

STATE WATER CONTROL BOARD  
NOTICE OF INTENT TO PROVIDE SECTION 401 WATER QUALITY  
CERTIFICATION OF UNITED STATES ARMY CORPS OF ENGINEERS  
NATIONWIDE PERMITS AND NORFOLK DISTRICT REGIONAL CONDITIONS.

Pursuant to Virginia Water Protection Permit Regulation 9 VAC 25-210-130H, the State Water Control Board (Board) is giving notice of its intent to provide Section 401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (USACE) Nationwide Permits (NWP), and Norfolk District Regional Conditions, after considering public comment for a 30-day period starting March 15, 2012. These NWPs were published in Part II of the *Federal Register* on February 21, 2012, with an effective date of March 19, 2012. The Norfolk District Regional Conditions were public noticed on March 11, 2011 and are subsequently under amendment with a public notice anticipated on or around March 16, 2012. The Board can only issue final Section 401 Certification of a nationwide or regional USACE permit if the permit meets the requirements of the VWP regulation and after advertising and accepting public comment for 30 days on its intent to provide certification.

The State Water Control Board will issue its final §401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (USACE) Nationwide Permits (NWP), and Norfolk District Regional Conditions at the end of the 30 day comment period and after any comments received are considered. The details of the Board's preliminary decision are attached to this notice. Written comments, including those by email, must be received no later than 4:00 p.m. on April 13, 2012 and should be submitted to David L. Davis at the address given below. Only those comments received within this period will be considered by the Board. Written comments shall include the name, address, and telephone number of the writer, and shall contain a complete, concise statement of the factual basis for comments. **CONTACT PERSON:** For additional information, contact: David L. Davis, Director, Office of Wetlands & Stream Protection - Department of Environmental Quality, P. O. Box 1105, Richmond, Virginia 23218, Phone (804) 698-4105, Fax (804) 698-4032, or E-mail [dave.davis@deq.virginia.gov](mailto:dave.davis@deq.virginia.gov).

STATE WATER CONTROL BOARD  
PRELIMINARY DECISION ON SECTION 401 WATER QUALITY CERTIFICATION  
OF UNITED STATES ARMY CORPS OF ENGINEERS NATIONWIDE PERMITS  
AND NORFOLK DISTRICT REGIONAL CONDITIONS.

The U.S. Army Corps of Engineers (USACE) Nationwide Permits (NWP) were published in Part II of the *Federal Register* on February 21, 2012, with an effective date of March 19, 2012.

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

- NWP 1: *Aids to Navigation*
- NWP 2: *Structures in Artificial Canals*
- NWP 3: *Maintenance*
- NWP 4: *Fish & Wildlife Harvesting, Enhancement, & Attraction Devices & Activities*
- NWP 5: *Scientific Measurement Devices*
- NWP 6: *Survey Activities*
- NWP 8: *Oil and Gas Structures*
- NWP 9: *Structures in Fleeting and Anchorage Areas*
- NWP 10: *Mooring Buoys*
- NWP 11: *Temporary Recreational Structures*
- NWP 13: *Bank Stabilization*
- NWP 15: *U.S. Coast Guard Approved Bridges*
- NWP 20: *Oil Spill Cleanup*
- NWP 22: *Removal of Vessels*
- NWP 23: *Approved Categorical Exclusions*
- NWP 28: *Modifications of Existing Marinas*
- NWP 30: *Moist Soil Management for Wildlife*
- NWP 31: *Maintenance of Existing Flood Control Facilities*
- NWP 33: *Temporary Construction, Access and Dewatering*
- NWP 34: *Cranberry Production Activities*
- NWP 35: *Maintenance Dredging of Existing Basins*
- NWP 36: *Boat Ramps*
- NWP 38: *Cleanup of Hazardous and Toxic Waste*
- NWP 45: *Repair of Uplands Damaged by Discrete Events*
- NWP 46: *Discharges Into Ditches*
- NWP 49: *Coal Re-mining Activities*
- NWP 50: *Underground Coal Mining Activities*

Unless otherwise covered under of the Norfolk District State Program General Permit SPGP-01, or other subsequent SPGPs, the State Water Control Board hereby tentatively provides §401 Water Quality Certification for the following Nationwide Permits as meeting the requirements of the Virginia Water Protection Permit Regulation, which serves as the Commonwealth's §401 Water Quality Certification provided that any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C:

NWP 14: *Linear Transportation Projects*

NWP 21: *Surface Coal Mining Activities*

NWP 29: *Residential Developments (Single Family Dwelling Only)*

The State Water Control Board hereby tentatively provides conditional §401 Water Quality Certification for the following Nationwide Permits provided that any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:23 A through C and as detailed below:

NWP 7: *Outfall Structures and Maintenance*, provided that the structure or maintenance is not associated with intake structures

NWP 12: *Utility Line Activities*, provided that the activities are not associated with intake structures or do not transport non-potable raw surface water

NWP 16: *Return Water from Upland Contained Disposal Areas*, provided that the associated dredging does not otherwise require issuance of an Individual or General Virginia Water Protection Permit from VDEQ

NWP 18: *Minor Discharges*, provided that: (1) the discharge does not include water withdrawals, such as the construction of an intake structure, weir or water diversion structure; (2) 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

NWP 19: *Minor Dredging*, provided that dredging is not used to create a deep space for water withdrawal

NWP 25: *Structural Discharges*, provided that the discharge does not include structures such as pilings to construct a platform to mount a pump for water withdrawals

NWP 27: *Stream and Wetland Restoration Activities*, provided that: (1) when used to permit a wetland mitigation bank, compensation for any surface water impacts is debited from the bank credits; (2) natural stream

design shall be used for stream restoration projects; (3) monitoring for success of these sites shall be conducted including submittal of as-built plans, surveys, and photographs; (4) Dam removal for those dams meeting the following limits: a) less than 25 feet in height with a maximum impoundment capacity of less than 15 acre-feet or b) less than six feet in height with a maximum impounding capacity less than 50 acre-feet, or c) dams operated primarily for agricultural purposes which are less than 25 feet in height or which create a maximum impoundment capacity smaller than 100 acre-feet

NWP 32: *Completed Enforcement Actions*, provided that the impact does not exceed 2 acres of wetlands or 1500 linear feet of streambed and only past unauthorized impacts are addressed

NWP 40: *Agricultural Activities*, except for the location of concentrated animal feeding operations or waste storage facilities in surface waters or activities associated with intake structures or impoundments in surface waters

NWP 41: *Reshaping Drainage Ditches*, provided the impact does not exceed 2 acres of wetlands or 1500 linear feet of streambed

NWP 42: *Recreational Facilities*, provided that: (1) the facility does not include an impoundment for irrigation; (2) compensation is required for wetland and/or stream loss due to direct impacts and permanent back flooding

NWP 43: *Stormwater Management Facilities*, provided that the facility is not associated with a water withdrawal

NWP 44: *Mining Activities*, provided that the activity is not for hydraulic dredging

NWP 48: *Commercial Shellfish Aquaculture Activities*, provided that the activity complies with the conditions of any VPDES permit issued for the facility, and provided that the associated activities do not include a surface water withdrawal or diversion

NWP 51: *Land Based Renewable Energy Generation Facilities*, provided that: (1) the discharge does not include water withdrawals, such as the construction of an intake structure, weir or water diversion structure; (2) the impact does not exceed 2 acres of wetlands or 1500 linear feet of streambed

NWP 52: *Water-Based Renewable Energy Generation Pilot Projects*, provided that: (1) the discharge does not include water withdrawals, such

as the construction of an intake structure, weir or water diversion structure; (2) the impact does not exceed 2 acres of wetlands or 1500 linear feet of streambed

The following Nationwide Permit is not currently applicable in the Commonwealth and therefore does not require §401 Certification:

*NWP 24: Indian Tribe or State Administered Section 404 Programs*

The State Water Control Board denies §401 Water Quality Certification for the following Nationwide Permits, as these types of projects require individual review under state laws:

*NWP 17: Hydropower Projects*

As to the exceptions for activities that would otherwise qualify for one of these Nationwide Permits, the State will continue to process applications for individual §401 Certification through a Virginia Water Protection General or Individual Permit pursuant to 9VAC 25-210-10 *et seq.* To accomplish our goal of individual review of certain activities, the Commonwealth is requesting that the Corps forward to the Department of Environmental Quality pre-construction notifications for any activities that fall into an excepted category.

Pursuant to our Virginia Water Protection Permit Regulation 9VAC 25-210-130H, the State Water Control Board can only issue final §401 Certification of a nationwide or regional USACE permit if the permit meets the requirements of the VWP regulation and after advertising and accepting public comment for 30 days on its intent to provide certification. The State Water Control Board will issue its final §401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (USACE) Nationwide Permits (NWP), and Norfolk District Regional Conditions at the end of that period and after any comments received are considered.