan elements during permit application review.



# Discussion Topics

- *NWP #27 (cont.)*

*ii. What are the guidelines (when will these be provided)?*

When restoration is occurring for other programs (i.e., SLAF, nutrient trading, etc.), DEQ will accept those programs' monitoring requirements, which, at a minimum, should include those elements listed in the 401 cert condition. We have observed many restoration projects proposed without any monitoring requirements. Most qualified practitioners are familiar with industry-accepted monitoring standards. 401 cert condition is intended to be the default guideline. Mitigation banks and ILF projects will just use (i.e., cite) the monitoring requirements in their operating Instruments.

# Discussion Topics

*NWP #27 (cont.)*

*iii. Duration of monitoring – how does this jive with the 2008 rule?*

Intent is for applicant to provide a monitoring schedule appropriate for the restoration activity being permitted. DEQ process is intended to be simple email (approving) or request for modifications to the monitoring schedule.

# Discussion Topics

- NWP #39

- i. *Why was this unsuspended?*

DEQ assumed (in it's tentative 401 cert notice) that this NWP would remain suspended due to SPGP. The Norfolk Corps determined that it should be unsuspended in case there was some project not qualifying for SPGP, but that would qualify for NWP39. DEQ made this change in the final 401 cert based on the Corps' comment.

- ii. *How does this affect Applicants?*

Vast majority of commercial/institutional developments will use an SPGP. If there is a C/I development not qualifying for SPGP for some reason, then the Corps could permit with NWP39 instead of requiring an individual permit. This change should provide more flexibility to the Corps and regulated community.