



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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Director

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August 9, 2013

Colonel Paul B. Olsen  
U. S. Army Corps of Engineers  
Norfolk District Regulatory Branch  
803 Front Street  
Norfolk, Virginia 23510-1096

**RE: Final Section 401 Water Quality Certification; U.S. Army Corps of Engineers-Norfolk District, Regional Permits RP-1, RP-2, RP-5, RP-15, RP-17, RP-18, RP-19, RP-20, and RP-22**

Dear Colonel Olsen:

On March 20, 2013, the U.S. Army Corps of Engineers (Corps) Norfolk District published a notice of their proposed reissuance and modification of several Norfolk District Regional Permits (RP's) and their general conditions. These regional permits authorize categories of activities in Virginia that are deemed to have minimal environmental impacts. We understand that the new RP-02 was developed to combine all navigationally-related dredging activities, commercial dredging projects and maintenance dredging projects in waters of the United States. The RP-2 combines dredging activities previously authorized under Regional Permit 19 (08-RP-19), Activity # 3 for the maintenance dredging for previously authorized projects, Letter of Permission 2 (08-LOP-02) for certain navigationally-related recreational and commercial dredging projects, and Regional Permit 40 (08-RP-40) for maintenance dredging and/or excavation of non-tidal waters for sediment and debris removal associated with flooding and/or erosion.

The State Water Control Board hereby provides unconditional §401 Water Quality Certification for the following Norfolk District Regional Permits as meeting the requirements of the Virginia Water Protection Permit Regulation, which serves as the Commonwealth's §401 Water Quality Certification:

- RP-2: Commercial, maintenance, and navigational-related dredging activities
- RP-5: Construction of Small Impoundments (Note: this unconditional §401 Water Quality Certification only applies to the construction of the impounding structure and

does not eliminate any approvals or notifications required by DEQ under 9VAC25-210 *et seq.* for withdrawing water from the subsequent impoundment)

RP-15: Maintenance of Certain Ditches

RP-17: Private Piers and Mooring Piles

RP-18: Private Piers not covered by RP-17

RP-19: Certain Activities covered by VMRC and/or Local Wetland Boards

RP-20: Development of State Owned and Operated Artificial Fin and Shellfish Reefs

RP-22: Installation of Certain Structures in Lake Gaston

With regard to the RP-1 (formerly, LOP-1 Letter of Permission for Virginia Department of Transportation projects), the State Water Control Board will continue to process applications for individual §401 Certification through a Virginia Water Protection General or Individual Permit pursuant to 9VAC25-210-10 *et seq.*, with the following exception as noted in 9VAC25-210-220 B:

“The board may waive the requirement for a VWP individual permit when the proposed activity qualifies for a permit issued by the USACE and receives a permit from the VMRC, pursuant to Chapter 12 (Section 28.2-1200 *et seq.*) or Chapter 13 (Section 28.2-1200 *et seq.*) of Title 28.2 of the Code of Virginia, and the activity does not impact instream flows.”

With regard to RP-2 (combines all commercial, maintenance, and navigational-related dredging activities from previous regional permits and letters of permission), we appreciate that this new regional permit incorporates our two previous certification conditions addressing dredge spoils storage within the Special Conditions section and our one previous condition addressing TMDL limits in the State and Local Approvals Section. Accordingly, the State Water Control Board grants unconditional §401 Certification for RP-2.

Pursuant to our Virginia Water Protection Permit Regulation 9VAC25-210-130 H, the State Water Control Board is issuing this final §401 Certification as meeting the requirements of the VWP regulation and after having advertised and accepted public comment for 30 days on our intent to provide certification. DEQ received one public comment on our proposed certification expressing concern that the TMDL condition included in RP-2 would unduly affect maintenance dredging projects that were formerly covered by the 08-RP-19. After review of the Corps criteria for maintenance dredging projects, DEQ determined that it is appropriate to exempt maintenance dredging projects from the TMDL condition provided the project is conducted utilizing USACE approved best management practices to minimize the impact of the maintenance dredging activity.

Please note that the Virginia Coastal Resources Management Program (VCP) completed its final review of the 2013 RP's for consistency with the federal Coastal Zone Management Act of 1972, as amended, on May 10, 2013. Questions regarding federal consistency with VCP should be directed to Ellie Irons at (804) 698-4325 or [ellie.iron@deq.virginia.gov](mailto:ellie.iron@deq.virginia.gov).

While not a condition of our §401 Certification, please be aware that the Virginia Environmental Laboratory Accreditation Program (VELAP) became effective on January 1, 2009, per Virginia Regulations 1 VAC 30, [Chapter 45: Certification for Noncommercial Environmental Laboratories](#), and 1 VAC 30, [Chapter 46: Accreditation for Commercial Environmental Laboratories](#). As of January 1, 2012, environmental laboratories must be certified or accredited by Virginia Division of Consolidated Laboratory Services (DCLS) before any analysis can be used for the purposes of the Virginia Air Pollution Control Law, the Virginia Waste Management Act, or the State Water Control Law. Subsequently, facilities providing DEQ with environmental laboratory data to satisfy permit and/or regulatory requirements must ensure their environmental laboratories (commercial or noncommercial) have been accredited or certified by DCLS, or secure the services of an environmental laboratory that has done so.

Should you have any questions pertaining to this final §401 Certification, please contact Dave Davis at (804) 698-4105 or [dave.davis@deq.virginia.gov](mailto:dave.davis@deq.virginia.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "David K. Paylor". The signature is fluid and cursive, with the first name "David" being the most prominent.

David K. Paylor

DKP:ewf

cc: Jack G. Travelstead, VMRC-Habitat Division  
Ellie Irons, DEQ-Office of Environmental Impact Review  
DEQ Regional VWP Managers