





2021 Nationwide Permits and Virginia Water Protection Permit Program

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Summary of NWP/401 Certification/VWP Permit Requirements

- NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 48, 55, 56, 57, 58
 - Norfolk Regional Condition 13 included to meet DEQ's Water Quality Certification (WQC) conditions.
 - Requires a VWP general permit coverage or VWP individual permit, or waiver of a permit action.
- In addition, NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, 52 are conditionally certified based on limits specified by DEQ.
 - Project with impacts above these WQC limits and certain NWP 12 projects will require an individual 401 WQC process.

2021 NWP	Water Quality Certification Limits
NWP 48 Commercial Shellfish Mariculture Activities	None
NWP 55 Seaweed Mariculture Activities	None
NWP 56 Finfish Mariculture Activities	None
NWP 57 Electric Utility Line and Telecommunications Activities	None
NWP 58 Utility Line Activities for Water and Other Substances	None
NWP 12 Oil or Natural Gas Pipeline Activities	Projects when there is a FERC license and the inside diameter is greater than 36 inches
NWP 21 Surface Coal Mining Activities	> 300 linear feet of stream bed
NWP 29 Residential Developments	Cumulative impacts > 1/10 of an acre of wetlands or open water or > 300 linear feet of stream bed
NWP 39 Commercial and Institutional Developments	Cumulative impacts > 1/10 of an acre of wetlands or open water or > 300 linear feet of stream bed
NWP 40 Agricultural Activities	Cumulative impacts >300 linear feet of stream bed/ channel or activities that increase the capacity of an impoundment or reduce instream flows
NWP 42 Recreational Facilities	Cumulative impacts > 1/10 of an acre of wetlands or open water or > 300 linear feet of stream bed
NWP 43 Stormwater Management Facilities	Cumulative impacts >1/10 of an acre of wetlands or open water or >300 linear feet of stream bed
NWP 44 Mining Activities	> 300 linear feet of stream bed
NWP 50 Underground Coal Mining Activities	> 300 linear feet of stream bed
NWP 51 Land-Based Renewable Energy Generation Facilities	Cumulative impacts > 1/10 of an acre of wetlands or open water or > 300 linear feet of stream bed
NWP 52 Water-Based Renewable Energy Generation Pilot Projects	Cumulative impacts > 1/10 of an acre of wetlands or > 300 linear feet of stream bed

2021 NWP's Projects - Submit a JPA

- Submit a Joint Permit Application (JPA) to Virginia Marine Resources Commission. DEQ will email USACE upon receipt of the JPA.
 - This will be the day the VMRC project number is received by DEQ.
- DEQ actions will be to:
 - Determine a VWP permit is not required for the activity
 - Not Regulated (boring under a Section 10 Water)
 - Exclusion
 - Waiver applies
 - Review for authorization via coverage under a VWP General or Individual permit.
- DEQ will send or copy any correspondence related to these steps to USACE, agent and owner.

[Subject to Change]

DEQ

NWPs Requiring an Individual 401 Certification Process

Nationwide Permits with Specific Water Quality Certification Limits	
NWP 21	> 300 linear feet of stream bed
NWP 29	Cumulative impacts > 1/10 of an acre of wetlands or open water or > 300 linear feet of stream bed
NWP 39	Cumulative impacts > 1/10 of an acre of wetlands or open water or > 300 linear feet of stream bed
NWP 40	Cumulative impacts >300 linear feet of stream bed/ channel or activities that increase the capacity of an impoundment or reduce instream flows
NWP 42	Cumulative impacts > 1/10 of an acre of wetlands or open water or > 300 linear feet of stream bed
NWP 43	Cumulative impacts >1/10 of an acre of wetlands or open water or >300 linear feet of stream bed
NWP 44	> 300 linear feet of stream bed
NWP 50	> 300 linear feet of stream bed
NWP 51	Cumulative impacts > 1/10 of an acre of wetlands or open water or > 300 linear feet of stream bed
NWP 52	Cumulative impacts > 1/10 of an acre of wetlands or > 300 linear feet of stream bed
NWP 12	Projects when there is a FERC license and the inside diameter is greater than 36 inches

Stream Channel/Bed as defined in 9VAC25-210-10

[Subject to Change]

NWPs Requiring an Individual 401 Certification Process

- Pre-filing Request
 - Upon receipt of the Pre-filing Meeting Request, DEQ will generally decline, relying upon meeting request correspondence and/or the JPA to provide sufficient information about the project.
- The 401 Water Quality Certification Request - DEQ will generally provide one of the following:
 - A letter indicating that no VWP permit is required for the activity (not regulated, excluded)
 - A letter indicating that a VWP permit is waived (waiver applies)
 - Response that we are processing a permit application or have authorized coverage under a VWP permit. Issuance of a VWP Permit constitutes the certification required under § 401 of the Clean Water Act.

Implications for Obtaining NWP Authorization

- Joint Permit Application to VMRC required for projects previously submitting only a PCN
 - Different Informational Requirements
- Impacts and Compensation
- VWP Permit Construction Monitoring and Reporting

In Summary:

- Submit a Joint Permit Application for 16 finalized 2021 NWP's
 - As applicable, complete the individual 401 Certification Process
- Stay Tuned – Subject to Change.
- DEQ and USACE are working to provide a more clear process and streamlined process.
- 2017 NWP's and DEQ's associated 401 Certification intact.



State Surface Water Determinations

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Why Is This Changing?

- Navigable Waters Protection Rule (NWPR; formerly, WOTUS)
 - Final rule June 22, 2020
 - Changes to Federal jurisdiction and definitions
- State law and authority remains in place – no change to state jurisdiction and definitions
- Overlap between federal waters and state waters diminished
 - Permitting efficiencies will be affected
 - Anticipate more instances of 2 separate permits (DEQ & Corps permit) for projects
- Corps and DEQ personnel continue to collaborate in VA

State Surface Water Determinations

- **Prior to June 2020**

- The Corps and DEQ-VWP Program regulated essentially the same physical waters on the landscape.
 - Streamlined process
 - The Corps confirmed the extent of all aquatic resources on-site.
 - Nationwide Permit (NWP), for which DEQ provided Section 401 Certification, allowed for no additional VWP permit

- **After June 2020**

- Public and DEQ must now change our practices to prevent unauthorized impacts to state surface waters, which may not be captured or covered by the federal process.

State Surface Water Determinations Relationship to Corps' Determinations

Preliminary Jurisdictional Determination (PJD)

- PJD will result in a determination of all aquatic resources and typically includes all state surface waters. Additional concurrence from DEQ (i.e., separate State Surface Water Determination [SSWD]) is not typically necessary.

Approved Jurisdictional Determination (AJD)

- AJD's will identify federally excluded waters.
- Features not identified and/or regulated by Corps, a SSWD is required.

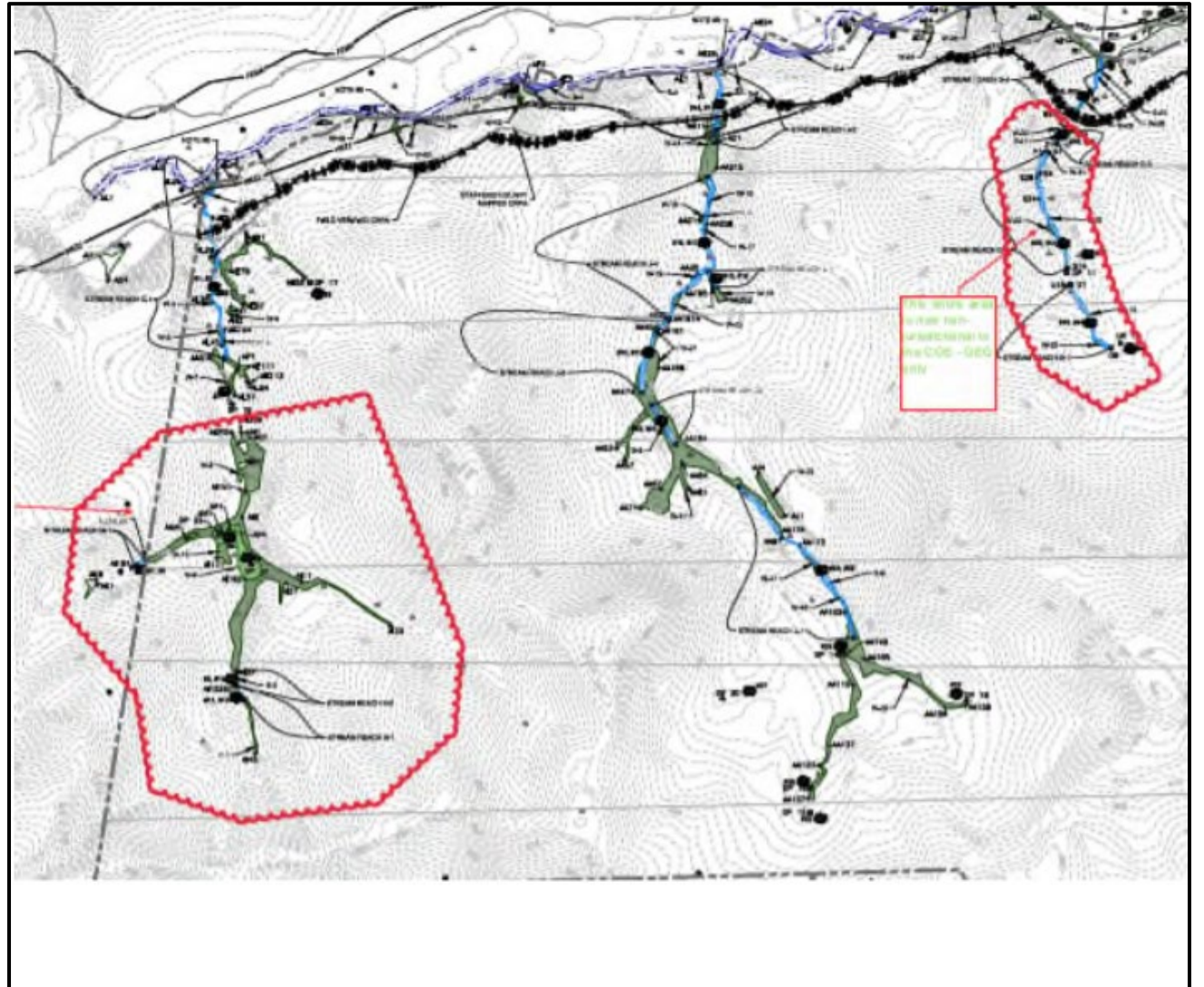
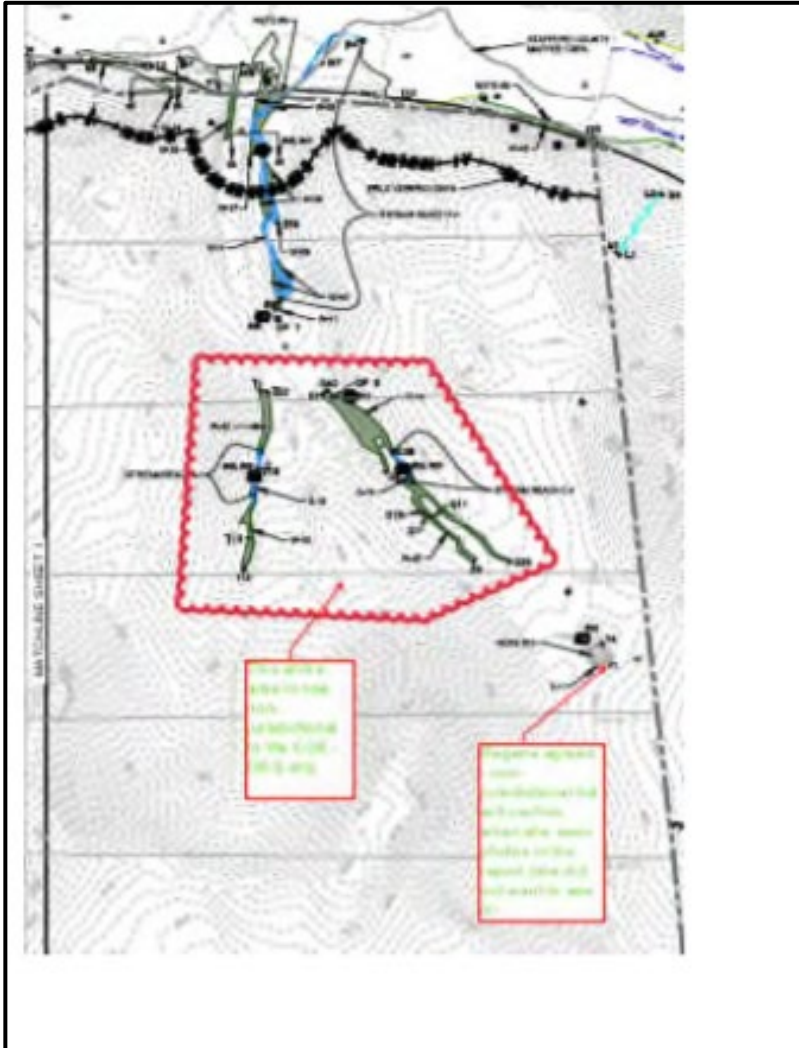
State Surface Water Determinations

- **Submitting a SSWD to DEQ**
 - SSWD Request to DEQ Regional Office, and include:
 - The Corps' jurisdictional determination request package (data sheets, photographs, stream assessment forms)
 - SSWD Request Form
- **When to Submit a SSWD to DEQ?**
 - After the Corps' AJD.
 - Allows DEQ to focus on the wetland and surface water features not included in the Corps' Delineation approval - saves some duplication of effort.
 - Concurrently to the Corps and DEQ
 - You may request concurrent review Corps/DEQ visit. The availability and appropriateness of such a visit would be decided on a case by case by the Corps, DEQ, and Agent.
 - Always before the Joint Permit Application (JPA)
 - Reduce processing time because an accurate map of all state waters is required in the applications.
 - Provide certainty in the application process by concurring on the impacts ahead of time.
 - Potential to process/resolve any VWP Permitting exclusions.

Example:

Areas in **red** are not Federal Waters in AJD.

Areas in **red** are State Surface Waters.



State Surface Water Determinations

- **SSWD - Additional Points**

- Ensure field flagging is intact.
 - Flagging needs to be represented on the map for reference.
 - Cannot confirm your boundary if your boundary is not marked.
 - Be prepared to represent your observations in the field, with a copy of the report
- Provide a table of State Surface Waters
 - Delineation Maps with multiple WOTUS and Federally Excluded Waters can be unclear, further compounded by State Surface Waters identifiers.
 - A DEQ State Surface Water Table may be needed as a point of clarification.
 - DEQ staff can provide a template table.
 - You may request DEQ staff to review/concur with Exclusions, Cowardin classifications and stream assessments during the SSWD to save time later in the process.

State Surface Water Determinations

Stay Tuned! The situation is still changing!

Questions?