



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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March 4, 2004

Mr. J. Robert Hume
U. S. Army Corps of Engineers
Regulatory Branch
Norfolk District, Fort Norfolk
803 Front Street
Norfolk, Virginia 23510-1096

RE: Final Section 401 Water Quality Certification of Norfolk District LOP-2 for Certain Navigationally-related Recreational and Commercial Dredging Projects

Dear Mr. Hume:

On August 14, 2003, the Norfolk District United States Army Corps of Engineers issued Letter of Permission 01-LOP-02 for Certain Navigationally-related Recreational and Commercial Dredging Projects. This Letter of Permission was issued after accepting and incorporating comments from the Department of Environmental Quality concerning the inclusion of time of year restrictions, reference to compliance with state water quality standards, and the solicitation of comments from the Department prior to issuance of an LOP-02 authorization for a project. Based on the requirements and reviews entailed in approval of a project under the Norfolk District USACE LOP-2, additional review by the DEQ and issuance of a Virginia Water Protection Individual of General Permit would provide unnecessary regulatory duplication.

Accordingly, The State Water Control Board hereby provides §401 Water Quality Certification for the LOP-02 as meeting the requirements of the Virginia Water Protection Permit Regulation, which also serves as the Commonwealth's §401 Water Quality Certification, provided that the following additional conditions are met:

1. The applicant has an adequately sized containment area to prevent overtopping of any containment berm used for upland disposal of the dredged material.

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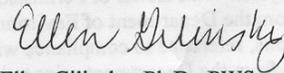
2. The applicant has adequately addressed the need for a liner or impermeable material to prevent the leaching of any identified contaminants into ground water.
3. The applicant has ensured that dredging in waterbody segments on the current effective Section 303(d) Total Maximum Daily Load (TMDL) priority list or with an approved TMDL will not exacerbate the impairment and is consistent with any waste load allocation, limit, or conditions imposed by an approved TMDL.

Note that this certification supercedes the Board's previous decision issued on October 8, 2003 regarding the need for individual §401 Water Quality Certification through a Virginia Water Protection General or Individual Permit pursuant to 9VAC 25-210-10 et seq., with the exception noted in 9VAC 25-210-220B ["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."].

Pursuant to our Virginia Water Protection Permit Regulation 9VAC 25-210-130H, the State Water Control Board is issuing this final §401 Certification as meeting the requirements of the VWP regulation and after advertising and accepting public comment for 30 days on our intent to provide certification. We note that no public comments on our proposed certification were received.

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

Very truly yours,



Ellen Gilinsky, Ph.D., PWS
Director, Office of Wetlands, Water
Protection and Compliance

cc: VWP Regional Managers