



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Molly Joseph Ward  
Secretary of Natural Resources

David K. Paylor  
Director

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January 20, 2017

William T. Walker, Chief  
Regulatory Branch  
Norfolk District Army Corps of Engineers  
803 Front Street  
Norfolk, Virginia 23510-1096

**RE: Conditional §401 Certification for Regional Permit 16-RP-05 for Construction of Small Impoundments**

Dear Mr. Walker,

This letter serves as the Commonwealth of Virginia's decision with regard to Section 401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (USACE) Regional Permit 05 (16-RP-05) for the Construction of Small Impoundments. Pursuant to the Virginia Water Protection (VWP) 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 after accepting public comment for 30 days on our intent to provide conditional certification. The public comment period began on December 14, 2016 and ended on January 17, 2017.

The Department of Environmental Quality (DEQ) received one public comment on our proposed certification. This comment suggested a slightly different wording than proposed in noticed condition number two (2). DEQ has revised the wording.

Pursuant to Virginia Water Protection (VWP) Permit Program Regulation 9VAC25-210-130 H, the Board is providing conditional Section 401 Water Quality Certification for the 16-RP-05. The Board will continue to process applications for Section 401 Certification through a VWP individual permit or VWP general permit coverage, pursuant to VWP permit program regulations, when the project proposes to construct an impoundment that is not otherwise excluded from VWP permitting pursuant to 9VAC25-210-60 and the impacts to any type of

nontidal stream bed exceed 1,500 linear feet, regardless of any waiver decision made by the USACE.

Also, Section III.2 (State and Local Approvals) in the Draft 16-RP-05 should remain as noticed by the USACE, once the underlined corrections below are made:

“...2. ...A Joint Permit application must be submitted to the Virginia Department of Environmental Quality Water if the permittee is required to obtain a Virginia surface water withdrawal permit pursuant to 9VAC25-210. More information on Virginia surface water withdrawal permits can be obtained at <http://www.deq.state.va.us/Programs/Water/WaterSupplyWaterQuantity/WaterWithdrawalPermittingandCompliance.aspx>. ...”

Please be aware that the final review for consistency with Virginia's Coastal Resources Management Program (VCP) pursuant to the federal Coastal Zone Management Act of 1972, as amended, is not yet complete. Projects in the Tidewater area of Virginia may require additional coordination with the VCP prior to issuance of an RP-05 until the federal consistency review is complete. A map depicting those localities within the coastal zone can be found at <http://www.deq.virginia.gov/coastal/coastmap.html>. Questions regarding federal consistency with VCP should be directed to Bettina Sullivan at (804) 698-4204 or [bettina.sullivan@deq.virginia.gov](mailto:bettina.sullivan@deq.virginia.gov).

Please do not hesitate to contact me at (804) 698-4105 or [dave.davis@deq.virginia.gov](mailto:dave.davis@deq.virginia.gov) if you have any questions regarding this decision.

Sincerely,



David L. Davis, CPWD, PWS  
Director, Office of Wetlands & Stream Protection

cc: Bettina Sullivan, DEQ Office of Environmental Impact Review  
Scott Kudlas, DEQ Office of Water Supply  
DEQ Regional VWP Managers