



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
Street address: 629 East Main Street, Richmond, Virginia 23219
Mailing address: P.O. Box 1105, Richmond, Virginia 23218
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

April 07, 2017

Colonel Jason E. Kelly, PMP
United States Army Corps of Engineers
Norfolk District, Fort Norfolk
803 Front Street
Norfolk, Virginia 23510-1096

RE: Section 401 Water Quality Certification of the 2017 Nationwide Permits

Dear Colonel Kelly:

This is the Commonwealth of Virginia's decision with regard to §401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers' (the Corps) Nationwide Permits (NWP), and Norfolk District Regional Conditions. These NWP were published in the January 6, 2017 *Federal Register* with an effective date of March 19, 2017. The Commonwealth supports the issuance and use of nationwide and regional permits to expedite the processing of permits while safeguarding the environment and reducing duplication of effort by government regulatory agencies.

Pursuant to 40 CFR 121.2 (a)(2) and (3), the State Water Control Board (the Board) has (i) examined the NWP, the Norfolk District Regional Conditions, and (ii) other decision documents provided by the Corps to base its certification. Accordingly, the Board finds 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 (see table herein).

Further, pursuant to Virginia Water Protection (VWP) Permit Regulation 9VAC25-210-130 H, the Board is issuing this final §401 Water Quality Certification as meeting the requirements of the VWP regulation after having advertised and accepted public comment for 30 days on our intent to provide this certification.

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.

Thank you for your continuing cooperation in the administration of the Joint Permit Program.

Sincerely,



James J. Golden
Director of Operations

cc: The Honorable Molly J. Ward
Mr. John M.R. Bull, Commissioner, VMRC
Mr. William T. Walker, Norfolk District Regulatory Branch
Mr. William Seib, Baltimore District Regulatory Branch
Ms. Bettina Sullivan, DEQ-OEIR
DEQ Regional VWP Managers

Commonwealth of Virginia Final §401 Certifications of the 2017 Nationwide Permits April 07, 2017		
Nationwide Permit	Final §401 Certification	Final §401 Certification Conditions
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 approved alternative design; (2) the discharge: a) would not increase the capacity of an impoundment, or b) would reduce instream flows; (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; (4) the Corps of Engineers shall provide DEQ an annual report of projects authorized by this Nationwide Permit that includes detailed information on physical changes to water withdrawal structures, such as the maintenance of an intake, dam, weir, or water diversion structure that are deviations from the original configuration, or are a change in the character, scope, or size of the original design, or where those deviations would otherwise reduce instream flows.
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, 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.

Commonwealth of Virginia Final §401 Certifications of the 2017 Nationwide Permits April 07, 2017		
Nationwide Permit	Final §401 Certification	Final §401 Certification Conditions
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	<p>provided that:</p> <p>(1) the activities are not associated with 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;</p> <p>(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;</p> <p>(3) temporary diversions of surface water associated with “pump arounds” during the construction of utility crossings are specifically allowed.</p>
NWP 13 – Bank Stabilization	Conditional	<p>provided that:</p> <p>(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;</p> <p>(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.</p>

Commonwealth of Virginia		
Final §401 Certifications of the 2017 Nationwide Permits		
April 07, 2017		
Nationwide Permit	Final §401 Certification	Final §401 Certification Conditions
NWP 14 – Linear Transportation Projects	Conditional	provided that: (1) unless otherwise covered under of the Norfolk District State Program General Permit SPGP-01, or other subsequent SPGPs; (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.
NWP 15 – U.S. Coast Guard Approved Bridges	Unconditional	
NWP 16 – Return Water From Upland Contained Disposal Areas	Conditional	provided that: (1) the associated dredging does not otherwise require issuance of a Virginia Water Protection Individual permit or General 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.
NWP 17 – Hydropower Projects	Denied	
NWP 18 – Minor Discharges	Conditional	provided that: (1) 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; (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; (3) the Corps of Engineers shall provide DEQ an annual report of projects authorized by this Nationwide Permit that includes detailed information on physical changes to water withdrawal structures, such as the maintenance of an intake, dam, weir, or water diversion structure that are deviations from the original configuration, or are a change in the character, scope, or size of the original design.

Commonwealth of Virginia		
Final §401 Certifications of the 2017 Nationwide Permits		
April 07, 2017		
Nationwide Permit	Final §401 Certification	Final §401 Certification Conditions
NWP 19 – Minor Dredging	Conditional	provided that: (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.
NWP 20 – Response Operations for Oil or Hazardous Substances	Unconditional	
NWP 21 – Surface Coal Mining Activities	Conditional	provided that: (1) unless otherwise covered under of the Norfolk District State Program General Permit SPGP-01, or other subsequent SPGPs; (2) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.
NWP 22 – Removal of Vessels	Unconditional	
NWP 23 – Approved Categorical Exclusions	Conditional	provided that: (1) 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.
NWP 24 – Indian Tribe or State Administered Section 404 Program	Not Applicable in VA	
NWP 25 – Structural Discharges	Conditional	provided that: (1) the discharge does not include structures such as pilings to construct a platform to mount a pump for water withdrawals; (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.

Commonwealth of Virginia
Final §401 Certifications of the 2017 Nationwide Permits
April 07, 2017

Nationwide Permit	Final §401 Certification	Final §401 Certification Conditions
NWP 27 – Aquatic Habitat Restoration, Enhancement, and Establishment Activities	Conditional	<p>provided that:</p> <p>(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;</p> <p>(2) natural stream channel design shall be used for stream restoration projects;</p> <p>(3) monitoring for performance of these sites shall be conducted and reports submitted with the as-built during 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 annual post-construction monitoring will be required. The as-built report may include final grade topographic surveys (plan, profile, and cross sections, as appropriate, and approved by DEQ), final location of all planted riparian buffer vegetation (as appropriate and approved by DEQ), 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 (plan, profile, and cross sections, as appropriate, and approved by DEQ), vegetation surveys (as appropriate and approved by DEQ), site photographs, and a discussion of project performance;</p> <p>(4) temporary diversions of surface water associated with “pump arounds” during the construction of stream or wetland restoration and/or creation areas are specifically allowed;</p> <p>(5) any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C.</p>
NWP 28 – Modifications of Existing Marinas	Unconditional	

Commonwealth of Virginia		
Final §401 Certifications of the 2017 Nationwide Permits		
April 07, 2017		
Nationwide Permit	Final §401 Certification	Final §401 Certification Conditions
NWP 29 – Residential Developments	Conditional	provided that: (1) unless otherwise covered under of the Norfolk District State Program General Permit SPGP-01, or other subsequent SPGPs; (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.
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: (1) the impact does not exceed 2 acres of wetlands or 1,500 linear feet of stream bed and only past unauthorized impacts are addressed; (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.
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	

Commonwealth of Virginia Final §401 Certifications of the 2017 Nationwide Permits April 07, 2017		
Nationwide Permit	Final §401 Certification	Final §401 Certification Conditions
NWP 39 – Commercial and Institutional Developments	Conditional	provided that: (1) unless otherwise covered under of the Norfolk District State Program General Permit SPGP-01, or other subsequent SPGPs; (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.
NWP 40 – Agricultural Activities	Conditional	provided that: (1) except for the location of concentrated animal feeding operations or waste storage facilities in surface waters; (2) except for activities associated with intake structures or impoundments in surface waters; (3) 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: (1) the impact does not exceed 2 acres of wetlands or 1,500 linear feet of stream bed; (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.
NWP 42 – Recreational Facilities	Conditional	provided that: (1) the facility does not include an impoundment for irrigation; (2) compensation is required for permanent wetland or stream impacts that exceed 0.10 of an acre or 300 linear feet due to direct impacts 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.

Commonwealth of Virginia
Final §401 Certifications of the 2017 Nationwide Permits
April 07, 2017

Nationwide Permit	Final §401 Certification	Final §401 Certification Conditions
NWP 43 – Stormwater Management Facilities	Conditional	provided that: (1) 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.
NWP 44 – Mining Activities	Conditional	provided that: (1) the activity is not for hydraulic dredging; (2) 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	
NWP 46 – Discharges in Ditches	Unconditional	
NWP 48 – Existing Commercial Shellfish Aquaculture Activities	Conditional	provided that: (1) the activity complies with the conditions of any Virginia Pollutant Discharge Elimination System (VPDES) permit issued for the facility; (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	

Commonwealth of Virginia		
Final §401 Certifications of the 2017 Nationwide Permits		
April 07, 2017		
Nationwide Permit	Final §401 Certification	Final §401 Certification Conditions
NWP 51 – Land-Based Renewable Energy Generation Facilities	Conditional	<p>provided that:</p> <p>(1) the impact does not exceed 2 acres of wetlands or 1,500 linear feet of stream bed;</p> <p>(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;</p> <p>(3) the Corps of Engineers shall provide DEQ an annual report of projects authorized by this Nationwide Permit that includes detailed information on physical changes to water withdrawal structures, such as the maintenance of an intake, dam, weir, or water diversion structure that are deviations from the original configuration, or are a change in the character, scope, or size of the original design.</p>
NWP 52 – Water-Based Renewable Energy Generation Pilot Projects	Conditional	<p>provided that:</p> <p>(1) the discharge does not include water withdrawals, such as the construction of an intake structure, weir, water diversion structure, or other structure transporting non-potable raw surface water;</p> <p>(2) the impact does not exceed 2 acres of wetlands or 1,500 linear feet of stream bed;</p> <p>(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.</p>
NWP 53 – Removal of Low- Head Dams	Unconditional	
NWP 54 – Living Shorelines	Unconditional	