COMMONWEALTH of VIRGINIA

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January 7, 2008

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

RE: Final Section 401 Certification of Regional Permit 05 for Construction of Small Impoundments

Dear Mr. Hume:

Provided herein is 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 (the Corps) Regional Permit 05 (RP-05) for the Construction of Small Impoundments.

Pursuant to Virginia Water Protection (VWP) Permit Regulation 9 VAC 25-210-130.H., the State Water Control Board is issuing this final Section 401 Water Quality Certification as meeting the requirements of the VWP regulation, after advertising its intention and accepting public comment for 30 days. The public comment period began on November 19, 2007 and ended on December 19, 2007. No comments were received.

The State Water Control Board hereby provides conditional Section 401 Water Quality Certification for the Regional Permit 05 (RP-05) for the Construction of Small Impoundments, with the following provisions:

- Agricultural surface water withdrawals from nontidal waters that total less than one million gallons in a single month do not require flow-by of water past the impoundment. Withdrawals greater than or equal to one million gallons in a single month will be subject to a DEQ permit, unless otherwise exempt, that includes withdrawal limits to ensure the protection of in-stream beneficial uses downstream of the impoundment.

- Surface water withdrawals from nontidal waters for all other purposes that total less than 10,000 gallons per day do not require flow-by of water past the impoundment. Withdrawals greater than or equal to 10,000 gallons per day will be subject to a DEQ permit, unless otherwise exempt, that includes withdrawal limits to ensure the protection of in-stream beneficial uses downstream of the impoundment.

- The permittee shall report surface water withdrawals: 1) where the average daily withdrawal during any single month exceeds 10,000 gallons per day for the purposes of, but not limited to, public water supply, manufacturing, mining, commercial, institutional, livestock watering, artificial fish culture, and steam-electric power generation uses; and 2) where the withdrawal exceeds 1 million gallons in any single month for the purpose of irrigating crops. Permittees are not required to report the withdrawal of surface water if the withdrawal is made from a pond that only collects diffuse surface water (pond that is not located in a wetland or on an intermittent or perennial stream).

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-5 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 Ms. Ellie Irons at (804) 698-4325 or elirons@deq.virginia.gov.

Please do not hesitate to contact Mr. David L. Davis (804.698.4105; dldavis@deq.virginia.gov) or me (804.698.4375; egilinsky@deq.virginia.gov) if you have any questions regarding this Section 401 certification.

Sincerely,

Ellen Gilinsky

Ellen Gilinsky, Ph.D., Director,
Division of Water Quality Programs

CC: Ms. Ellie Irons