



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 1111 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

December 17, 2020

Norfolk District Corps of Engineers
c/o Melissa Nash
803 Front Street
Norfolk Virginia 23510
Via email: melissa.a.nash@usace.army.mil

RE: Federal Consistency Determination for the 2020 Reissuance and Modification of the Nationwide Permits and Virginia Regional Conditions, Norfolk District U.S. Army Corps of Engineers, DEQ 20-143F.

Dear Ms. Nash:

The Commonwealth of Virginia has completed its review of the Federal Consistency Determination (FCD) submitted for the 2020 reissuance and modification of the Nationwide Permits and Virginia Regional Conditions. The Department of Environmental Quality (DEQ) is responsible for coordinating Virginia's review of federal consistency documents submitted under the Coastal Zone Management Act (CZMA) and responding to appropriate officials on behalf of the Commonwealth. This letter is in response to the FCD received on October 22, 2020, requesting concurrence with the U.S. Army Corps of Engineers Norfolk District's finding of consistency. The following agencies and planning district commissions participated in this review:

Department of Environmental Quality
Department of Conservation and Recreation
Department of Wildlife Resources
Department of Health
Virginia Marine Resources Commission
Virginia Institute of Marine Science
Crater Planning District Commission
PlanRVA

In addition, the Department of Agriculture and Consumer Services, Department of Historic Resources, Department of Transportation, Department of Mines, Minerals and Energy, Department of Forestry, Northern Virginia Regional Commission, Accomack-Northampton Planning District Commission, George Washington Regional Commission, Hampton Roads Planning District Commission, Northern Neck Planning District

Commission, and Middle Peninsula Planning District Commission were invited to comment on the proposal.

PROPOSED ACTION

The U.S. Army Corps of Engineers (Corps) proposes to reissue the 52 existing nationwide permits (NWP's) and issue five new NWP's. Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in no more than minimal individual and cumulative adverse environmental effects.

Typically, NWP's are issued by the Corps for a five-year period. NWP's currently in effect were issued in 2017 and are not set to expire until March 28, 2022. However, two Presidential Executive Orders prompted the Corps to renew and revise the NWP's now:

- EO 13783, Promoting Energy Independence and Economic Growth (March 28, 2017), which instructed federal agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources.
- Executive Order 13921 Promoting American Seafood Competitiveness and Economic Growth (May 7, 2020) contains a similar mandate.

In addition, there are two separate court cases challenging NWP's. By reissuing now, the Corps hopes to resolve or delay the litigation.

The five new NWP's include:

- seaweed mariculture activities (NWP A)
- finfish mariculture activities (NWP B)
- electric utility line and telecommunications activities (NWP C)
- utility line activities for water and other substances (NWP D)
- water reclamation and reuse facilities (NWP E)

Most utility line projects have been governed by NWP 12 Oil or Natural Gas Pipeline Activities. The Corps proposes splitting NWP 12 into three parts:

1. oil and natural gas pipelines
2. electric utility lines and telecommunication lines
3. utility lines conveying water, sewage and other substances

NWP 12 is being separated to address the differences in how linear projects are constructed, the substances they convey, and the different standards and best management practices.

In addition, the Corps North Atlantic Division has added Regional Conditions (RCs) to ensure those NWP's cause no more than minimal individual and cumulative adverse

environmental effects based on region-specific conditions. The proposed RCs affecting the Commonwealth fall under the responsibility of the Corps Norfolk District and also include the military installations in Northern Virginia within the Corps Baltimore District. The Norfolk District is proposing [Virginia RCs](#) for the [NWP's](#). Including the modification of three NWP's in Virginia where a programmatic general permit overlaps with those NWP's. The NWP's will go into effect in early 2021 and expire five years after the effective date.

PUBLIC PARTICIPATION

In accordance with 15 CFR §930.2, the public was invited to participate in the review of the FCD. Public notice of this proposed action was published in the OEIR Program Newsletter and on the DEQ website from October 30, 2020 through November 27, 2020. No public comments were received in response to the notice.

FEDERAL CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT

Pursuant to the Coastal Zone Management Act of 1972 (§ 1456(c)), as amended, and the federal consistency regulations implementing the CZMA (15 CFR Part 930, Subpart C, § 930.30 *et seq.*) federal actions that can have reasonably foreseeable effects on Virginia's coastal uses or resources must be conducted in a manner which is consistent to the maximum extent practicable with the Virginia Coastal Zone Management (CZM) Program. The Virginia CZM Program is comprised of a network of programs administered by several agencies. In order to be consistent with the Virginia CZM Program, the federal agency action must be consistent with all the applicable enforceable policies of the Virginia CZM Program prior to commencing the project.

FEDERAL CONSISTENCY CONDITIONAL CONCURRENCE

Based on the comments submitted by the agencies administering the enforceable policies of the Virginia CZM Program, DEQ concurs that the 2020 NWP's and Virginia RCs, as proposed, are consistent with the Virginia CZM Program provided the following conditions, discussed below, are satisfied:

- 1) Prior to construction, applicants shall obtain all required permits and approvals for activities to be performed that are applicable to the Virginia CZM Program's enforceable policies, and that applicants adhere to all the conditions contained therein.
- 2) The Virginia Marine Resources Commission's (VMRC) concurrence of consistency with regard to the marine fisheries, subaqueous lands, tidal and nontidal wetlands, and dunes and beaches enforceable policies is based on the recognition that prospective permittees may be required to obtain additional state and/or local approvals from the VMRC and/or the local wetlands board prior to commencement of work in both tidal and nontidal waters under the agency's jurisdiction. Such approvals must precede implementation of the projects.

- 3) The DEQ Office of Wetlands and Stream Protection (OWSP) is currently conducting a § 401 Clean Water Act (CWA) Water Quality Certification (WQC) review of the proposed 2020 Nationwide Permits with General Conditions (NWP's) and proposed Norfolk District Regional Conditions. The activities that qualify for the NWP's must comply with DEQ's WQC decisions. DEQ's WQC decisions are applicable to the terms of the proposed Nationwide Permits with General Conditions and the proposed Norfolk District Regional Conditions, and only applies if the final Nationwide Permits with General Conditions and the final Norfolk District Regional Conditions are issued as no less restrictive than the proposed Nationwide Permits with General Conditions and the proposed Norfolk District Regional Conditions. DEQ reserves its right to revise one or more § 401 WQC decisions based on the final 2020 Nationwide Permits with General Conditions and the final Norfolk District Regional Conditions.
- 4) For the reissuance to be consistent with the Wildlife and Inland Fisheries enforceable policy, activities covered by NWP's and RCs issued within the Virginia's designated coastal zone must not result in adverse impacts upon state-listed species and/or wildlife resources designated by the Virginia Department of Wildlife Resources (DWR). To accomplish this, language must be included within RC 4 which directs applicants to access DWR's Virginia Fish and Wildlife Information Service (VAFWIS) and coordinate with DWR's Environmental Services Section (ESS) if a listed species or designated resource is known from within 2 miles of the proposed project being permitted. The Corps Norfolk District must coordinate with DWR to include state-listed species and designated resources under its jurisdiction in the permit review process.

In accordance with the *Federal Consistency Regulations* at 15 CFR Part 930, § 930.4, this conditional concurrence is based on the applicants demonstrating to the Corps that they have obtained, or will obtain, all necessary authorizations prior to implementing a project which qualifies for a NWP. If the requirements of section 930.4, sub-paragraphs (a)(1) through (a)(3) are not met, this conditional concurrence becomes an objection under 15 CFR, Part 930, § 940.43.

FEDERAL CONSISTENCY ANALYSIS

According to information in the FCD, the proposed NWP's and Virginia RCs affect the enforceable policies of the Virginia CZM Program with the exception of the dunes management enforceable policy. The agencies responsible for the administration of the enforceable policies of the Virginia CZM Program generally agree with the determination. The Corps must ensure that the NWP's and RCs are administered in a manner that is consistent with the aforementioned policies. In addition, DEQ encourages the Corps to consider the advisory policies of the Virginia CZM Program. The analysis which follows responds to the discussion of the enforceable policies of the Virginia CZM Program that apply to this action and review comments submitted by agencies that administer the enforceable policies.

1. Tidal and Non-Tidal Wetlands. According to the FCD (page 2), all applicable NWP verification letters for impacts in tidal waters and nontidal rivers and streams will state, *“A permit may be required from the Virginia Marine Resources Commission and/or your local wetlands board, and this verification is not valid until you obtain their approval, if necessary.”* Corps NWP verification letters and enclosures will include any DEQ conditions that are made part of the §401 Clean Water Act, Water Quality Certification.

RC 9 indicates that when a pre-construction notification (PCN) is required, a compensatory mitigation plan must be submitted if the permanent loss of wetlands exceeds 1/10 acre and/or 300 linear feet of Waters of the U.S., unless otherwise stated in the RCs. Federal permittees are required to mitigate for losses of wetlands greater than 1/10 acre and 300 linear feet of stream, unless otherwise waived by the Norfolk District. RC 11 indicates that all impacts associated with transportation projects funded in part or in total by local, state or federal funds and requiring a PCN, will generally require compensatory mitigation for all permanent wetland impacts (including impacts less than 1/10 acre).

1(a) Agency Jurisdiction. The purpose of the policy is to preserve and protect wetlands and non-tidal surface waters, to prevent their despoliation and destruction, and accommodate necessary economic development in a manner consistent with wetlands preservation. Impacts to wetlands and streams shall be avoided or minimized to the maximum extent practicable. Tidal Wetlands are administered by the Virginia Marine Resources Commission (VMRC) under the authority of the Tidal Wetlands Act of 1972 (*Virginia Code § 28.2-1301 and -1308; 4 VAC § 20-390-20*). Tidal and Nontidal Wetlands are administered by the Department of Environmental Quality (DEQ) through the Virginia Water Protection Permit program and includes Water Quality Certification pursuant to Section 401 of the Clean Water Act (*Virginia Code §§ 62.1-44.15:20 and -44.15:21; and 9 VAC §§ 25-210-10, -210-45, 210-80, 260-10, -380, -390*).

1(b) Agency Findings.

(i) Virginia Marine Resources Commission

VMRC finds that since all NWP verification letters must include a statement conveying that a permit from VMRC and/or the local wetlands board may be required, the agency has no objection to the consistency determination for the NWP and RCs. The individual activity for which a permit is sought shall be contingent upon obtaining an appropriate VMRC or local wetlands board permit, if necessary. Any permit decision reached by VMRC during the Joint Application (JPA) process will clarify the permit conditions that are necessary to insure consistency with the tidal wetlands enforceable policy of the Virginia CZM Program.

(ii) Department of Environmental Quality

The DEQ Office of Wetlands and Stream Protection is undertaking the Commonwealth's §401 CWA Water Quality Certification review and approval process at this time. However, in the interim, DEQ-OWSP finds that the 2020 NWP and RCs will be consistent with the Tidal and Nontidal Wetlands enforceable policy of the Virginia CZM Program provided activities that qualify for the NWP comply with DEQ's Water Quality Certification (WQC) decisions and only applies if the final NWP and RCs are issued as no less restrictive than the proposed NWP and RCs.

1(c) Conclusion. The 2020 NWP and RCs are consistent to the maximum extent practicable with the Tidal and Non-tidal Wetlands enforceable policy of the Virginia CZM Program provided an appropriate VMRC or local wetlands board permit is obtained for individual activities, if necessary, and the NWP receives a Section 401 WQC or a project receives a Virginia Water Protection Permit, and permittees comply with all conditions contained therein.

For additional information regarding the above comments, contact VRMC, Tony Watkinson at (757) 247-2250 or tony.watkinson@mrc.virginia.gov and/or DEQ-OWSP, Dave Davis at (804) 698-4105 or dave.davis@deq.virginia.gov.

2. Subaqueous Lands. According to the FCD (page 3), all NWP used in Virginia have the potential to affect the enforceable policy, because authorization for impacts to state subaqueous lands covered under the NWP involve encroachments both channelward of mean low water along tidal waters and channelward of ordinary high water along nontidal rivers and streams. All applicable NWP verification letters for impacts in tidal waters and nontidal rivers and streams will state, *"A permit may be required from the Virginia Marine Resources Commission and/or your local wetlands board, and this verification is not valid until you obtain their approval, if necessary."*

The proposed RCs will ensure impacts to subaqueous lands are minimized. RC 1 requires submittal of a PCN for work in waters that contain submerged aquatic vegetation (SAV). Specific RCs for NWP 10-Mooring Buoys and NWP 11-Temporary Recreational Structures, specify conditions for sufficient mooring depths and indicate that boats should not hit bottom during low water conditions. Use of NWP 10 and 11 are prohibited in and around SAV beds.

2(a) Agency Jurisdiction. All decisions affecting subaqueous lands shall be guided by the Commonwealth's General Policy to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings and to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth. The General Assembly has authorized VMRC to grant or deny any use of state-owned bottomlands, including dredging, aquaculture, the taking and use of material from the bottomland, and the placement of wharves, bulkheads, and fill. (*Virginia Code* §§ 28.2-1200, -1203, -1204 and -1205).

2(b) Agency Findings. Since all NWP verification letters must include a statement that a permit from VMRC and/or the local wetlands board may be required, the agency has no objection to the consistency for the NWP and RCs issued by the Corps Norfolk District. The individual activity for which a permit is sought shall be contingent upon obtaining an appropriate VMRC permit, if necessary. Any permit decision reached by VMRC during the JPA process will clarify the permit conditions that are necessary to insure consistency with the subaqueous lands enforceable policy of the Virginia CZM Program.

2(d) Conclusion. The 2020 NWP and RCs are consistent to the maximum extent practicable with the Subaqueous Lands enforceable policy of the Virginia CZM Program provided applicant coordination with VMRC is included in verification letters for all NWP with the potential to impact state subaqueous lands.

For additional information, contact VRMC, Tony Watkinson at (757) 247-2250 or tony.watkinson@mrc.virginia.gov.

3. Dunes and Beaches. The FCD (page 3) finds that NWP do not impact the enforceable policy, since the NWP authorize work in Waters of the U.S. The Corps does not have jurisdiction over the destruction or alteration of primary dunes.

3(a) Agency Jurisdiction. The policy promotes the preservation and protection of coastal primary sand dunes and beaches, to prevent their despoliation and destruction, and whenever practical, to accommodate necessary economic development in a manner consistent with the protection of such features. Dune and beach protection is carried out pursuant to the Coastal Primary Sand Dune Protection Act as administered by VMRC (*Virginia Code §§ 28.2-1401 and -1408*).

3(b) Agency Findings. VMRC has no objection to the Corps' consistency finding for the NWP and RCs with respect to the dunes and beaches enforceable policy.

3(c) Conclusion. The 2020 NWP and RCs are consistent to the maximum extent practicable with the Dunes and Beaches enforceable policy of the Virginia CZM Program.

For additional information, contact VRMC, Tony Watkinson at (757) 247-2250 or tony.watkinson@mrc.virginia.gov.

4. Chesapeake Bay Preservation Areas. According to the FCD (page 4), the NWP may overlap in some areas where the Chesapeake Bay Preservation Act is applicable. However, the NWP are separate and distinct from the actions required under the Chesapeake Bay Preservation Act and the Norfolk District's NWP verification letters state, *"This authorization does not relieve your responsibility to comply with local requirements pursuant to the Chesapeake Bay Preservation Act (CBPA), nor does it supersede local government authority and responsibilities pursuant to the Act. You*

should contact your local government before you begin work to find out how the CBPA applies to your project."

4(a) Agency Jurisdiction. The policy is intended to protect and improve the water quality of the Chesapeake Bay, its tributaries, and other state waters by ensuring that land use and development performance criteria and standards are implemented in Chesapeake Bay Preservation Areas, which if improperly used or developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries. The program is administered by DEQ and 84 Bay Act localities through the Chesapeake Bay Preservation Act (*Virginia Code* §§ 28.2-104.1, 62.1-44.15:24, -44.15:51, -44.15:67, -44.15:68, -44.15:69, -44.15:73, -44.15:74, and -44.15:78) and Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC §§ 25-830-30, -40, -80, -90, -100, -120, -130, -140, and -150).

4(b) Agency Findings. DEQ-OWLGAP notes that in Tidewater Virginia, the 84 localities subject to and protected by the Bay Act, as locally implemented, require conformance with performance criteria. These areas include Resource Protection Areas (RPAs) and Resource Management Areas (RMAs) as designated by the local government. RPAs include:

- tidal wetlands;
- certain non-tidal wetlands;
- tidal shores; and
- a minimum 100-foot vegetated buffer located adjacent to and landward of these features and along both sides of any water body with perennial flow.

RMAs, which require less stringent performance criteria and vary in size from locality to locality (most locally-designated RMAs being jurisdiction-wide), include:

- 100-year floodplains;
- highly erodible soils;
- highly permeable soils;
- steep slopes;
- non-tidal wetlands not included in the RMA; and
- such other lands considered by a local government to be necessary to protect the quality of state waters.

4(c) Requirements. Projects involving land-disturbing activities must adhere to the general performance criteria as specified in 9 VAC 25-830-130 of the *Regulations*, especially with respect to:

- minimizing land disturbance (including access and staging areas);
- retaining existing vegetation; and
- minimizing impervious cover.

For land disturbance over 2,500 square feet, the project must comply with the requirements of the *Virginia Erosion and Sediment Control Handbook*, Third Edition, 1992. Additionally, stormwater management criteria consistent with water quality protection provisions of the *Virginia Stormwater Management Regulations*, 9 VAC 25-870-10, shall be satisfied

4(d) Conclusion. Provided the above conditions are met, the proposed 2020 NWP and RCs are consistent to the maximum extent practicable with the Chesapeake Bay Preservation Areas enforceable policy.

For additional information, contact DEQ-OWLGAP, Daniel Moore at (804) 698-4520 or daniel.moore@deq.virginia.gov.

5. Marine Fisheries. According to the FCD (page 5), all the NWP used in Virginia have the potential to affect the fisheries management enforceable policy, since activities could occur in tidal waters or nontidal rivers and streams that are regulated by the State. All applicable NWP verification letters for impacts in tidal waters and nontidal rivers and streams will state, “*A permit may be required from the Virginia Marine Resources Commission and/or your local wetlands board, and this verification is not valid until you obtain their approval, if necessary.*”

The proposed NWP and the Norfolk District’s RCs will also ensure impacts to marine fisheries are minimized. The proposed NWP will not authorize the introduction of any non-native species (shell or finfish). NWP 48 for Commercial Shellfish Mariculture Activities, NWP C for Seaweed Mariculture Activities and NWP D for Finfish Mariculture Activities do not permit the cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1999. A RC under NWP 48 specifies that an aquaculture activity will not qualify for this NWP if it will have more than minimal adverse effects on existing or naturally occurring beds or population of shellfish, marine worms or other invertebrates that could be used by man, other mammals, birds, reptiles, or fish. The Norfolk District has also included several other regional conditions on NWP 48 to ensure that the impacts will not be more than minimal.

5(a) Agency Jurisdiction. The policy stresses the conservation and promotion of seafood and marine resources of the Commonwealth, including fish, shellfish and marine organisms, and the management of the fisheries to maximize food production and recreational opportunities within the Commonwealth’s territorial waters. The policy is administered by VMRC (*Virginia Code §§ 28.2-101, -201, -203, -203.1, -225, -551, -600, -601, -603 -618, and -1103, -1203 and the Constitution of Virginia, Article XI, Section 3*).

5(b) Agency Findings. Since all NWP verification letters must include a statement that a permit from VMRC and/or the local wetlands board may be required, the agency has no objection to the consistency determination for the NWP and RCs. The individual activity for which a permit is sought shall be contingent upon obtaining an appropriate

VMRC permit, if necessary. Any permit decision reached by VMRC during the JPA process will clarify the permit conditions that are necessary to insure consistency with the marine fisheries enforceable policy of the Virginia CZM Program.

5(c) Conclusion. The proposed 2020 NWP and RCs are consistent to the maximum extent practicable with the Marine Fisheries enforceable policy provided applicant coordination with VMRC is included in verification letters for all NWP with the potential to impact marine fisheries.

For additional information, contact VRMC, Tony Watkinson at (757) 247-2250 or tony.watkinson@mrc.virginia.gov.

6. Wildlife and Inland Fisheries. The FCD (page 6) states that the proposed RCs will help to ensure that impacts to the enforceable policy are minimized. RC 2 specifies that, “*Authorizations associated with the NWP shall not adversely affect spawning habitat or a migratory pathway for anadromous fish.*” RC 4 for Federally-Listed Threatened or Endangered Species and Designated Critical Habitat for Non-Federal Permittees, requires a PCN for projects that may affect a federally listed threatened or endangered species or designated critical habitat. RC 5 for work in Designated Trout Streams, requires a PCN and information on designated trout streams through the Department of Wildlife Resources’ Virginia Fish and Wildlife Information Service (VAFWIS) Cold Water Stream Survey database and time-of-year restrictions required for work in these streams. RCs 7 and 8 require countersinking of culverts to minimize disruption of aquatic life movement.

6(a) Agency Jurisdiction. The Department of Wildlife Resources (DWR) administers the enforceable policy for activities affecting wildlife and inland fisheries to ensure they do not negatively impact the Commonwealth’s efforts in conserving, protecting, replenishing, propagating and increasing of the supply of game birds, game animals, fish and other wildlife of the Commonwealth(*Virginia Code §§ 29.1-501, -512, -521, -530.2, -531, -533, -542, -543.1, -545, -548, -549, -550, -552, -554, -556, -569, and -574; 4 VAC §§ 15-30-10, -20, -50, and 15-290-60*), fish or wildlife listed as threatened or endangered by the Department of Wildlife Resources Board(*Virginia Code §§ 29.1-501, -564, -566, -567, and -568; 4 VAC §§ 15-20-130 and -140*), the use of drugs on vertebrate wildlife (*Virginia Code § 29.1-501 and -508.1*), and nonindigenous aquatic nuisance, predatory, or undesirable species(*Virginia Code §§ 29.1-501, -542, -543.1, -545, -569, -571, -574, and -575; 4 VAC §§ 15-20-210, -30-20, -30-40, and 15-290-60*).

6(b) Agency Findings. DWR finds the NWP to be appropriate and the Virginia RCs are supportive of the agency’s recommendations for the protection of anadromous fish and trout resources (not coastal zone). However, DWR finds that for the reissuance to be consistent with the Wildlife and Inland Fisheries enforceable policy, RC 4 needs to be modified or a new condition needs to be developed for NWP issued in the Coastal Zone to address the policy.

6(c) Requirement. For the NWP reissuance to be consistent with the Wildlife and Inland Fisheries enforceable policy, the following or similar language must be included within RC 4 for permits being issued within the Virginia's designated coastal zone.

"DWR is Virginia's wildlife (including freshwater) management agency and exercises law enforcement and regulatory jurisdiction over these resources, including state or federally Endangered or Threatened species, but excluding listed insects. DWR is a consulting agency under the U.S. Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), and provides environmental analysis of projects or permit applications coordinated through the Virginia Department of Environmental Quality, the Virginia Marine Resources Commission, the Virginia Department of Transportation, the Federal Energy Regulatory Commission, the U.S. Army Corps of Engineers, and other state or federal agencies. To ensure activities covered by NWPs do not result in adverse impacts upon state-listed species and/or wildlife resources designated by DWR, and are therefore consistent with Enforceable Policy VI-Wildlife and Inland Fisheries, access DWR's Virginia Fish and Wildlife Information Service (VAFWIS) at <https://vafwis.dgif.virginia.gov/fwis/> and coordinate with DWR's Environmental Services Section (ESS) if a listed species or designated resource is known from within 2 miles of the proposed project being permitted. Permit applications that need DWR ESS review should be emailed to ESSProjects@dwr.virginia.gov and at least 30 days should be provided for review and comment by DWR."

The Corps Norfolk District must coordinate with DWR to include the consideration of state-listed species and designated resources under its jurisdiction in the permit review process.

6(d) Conclusion. The proposed reissuance of the NWPs and RCs will be consistent to the maximum extent practicable with the Wildlife and Inland Fisheries enforceable policy provided language addressing state-listed species or designated resources is included in RC 4 for permits being issued within the coastal zone.

For additional information and coordination, contact DWR, Amy Ewing at (804) 347-2211 or amy.ewing@dwr.virginia.gov.

7. Plant Pests and Noxious Weeds. The FCD (page 7) states that RC 6, Invasive Species indicates that plant species listed in the most current DCR *Invasive Alien Plant List* shall not be used for revegetation for activities authorized by any NWP. In addition, RC 10 requires that restoration areas must be seeded using native wetland species.

7(a) Agency Jurisdiction. The enforceable policy is administered by the Virginia Department of Agriculture and Consumer Services (VDACS) and applies to activities affecting quarantines established for pests (*Virginia Code* §§ 3.2-700 and -703; 2 VAC §§ 5-315-10 to -130, -318-10 to -140, -330-10 to -90, and -440-10 to -70, -100, and -110), the importation of regulated articles proclaimed a menace to public health by Board of

Agriculture and Consumer Services (*Virginia Code* § 3.2-704), and plant pests and noxious weeds (*Virginia Code* §§ 3.2-712 and -804; 2 VAC §§ 5-315-10 to -130, -317-10 to -100, -318-10 to -140, -330-10 to -90, and -440-10 to -70, -100, and -110).

7(b) Agency Findings. VDACS did not respond to the request for comments on the FCD.

7(c) Conclusion. The proposed reissuance of the NWP and RCs is consistent to the maximum extent practicable with the Plant Pest and Noxious Weeds enforceable policy.

For additional information, contact VDACS, Keith Tignor at (804) 786-3515 or keith.tignor@vdacs.virginia.gov.

8. Commonwealth Lands. According to the FCD (page 7), DWR and DCR, who manage the public lands, may apply for authorization under the proposed NWP. Since the authorized work would be under the purview of the state agency, the Corps expects that the action would comply with the enforceable policy.

8(a) Agency Jurisdiction. The enforceable policy applies to activities on state-owned lands managed by DWR and DCR to include the free passage of anadromous and other migratory fish (*Virginia Code* § 29.1-532), the removal of coastal resources from Back Bay (*Virginia Code* § 29.1-103(10); 4 VAC § 15-20-90), encroachments into game refuges (*Virginia Code* § 29.1-554), tampering with DWR owned or operated aquatic and terrestrial habitats (*Virginia Code* § 29.1-554; 4 VAC §§ 15-20-150 and -320-100), and fire use (4 VAC §§ 5-30-70 and -220), hunting and fishing (4 VAC §§ 5-30-240 to -250), feeding wildlife (4 VAC § 5-30-422), boating and vehicle use in state parks (4 VAC §§ 5-30-190, -290, and -330).

8(b) Agency Findings. Neither DCR nor DWR indicated any concerns with potential impacts of the NWP and RCs on Commonwealth lands under their jurisdictions.

8(c) Conclusion. The proposed reissuance of the NWP and RCs is consistent to the maximum extent practicable with the Commonwealth Lands enforceable policy.

For additional information, contact DWR, Amy Ewing at (804) 347-2211 or amy.ewing@dwr.virginia.gov and/or DCR, Robbie Rhur at (804) 371-2594 or robbie.rhur@dc.virginia.gov.

9. Point Source Air Pollution. The FCD (page 7) states that the NWP have been analyzed for conformity applicability pursuant to regulations implementing Section 176(c) of the Clean Air Act. It has been determined that the activities proposed under the NWP will not exceed *de minimis* levels of direct emissions of a criteria pollutant or its precursors and are exempted by 40 CFR Part 93.153.

9(a) Agency Jurisdiction. The policy is administered by DEQ through the federal Clean Air Act and Virginia's legally enforceable State Implementation Plan for the

attainment and maintenance of the National Ambient Air Quality Standards. It is the policy of the Commonwealth to abate, control, and prohibit air pollution throughout the Commonwealth (*Virginia Code § 10.1-1308*), to include: asphalt paving operations in volatile organic compound emission control areas (*Virginia Code §§ 10.1-1308 and -1322; 9 VAC §§ 5-20-206 and -45-780*), open burning (*Virginia Code §§ 10.1-1308 and -1322; 9 VAC §§ 5-80-1105, -130-10, -130-30 to -50, 20-60-30, and 5-60-200*), fugitive dust emissions (*Virginia Code §§ 10.1-1308 and -1322; 9 VAC §§ 5-50-90 and -40-90*), state operation permits (*Virginia Code §§ 10.1-1308 and -1322; 9 VAC § 5-80-800*), and new source review (*Virginia Code §§ 10.1-1308 and -1322; 9 VAC §§ 5-80-1100, -1400, -1605, and -2000*).

9(b) Agency Findings. The DEQ Air Division finds that activities authorized under the NWP's may occur in designated ozone (O₃) attainment/maintenance areas, ozone nonattainment areas, and emission control areas for oxides of nitrogen (NO_x) and volatile organic compounds (VOCs).

9(c) Recommendations. Applicants should take all reasonable precautions to limit emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x), principally by controlling or limiting the burning of fossil fuels.

9(d) Requirements.

(i) Fugitive Dust

During construction, fugitive dust must be kept to a minimum by using control methods outlined in 9 VAC 5-50-60 *et seq.* of the *Regulations for the Control and Abatement of Air Pollution*. These precautions include, but are not limited to, the following:

- Use, where possible, of water or chemicals for dust control;
- Installation and use of hoods, fans, and fabric filters to enclose and vent the handling of dusty materials;
- Covering of open equipment for conveying materials; and
- Prompt removal of spilled or tracked dirt or other materials from paved streets and removal of dried sediments resulting from soil erosion.

(ii) Open Burning

If project activities include the open burning or use of special incineration devices for the disposal of land clearing debris, this activity must meet the requirements of 9 VAC 5-130 *et seq.* of the *Regulations* for open burning and it may require a permit. The *Regulations* provide for, but do not require, the local adoption of a model ordinance concerning open burning. Project applicants should contact local officials to determine what local requirements, if any, exist.

9(e) Conclusion. The proposed 2020 NWP and RCs are consistent to the maximum extent practicable with the Point Source Air Pollution enforceable policy provided applicants obtain and comply with any necessary authorizations.

For additional information, contact the DEQ Air Division, Kotur Narasimhan at (804) 698-4415 or kotur.narasimhan@deq.virginia.gov.

10. Point Source Water Pollution. According to the FCD (page 8), the Corps is requesting §401 Water Quality Certification from the State Water Control Board pursuant to VWP Permit Regulation 9 VAC 25-210-130H. Corps NWP Verification letters and enclosures will include any conditions that are identified through the §401 Water Quality Certification review.

10(a) Agency Jurisdiction The policy is administered by DEQ to protect existing high quality state waters and restore all other state waters to permit all reasonable public uses and support the propagation and growth of all aquatic life. Legal authority is granted by the National Pollutant Discharge Elimination System (NPDES) permit program established pursuant to Section 402 of the federal Clean Water Act and administered by DEQ as the Virginia Pollutant Discharge Elimination System (VPDES) permit program (*Virginia Code* § 62.1-44.2; 9 VAC § 25-31-20).

10(b) Agency Findings. The VPDES program did not indicate any concerns with the effect of the reissuance and modifications of the NWP and RCs.

10(c) Conclusion. The proposed 2020 NWP and RCs are consistent to the maximum extent practicable with the Point Source Water Pollution enforceable policy of the Virginia CZM Program.

For additional information, contact DEQ, Allan Brockenbrough at (804) 698-4147 or allan.brockenbrough@deq.virginia.gov.

11. Nonpoint Source Water Pollution. According to the FCD (page 8), the proposed NWP may authorize activities that result in the creation of nonpoint source runoff from land disturbance and development. However, the NWP General Condition 12 for Soil Erosion and Sediment Controls, specifies that *“Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides”*.

11(a) Agency Jurisdiction. The policy addresses the control stormwater runoff to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater. Virginia's Erosion and Sediment Control Law requires soil-disturbing projects to be designed to reduce soil erosion and to decrease inputs of chemical nutrients and sediments to the Chesapeake Bay, its tributaries, and other rivers and waters of the

Commonwealth. This program is administered by DEQ (*Virginia Code* §§ 62.1-44.15:25, 62.1-44.15:52; 9 VAC §§ 25-840-30, 25-870-20).

11(b) Agency Findings. The DEQ Office of Stormwater Management had no comments on the proposed NWP and RCs.

11(c) Conclusion. The proposed 2020 NWP and RCs are consistent to the maximum extent practicable with the Nonpoint Source Water Pollution enforceable policy of the Virginia CZM Program.

For additional information, contact DEQ-OSWM, Larry Gavan at (804) 698- or larry.gavan@deq.virginia.gov.

12. Shoreline Sanitation. The FCD (page 9) finds that NWP 3, 18, 29, 39, and 42 may be applicable to the shoreline sanitation enforceable policy, since they could authorize developments that include septic tanks. However, all septic tanks must be approved by the Department of Health, so the state's applicable standards would apply.

12(a) Agency Jurisdiction. The Virginia Department of Health administers the enforceable policy for conventional and alternative onsite sewage systems. The policy ensures adequate service for human occupied structures (*Virginia Code* §§ 32.1-12 and -164; 12 VAC §§ 5-610-20 and -80); public and environmental health protection (*Virginia Code* §§ 32.1-12 and -164, 12 VAC §§ 5-610-20, -120, -240, -320, -330, -450 to -500, -560, -593, -594, -596, -597, -670, -720 to -770, -810, -815, -870, -880, -890, -960, -965, -1000, -1010, -1040, -1050, -1060, -1070, -1110, -1120, -1130, -613-10 to -210, and -640-5, -20 to -40, -60 to -90, -110 to -120, -140 to -180, -210 to -290, -390 to -470, and -490 to -520), and onsite sewage system design requirements (*Virginia Code* §§ 32.1-12, -163.5(A), -163.6(A), and -164; 12 VAC §§ 5-610-260 and -597).

12(b) Agency Findings. The Virginia Department of Health (VDH) did not indicate any concerns with the effect of the proposed NWP and RCs on onsite sewage systems under its jurisdiction.

12(c) Conclusion. The proposed 2020 NWP and RCs are consistent to the maximum extent practicable with the Shoreline Sanitation enforceable policy of the Virginia CZM Program.

For additional information, contact VDH, Arlene Fields Warren at (804) 864-7781 or arlene.warren@vdh.virginia.gov.

ADDITIONAL ENVIRONMENTAL CONSIDERATIONS

In addition to the enforceable policies of the Virginia CZM Program, comments were provided with respect to other applicable requirements and recommendations. The applicant must ensure that the project is constructed and operated in accordance with all applicable federal, state, and local laws and regulations.

1. Solid and Hazardous Wastes.

1(a) Agency Jurisdiction. On behalf of the Virginia Waste Management Board, the [DEQ Division of Land Protection and Revitalization \(DLPR\)](#) is responsible for carrying out the mandates of the Virginia Waste Management Act (Virginia Code §10.1-1400 *et seq.*), as well as meeting Virginia's federal obligations under the Resource Conservation and Recovery Act and the Comprehensive Environmental Response Compensation Liability Act, commonly known as Superfund.

Virginia:

- Virginia Waste Management Act, Virginia Code § 10.1-1400 *et seq.*
- *Virginia Solid Waste Management Regulations*, 9 VAC 20-81
 - (9 VAC 20-81-620 applies to asbestos-containing materials)
- *Virginia Hazardous Waste Management Regulations*, 9 VAC 20-60
 - (9 VAC 20-60-261 applies to lead-based paints)
- *Virginia Regulations for the Transportation of Hazardous Materials*, 9 VAC 20-110.

Federal:

- Resource Conservation and Recovery Act (RCRA), 42 U.S. Code sections 6901 *et seq.*
- U.S. Department of Transportation *Rules for Transportation of Hazardous Materials*, 49 Code of Federal Regulations, Part 107
- Applicable rules contained in Title 40, *Code of Federal Regulations*.

DEQ-DLPR also administers laws and regulations on behalf of the State Water Control Board governing Petroleum Storage Tanks (Virginia Code § 62.1-44.34:8 *et seq.*), including Aboveground Storage Tanks (9 VAC 25-91 *et seq.*) and Underground Storage Tanks (9 VAC 25-580 *et seq.* and 9 VAC 25-580-370 *et seq.*), also known as 'Virginia Tank Regulations' and § 62.1-44.34:14 *et seq.* which covers oil spills.

1(b) Requirements.

(i) Waste Management

Any soil that is suspected of contamination or wastes that are generated during construction-related activities must be tested and disposed of in accordance with applicable federal, state, and local laws and regulations.

(ii) Asbestos-containing Materials and Lead-based Paint

Any structures being demolished/renovated/removed should be checked for asbestos-containing materials (ACM) and lead-based paint (LBP) prior to demolition. If ACM or LBP are found, in addition to the federal waste-related regulations mentioned above, State regulations 9 VAC 20-81-620 for ACM and 9 VAC 20-60-261 for LBP must be followed. Questions may be directed to the waste compliance staff at the appropriate DEQ's Regional Office.

1(c) Recommendations. DEQ recommends that project proponents conduct a search of any land-based project areas using the following solid and hazardous waste databases to identify waste sites (including petroleum releases) in close proximity (minimum 200-foot radius) to the project area:

- Environmental Protection Agency (EPA) Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) Database: Superfund Information Systems Information on hazardous waste sites, potentially hazardous waste sites and remedial activities across the nation, including sites that are on the National Priorities List (NPL) or being considered for the NPL:
 - www.epa.gov/superfund/sites/cursites/index.htm
- DEQ Online Database: Virginia Environmental Geographic Information Systems Information on Permitted Solid Waste Management Facilities, Impaired Waters, Petroleum Releases, Registered Petroleum Facilities, Permitted Discharge (Virginia Pollution Discharge Elimination System Permits) Facilities, Resource Conservation and Recovery Act (RCRA) Sites, Water Monitoring Stations, National Wetlands Inventory:
 - www.deq.virginia.gov/ConnectWithDEQ/VEGIS.aspx

For additional information, contact DEQ-DLPR, Carlos Martinez at (804) 698-4575 or carlos.martinez@deq.virginia.gov.

2. Natural Heritage Resources.

2(a) Agency Jurisdiction.

[The Virginia Department of Conservation and Recreation's \(DCR\) Division of Natural Heritage \(DNH\)](#). DNH's mission is conserving Virginia's biodiversity through inventory, protection and stewardship. The Virginia Natural Area Preserves Act (Virginia Code §10.1-209 through 217), authorizes DCR to maintain a statewide database for conservation planning and project review, protect land for the conservation of biodiversity, and protect and ecologically manage the natural heritage resources of

Virginia (the habitats of rare, threatened and endangered species, significant natural communities, geologic sites, and other natural features).

The [Virginia Department of Agriculture and Consumer Services \(VDACS\)](#). The Endangered Plant and Insect Species Act of 1979 (Virginia Code Chapter 39 §3.1-1020 through 1030) authorizes VDACS to conserve, protect and manage endangered and threatened species of plants and insects. Under a Memorandum of Agreement established between VDACS and the DCR, DCR represents VDACS in comments regarding potential impacts on state-listed threatened and endangered plant and insect species.

2(b) Agency Findings. DCR has reviewed the 2020 NWP's and RCs and offers the following permit-specific comments:

NWP 12 - Oil or Natural Gas Pipeline Activities Conditions Specific to NWP 12

- i. Selection of an alignment which avoids and minimizes wetland and stream impacts to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling should be reviewed as an option. However, the Norfolk District recognizes that in certain areas (e.g. karst areas) directional drilling may not be the environmentally preferred option.
- ii. Selection of an alignment which avoids fragmenting large tracts of forested wetlands by routing utility lines outside of forested tracts or on the edges of forested tracts. Consult [Virginia Conservation Vision](#), a GIS analysis tool for identifying and prioritizing areas of un-fragmented natural cover in Virginia or the [Virginia Natural Heritage Data Explorer](#).

NWP C - Electric Utility Line and Telecommunications Activities

- i. Selection of an alignment which avoids and minimizes wetland and stream impacts to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling should be reviewed as an option. However, the Norfolk District recognizes that in certain areas (e.g. karst areas) directional drilling may not be the environmentally preferred option.
- ii. Selection of an alignment which avoids fragmenting large tracts of forested wetlands by routing utility lines outside of forested tracts or on the edges of forested tracts. Consult the Virginia Conservation Vision, a GIS analysis for identifying and prioritizing areas of un-fragmented natural cover in Virginia <http://www.dcr.virginia.gov/natural-heritage/vaconvision> or the [Virginia Natural Heritage Data Explorer](#).

NWP D - Utility Line Activities for Water and Other Substances

- i. Selection of an alignment which avoids and minimizes wetland and stream impacts to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling should be reviewed as

- an option. However, the Norfolk District recognizes that in certain areas (e.g. karst areas) directional drilling may not be the environmentally preferred option.
- ii. Selection of an alignment which avoids fragmenting large tracts of forested wetlands by routing utility lines outside of forested tracts or on the edges of forested tracts. Consult [Virginia Conservation Vision](#), a GIS analysis tool for identifying and prioritizing areas of un-fragmented natural cover in Virginia or the [Virginia Natural Heritage Data Explorer](#).

NWP 54 - Living Shorelines

Projects, which include placement of sandy fill material, may result in impacts to suitable habitat for various federally listed threatened or endangered species. If the applicant seeks to either add to or replenish the suitable habitat area, the Corps will consult with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to ensure work is not likely to adversely affect proposed or listed species or proposed or designated critical habitat. Specific requirements on the type of sand allowed for beach and dune work may be required.

RC 4 - Conditions for Federally Listed Species and Designated Critical Habitat for Non-Federal Permittees (applicable to all NWPs unless otherwise stated)

DCR-DNH recommends the applicant obtain information on state listed or other rare species by contacting DWR and DCR-DNH as stated on the U.S. Fish and Wildlife online [Project Reviews in Virginia](#) webpage.

RC 6 - Invasive Species (DCR-DNH supports the following regional condition).

Invasive plant species listed in the most current DCR *Invasive Alien Plant List* shall not be used for revegetation for activities authorized by any NWP. The list of invasive plants in Virginia is found at [Virginia Invasive Plant Species List](#). DCR recommends the use of regional native species for revegetation as identified in the DCR [Native Plants for Conservation, Restoration and Landscaping Brochures](#) for the coastal, piedmont and mountain regions. Also, see the DCR [Native Plant Finder](#).

Contact DCR-DNH, Rene Hypes at (804) 371-2807 or rene.hypes@dcr.virginia.gov, for additional information.

3. Floodplain Management.

3(a) Agency Jurisdiction. The [DCR Division of Dam Safety and Floodplain Management \(DSFM\)](#) is the lead coordinating agency for the Commonwealth's floodplain management program and the National Flood Insurance Program (Executive Order 45 (2019)).

3(b) National Flood Insurance Program. According to the DCR Floodplain Management Program staff, the National Flood Insurance Program (NFIP) is administered by the Federal Emergency Management Agency (FEMA), and communities who elect to participate in this voluntary program manage and enforce the program on the local level through that community's local floodplain ordinance. Each local floodplain ordinance must comply with the minimum standards of the NFIP, outlined in 44 CFR 60.3; however, local communities may adopt more restrictive requirements in their local floodplain ordinance, such as regulating the 0.2% annual chance flood zone (Shaded X Zone).

3(c) Requirements. All development within a Special Flood Hazard Area (SFHA), as shown on the locality's Flood Insurance Rate Map (FIRM), must be permitted and comply with the requirements of the local floodplain ordinance. The DCR Floodplain Management Program does not have regulatory authority for projects in the SFHA. The applicant must coordinate with the local floodplain administrator for an official floodplain determination. If the project is located in the SFHA, the project must comply with the locality's floodplain ordinance and obtain a local permit. Failure to comply with the local floodplain ordinance could result in enforcement action from the locality.

Flood zone information may be found on the [Virginia Flood Risk Information System \(VFRIS\)](#). Local floodplain administrator contact information may be found on DCR's [Local Floodplain Management Directory](#).

For additional information, contact DCR-DSFM, Kristin Owen at (804) 786-2886 or kristin.owen@dcr.virginia.gov.

4. Regional Review.

4(a) Agency Jurisdiction. In accordance with the Virginia Code, §15.2-4207, planning district commissions encourage and facilitate local government cooperation and state-local cooperation in addressing, on a regional basis, problems of greater than local significance. The cooperation resulting from this is intended to facilitate the recognition and analysis of regional opportunities and take account of regional influences in planning and implementing public policies and services. Planning district commissions promote the orderly and efficient development of the physical, social and economic elements of the districts by planning, and encouraging and assisting localities to plan for the future.

4(b) Agency Findings.

(i) Crater Planning District Commission

The Crater Planning District Commission (CPDC) reviewed the Corps FCD and determined that the proposed NWP and RCs are in full compliance with regional environmental policies and plans.

(ii) PlanRVA

PlanRVA staff reviewed the FCD and circulated the document with locality staff. Henrico County staff responded with no concerns. Accordingly, PlanRVA staff have no concerns about this review.

For additional information, contact CPDC, Denny Morris at (804) 861-1666 or dmorris@craterpdc.org and/or PlanRVA, Sarah Stewart at (804) or sstewart@planrva.org.

5. Virginia Institute of Marine Science.

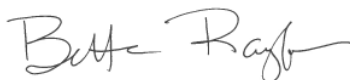
5(a) Agency Jurisdiction. The Virginia Institute of Marine Science (VIMS) serves as the Commonwealth's center of expertise in the marine environment, bringing together governmental, economic, regulatory, and scientific communities. VIMS is a central partner in the state's environmental management infrastructure working with the Virginia Marine Resources Commission, the Department of Environmental Quality, the Department of Conservation and Recreation, and the Virginia Department of Health. Additionally, VIMS is responsible for responding to requests from the General Assembly, the Governor's Office, and the Secretary of Natural Resources.

5(b) Agency Findings. VIMS finds that as projects in Virginia's jurisdictional tidal wetlands, dunes and beaches, and subaqueous lands would require submission of a Joint Permit Application and review by Virginia regulatory agencies, VIMS has no comments on the revisions proposed.

For additional information, contact VIMS, Emily Hein at (804) 684-7482 or eahein@vims.edu.

Thank you for the opportunity to review and respond to the FCD submitted for the 2020 Reissuance and Modification of the Nationwide Permits and Virginia Regional Conditions. The detailed comments of reviewing agencies are attached for your review. Please contact me at (804) 698-4204 or John Fisher at (804) 698-4339 for clarification of these comments.

Sincerely,



Bettina Rayfield, Program Manager
Environmental Impact Review and Long-Range
Priorities

Enclosures

Ec: Robbie Rhur, DCR
Amy Ewing, DWR
Tiffany Birge, VMRC
Arlene Fields Warren, VDH
Roger Kirchen, DHR
Emily Hein, VIMS
Keith Tignor, VDACS
Heather Williams, VDOT
David Spears, DMME
Terry Lasher, DOF
Bob Lazaro, NVRC
Sarah Steward, PlanRVA
Emily Meil, A-NPDC
Linda Millsaps, GWRC
Ben McFarlane, HRPDC
Jay Ruffa, CPDC
Jerry Davis, NNPDC
Lewie Lawrence, MPPDC
Beth Bachur, Baltimore District Corps



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 1111 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

MEMORANDUM

TO: John Fisher, DEQ Environmental Impact Review Coordinator

FROM: Daniel Moore, DEQ Principal Environmental Planner

DATE: December 10, 2020

SUBJECT: DEQ # 20-143F: US Army Corps of Engineers – Revision and Reissuance of 2020 Nationwide Permits

We have reviewed the Federal Consistency Determination for the proposed project and offer the following comments regarding consistency with the provisions of the *Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations)*:

In Tidewater Virginia, the 84 localities subject to and protected by the Chesapeake Bay Preservation Act, as locally implemented, require conformance with performance criteria. These areas include Resource Protection Areas (RPAs) and Resource Management Areas (RMAs) as designated by the local government. RPAs include tidal wetlands, certain non-tidal wetlands and tidal shores, and a minimum 100-foot vegetated buffer located adjacent to and landward of these features and along both sides of any water body with perennial flow. RMAs, which require less stringent performance criteria and vary in size from locality to locality (most locally-designated RMAs being jurisdiction-wide), include 100-year floodplains, highly erodible and highly permeable soils, steep slopes and non-tidal wetlands not included in the RMA and such other lands considered by a local government to be necessary to protect the quality of state waters.

Pursuant to the Coastal Zone Management Act of 1972, as amended, federal activities affecting Virginia's coastal resources or coastal uses must be consistent with Virginia's Coastal Zone Management Program (CZM Program) (see § 307(c)(1) of the Coastal Zone Management Act and 15 CFR Part 930, sub-part C of the *Federal Consistency Regulations*).

While Chesapeake Bay Preservation Areas (CBPAs) are not locally designated on federal lands, this does not relieve federal agencies of their responsibility to be consistent with the provisions of the *Regulations*, 9 VAC25-830-10 et seq., as one of the enforceable programs of the CZM Program. Federal actions on installations located within Tidewater Virginia are required to be

consistent with the performance criteria of the *Regulations* on lands analogous to locally designated CBPAs. Projects that include land disturbing activity must adhere to the general performance criteria, especially with respect to minimizing land disturbance (including access and staging areas), retaining indigenous vegetation and minimizing impervious cover. For land disturbance over 2,500 square feet, the project must comply with the requirements of the *Virginia Erosion and Sediment Control Handbook*, Third Edition, 1992. Additionally, stormwater management criteria consistent with water quality protection provisions of the *Virginia Stormwater Management Regulations*, 9 VAC 25-870, shall be satisfied.

Provided adherence to the above requirements, the proposed Nationwide permits reissuance would be consistent with the Chesapeake Bay Preservation Act and the *Regulations*.

*Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in Resource Protection Areas provided such facilities are allowed and constructed in accordance with the Virginia Stormwater Management Act and its attendant regulations, and provided that (i) the local government has conclusively established that location of the facility within the Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control or stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-870-92 of the Virginia Stormwater Management Program (VSMP) regulations; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a Resource Protection Area.

Re: Federal Consistency Conditional Concurrence to NWP's and RC's

1 message

Winn, Brenda <brenda.winn@deq.virginia.gov>

Thu, Dec 17, 2020 at 11:31 AM

To: "Fisher, John" <john.fisher@deq.virginia.gov>Cc: Dave Davis <dave.davis@deq.virginia.gov>, Bettina Rayfield <bettina.sullivan@deq.virginia.gov>

Here is my suggested language in lieu - it's what is in our cover letter for three separate WQC decisions.

The DEQ Office of Wetlands and Stream Protection (OWSP) is currently conducting a § 401 Clean Water Act (CWA) Water Quality Certification (WQC) review of the proposed 2020 Nationwide Permits with General Conditions (NWP's) and proposed Norfolk District Regional Conditions. The activities that qualify for the NWP's must comply with DEQ's WQC decisions. DEQ's WQC decisions are applicable to the terms of the proposed Nationwide Permits with General Conditions and the proposed Norfolk District Regional Conditions, and only applies if the final Nationwide Permits with General Conditions and the final Norfolk District Regional Conditions are issued as no less restrictive than the proposed Nationwide Permits with General Conditions and the proposed Norfolk District Regional Conditions. DEQ reserves its right to revise one or more § 401 WQC decisions based on the final 2020 Nationwide Permits with General Conditions and the final Norfolk District Regional Conditions.

Brenda Winn

Senior Program Coordinator
Virginia Water Protection Permit Program
Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218
brenda.winn@deq.virginia.gov
804-698-45160

ESSLog#40966_20-143F_ACOEReissuanceNWPS_DWR_AME20201123

1 message

Ewing, Amy <amy.ewing@dwr.virginia.gov>
To: John Fisher <john.fisher@deq.virginia.gov>
Cc: Fernald Raymond dvs93356 <ray.fernald@dwr.virginia.gov>

Mon, Nov 23, 2020 at 4:05 PM

John,

We have reviewed the consistency determination for reissuance of the NWP's and VA regional conditions. We find the NWP's to be appropriate and the VA Regional conditions are supportive of our recommendations for the protection of anadromous fish and trout resources (not coastal zone).

However, it seems that if this reissuance is to be consistent with the new enforceable policies, the following, or something similar, should be added to Regional Condition # 4 or a new condition needs to be developed, at least for NWP's issued in the Coastal Zone, to address the new policies:

State-listed Species and/or resources designated by the Virginia DWR:

DWR is Virginia's wildlife (including freshwater) management agency and exercises law enforcement and regulatory jurisdiction over these resources, including state or federally Endangered or Threatened species, but excluding listed insects. DWR is a consulting agency under the U.S. Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), and provides environmental analysis of projects or permit applications coordinated through the Virginia Department of Environmental Quality, the Virginia Marine Resources Commission, the Virginia Department of Transportation, the Federal Energy Regulatory Commission, the U.S. Army Corps of Engineers, and other state or federal agencies. To ensure activities covered by NWP's do not result in adverse impacts upon state-listed species and/or wildlife resources designated by DWR, and are therefore consistent with Enforceable Policy VI. Wildlife and Inland Fisheries, access DWR's Virginia Fish and Wildlife Information Service (VAFWIS) at <https://vafwis.dgif.virginia.gov/fwis/> and coordinate with DWR's Environmental Services Section (ESS) if a listed species or designated resource is known from within 2 miles of the proposed project being permitted. Permit applications that need DWR ESS review should be emailed to ESSProjects@dwr.virginia.gov and at least 30 days should be provided for review and comment by DWR.

If the NWP reissuance needs to be consistent with the previous enforceable policies, we find that it is consistent. However, if the NWP reissuance needs to be consistent with the current enforceable policies, it is only consistent assuming the above language or something similar is included within the regional conditions for permits being issued within the Coastal Zone and/or if the ACOE Norfolk District works with us to include consideration of state-listed species and designated resources under our jurisdiction in their permit review process.

We look forward to working with DEQ and the Corps to ensure issued permits are consistent with the Enforceable Policies for which we have jurisdiction.

Thanks, Amy

**Amy Martin Ewing**

*Environmental Services Biologist
Manager, Wildlife Information*

P 804.367.2211

Department of Wildlife Resources*CONSERVE. CONNECT. PROTECT.*

A 7870 Villa Park Drive, P.O. Box 90778, Henrico, VA 23228

www.VirginiaWildlife.gov

RE: NEW PROJECT ACOE Revision and Reissuance of Nationwide Permits 20-143F1 message

Sarah Stewart <SStewart@planrva.org>
To: John Fisher <john.fisher@deq.virginia.gov>
Cc: Siddharth Kumar <skumar@planrva.org>

Tue, Nov 24, 2020 at 6:14 AM

Hi John,

PlanRVA staff have completed a review of the Consistency Determination indicated below. PlanRVA staff circulated the review information with locality staff. Henrico County staff responded with no concerns. PlanRVA staff have no concerns about this review.

Thank you,

Sarah

Re: NEW PROJECT ACOE Revision and Reissuance of Nationwide Permits 20-143F

1 message

Warren, Arlene <arlene.warren@vdh.virginia.gov>

Fri, Nov 6, 2020 at 1:33 PM

To: John Fisher <john.fisher@deq.virginia.gov>, rr Environmental Impact Review <eir@deq.virginia.gov>

The Office of Drinking Water does not have comments on this review request.

Best Regards,

Arlene Fields Warren

GIS Program Support Technician

Office of Drinking Water

Virginia Department of Health

109 Governor Street

Richmond, VA 23219

(804) 864-7781

Revision and Reissuance of the Nationwide Permits and Virginia Regional Conditions

1 message

Emily A. Hein <eahein@vims.edu>

Thu, Nov 19, 2020 at 3:08 PM

To: "John.Fisher@deq.virginia.gov" <John.Fisher@deq.virginia.gov>

Good afternoon, John,

We have reviewed the documents for the federal consistency determination of the US Army Corps of Engineers Revision and Reissuance of the Nationwide Permits and Virginia Regional Conditions (DEQ #20-143F). As projects in Virginia's jurisdictional tidal wetlands, dunes and beaches, and subaqueous lands would require submission of a Joint Permit Application and review by Virginia regulatory agencies, we have no comments on the revisions proposed.

Please let me know if you have any questions.

Best,

Emily

Upcoming out of office dates:

Nov 23-30

Emily Hein

Assistant Director for Advisory Services

VIMS Research and Advisory Services

eahein@vims.edu, 804-684-7482





COMMONWEALTH of VIRGINIA

*Marine Resources Commission
380 Fenwick Road
Bldg 96
Fort Monroe, VA 23651-1064*

Matthew J. Strickler
Secretary of Natural Resources

Steven G. Bowman
Commissioner

November 19, 2020

Department of Environmental Quality
Office of Environmental Impact Review
Attn: John Fisher
1111 East Main St.
Richmond, VA 23219

Re: Revision & Reissuance of the Nationwide Permits and
Virginia Regional Conditions, DEQ# 20-143F

Dear Mr. Fisher,

This will respond to the request for comments regarding the Federal Consistency Determination for the Revision and Reissuance of the Nationwide Permits (NWP) and Regional Conditions (DEQ #20-143F), prepared by the Norfolk District U.S. Army Corps of Engineers. Specifically, the Norfolk District is proposing regional conditions for the proposed NWP activities within or affecting the coastal zone of the Commonwealth of Virginia.

Please be advised that the Virginia Marine Resources Commission (VMRC), pursuant to §28.2-1200 et seq of the Code of Virginia, has jurisdiction over any encroachments in, on, or over the beds of the bays, ocean, rivers, streams, or creeks which are the property of the Commonwealth. The VMRC administers the enforceable policies of fisheries management, subaqueous lands, tidal wetlands, and coastal primary sand dunes and beaches, which comprise some of Virginia's Coastal Zone Management Program. VMRC Habitat Management Division staff has reviewed the submitted documents and offers the following comments:

Given that all NWP verification letters must include a statement conveying a permit from VMRC and/or the local wetlands board may be required, we have no objection for a finding of consistency for the NWP and regional conditions issued by the Norfolk District. However, the individual activity for which a permit is sought shall be contingent upon obtaining an appropriate VMRC or local wetlands board permit, if necessary. Any permit decision reached by the Commission during the Joint Application process will clarify the permit conditions that are necessary to insure consistency with the submerged lands, tidal wetlands and marine fishery elements of Virginia's Coastal Zone Management Program.

If you have any questions please contact me at 757-247-2250 or by email at tony.watkinson@mrc.virginia.gov. Thank you for the opportunity to comment.

An Agency of the Natural Resources Secretariat
www.mrc.virginia.gov

Telephone (757) 247-2200 (757) 247-2292 V/TDD Information and Emergency Hotline 1-800-541-4646 V/TDD

Department of Environmental Quality
November 19, 2020
Page Two

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Watkinson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Tony Watkinson
Chief, Habitat Management Division

AW/tlb
HM

NEW PROJECT ACOE Revision and Reissuance of Nationwide Permits 20-143F1 message

Dennis Morris <dmorris@craterpdc.org>
To: John Fisher <john.fisher@deq.virginia.gov>

Tue, Oct 27, 2020 at 3:49 PM

Dear John,

The Crater Planning District Commission has reviewed the information regarding Federal Consistency Determination regarding the Army Corps of Engineers, Project No. 20-143F.

The Crater Commission has determined that the proposed ACOE Federal Consistency Determination is in full compliance with regional environmental policies and plans.

Thank you for allowing the Crater Commission to comment on this proposed Application.

Denny Morris
Crater Planning District Commission
(804) 861-1666

Matthew J. Strickler
Secretary of Natural Resources

Clyde E. Cristman
Director



Rochelle Altholz
Deputy Director of
Administration and Finance

Russell W. Baxter
Deputy Director of
Dam Safety & Floodplain
Management and Soil & Water
Conservation

Nathan Burrell
Deputy Director of
Government and Community Relations

Thomas L. Smith
Deputy Director of
Operations

COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

MEMORANDUM

DATE: November 20, 2020
TO: John Fisher, DEQ
FROM: Roberta Rhur, Environmental Impact Review Coordinator
SUBJECT: DEQ 20-143F, Nationwide Permit Reissuance Request for Comments

Division of Natural Heritage

The Department of Conservation and Recreation's Division of Natural Heritage's (DCR-DNH) mission is conserving Virginia's biodiversity through inventory, protection, and stewardship. Natural heritage resources are defined as the habitat of rare, threatened, or endangered plant and animal, unique or exemplary natural communities, and significant geologic formations.

DCR-DNH has reviewed the reissuance of the nationwide permits (NWP) and would like to provide the following comments at this time:

I. REGIONAL conditions applicable to all NWPs Unless Otherwise Stated:

4. Conditions for Federally Listed Species and Designated Critical Habitat- DCR-DNH recommends the applicant obtain information on state listed or other rare species by contacting the Virginia Department of Wildlife Resources (VDWR) and the Virginia Department of Conservation and Recreation-Division of Natural Heritage ([VDCR-DNH](https://www.dcr.virginia.gov/natural-heritage)) as stated on the U.S. Fish and Wildlife online project review webpage https://www.fws.gov/northeast/virginiafield/endangered/projectreviews_step3.html

DCR-DNH supports the following regional conditions and specific NWP conditions with recommended tracked changes.

6. Conditions Regarding Invasive Species - Invasive Plant species listed in the most current Virginia Department of Conservation and Recreation's (DCR) *Invasive Alien Plant List* shall not be used for re-vegetation for activities authorized by any NWP. The list of invasive plants in Virginia is found at: <https://www.dcr.virginia.gov/natural-heritage/invspdflist>. DCR recommends the use of regional native species for re-vegetation as identified in the DCR *Native Plants for Conservation, Restoration and Landscaping* brochures for the coastal, piedmont and mountain regions <http://www.dcr.virginia.gov/natural-heritage/nativeplants#brochure> also see the DCR native plant finder: <https://www.dcr.virginia.gov/natural-heritage/native-plants-finder>.

NWP 12 - Oil or Natural Gas Pipeline Activities Conditions Specific to NWP 12:

- i. Selection of an alignment which avoids and minimizes wetland and stream impacts to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling should be reviewed as an option. However, the Norfolk District recognizes that in certain areas (e.g. karst areas) directional drilling may not be the environmentally preferred option.
- ii. Selection of an alignment which avoids fragmenting large tracts of forested wetlands by routing utility lines outside of forested tracts or on the edges of forested tracts. Consult the Virginia Conservation Vision, a GIS analysis for identifying and prioritizing areas of un-fragmented natural cover in Virginia <http://www.dcr.virginia.gov/natural-heritage/vaconvision> or the Virginia Natural Heritage Data Explorer (<http://vanhde.org/content/map>).

NWP C- Electric Utility Line and Telecommunications Activities

- i. Selection of an alignment which avoids and minimizes wetland and stream impacts to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling should be reviewed as an option. However, the Norfolk District recognizes that in certain areas (e.g. karst areas) directional drilling may not be the environmentally preferred option.
- ii. Selection of an alignment which avoids fragmenting large tracts of forested wetlands by routing utility lines outside of forested tracts or on the edges of forested tracts. Consult the Virginia Conservation Vision, a GIS analysis for identifying and prioritizing areas of un-fragmented natural cover in Virginia <http://www.dcr.virginia.gov/natural-heritage/vaconvision> or the Virginia Natural Heritage Data Explorer (<http://vanhde.org/content/map>).

NWP D- Utility Line Activities for Water and Other Substances

- i. Selection of an alignment which avoids and minimizes wetland and stream impacts to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling should be reviewed as an option. However, the Norfolk District recognizes that in certain areas (e.g. karst areas) directional drilling may not be the environmentally preferred option.
- ii. Selection of an alignment which avoids fragmenting large tracts of forested wetlands by routing utility lines outside of forested tracts or on the edges of forested tracts. Consult the Virginia Conservation Vision, a GIS analysis for identifying and prioritizing areas of un-fragmented natural cover in Virginia <http://www.dcr.virginia.gov/natural-heritage/vaconvision> or the Virginia Natural Heritage Data Explorer (<http://vanhde.org/content/map>).

NWP 54- Living Shorelines

- 10. Projects, which include placement of sandy fill material, may result in impacts to suitable habitat for various federally listed threatened or endangered species. If the applicant seeks to either add to or replenish the suitable

habitat area, the Corps will consult with the U.S. Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act to ensure work is not likely to adversely affect proposed or listed species or proposed or designated critical habitat. Specific requirements on the type of sand allowed for beach and dune work may be required.

Division of Dam Safety and Floodplain Management

Floodplain Management Program:

The National Flood Insurance Program (NFIP) is administered by the Federal Emergency Management Agency (FEMA), and communities who elect to participate in this voluntary program manage and enforce the program on the local level through that community's local floodplain ordinance. Each local floodplain ordinance must comply with the minimum standards of the NFIP, outlined in 44 CFR 60.3; however, local communities may adopt more restrictive requirements in their local floodplain ordinance, such as regulating the 0.2% annual chance flood zone (Shaded X Zone).

All development within a Special Flood Hazard Area (SFHA), as shown on the locality's Flood Insurance Rate Map (FIRM), must be permitted and comply with the requirements of the local floodplain ordinance.

State Agency Projects Only

[Executive Order 45](#), signed by Governor Northam and effective on November 15, 2019, establishes mandatory standards for development of state-owned properties in Flood-Prone Areas, which include Special Flood Hazard Areas, Shaded X Zones, and the Sea Level Rise Inundation Area. These standards shall apply to all state agencies.

1. Development in Special Flood Hazard Areas and Shaded X Zones
 - A. All development, including buildings, on state-owned property shall comply with the locally-adopted floodplain management ordinance of the community in which the state-owned property is located and any flood-related standards identified in the Virginia Uniform Statewide Building Code.
 - B. If any state-owned property is located in a community that does not participate in the NFIP, all development, including buildings, on such state-owned property shall comply with the NFIP requirements as defined in 44 CFR §§ 60.3, 60.4, and 60.5 and any flood-related standards identified in the Virginia Uniform Statewide Building Code.
 - (1) These projects shall be submitted to the Department of General Services (DGS), for review and approval.
 - (2) DGS shall not approve any project until the State NFIP Coordinator has reviewed and approved the application for NFIP compliance.
 - (3) DGS shall provide a written determination on project requests to the applicant and the State NFIP Coordinator. The State NFIP Coordinator shall maintain all documentation associated with the project in perpetuity.
 - C. No new state-owned buildings, or buildings constructed on state-owned property, shall be constructed, reconstructed, purchased, or acquired by the Commonwealth within a Special Flood Hazard Area or Shaded X Zone in any community unless a variance is granted by the Director of DGS, as outlined in this Order.

The following definitions are from Executive Order 45:

Development for NFIP purposes is defined in 44 CFR § 59.1 as "Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials."

The Special Flood Hazard Area may also be referred to as the 1% annual chance floodplain or the 100-year floodplain, as identified on the effective Flood Insurance Rate Map and Flood Insurance Study. This includes the following flood zones: A, AO, AH, AE, A99, AR, AR/AE, AR/AO, AR/AH, AR/A, VO, VE, or V.

The Shaded X Zone may also be referred to as the 0.2% annual chance floodplain or the 500- year floodplain, as identified on the effective Flood Insurance Rate Map and Flood Insurance Study.

The Sea Level Rise Inundation Area referenced in this Order shall be mapped based on the National Oceanic and Atmospheric Administration Intermediate-High scenario curve for 2100, last updated in 2017, and is intended to denote the maximum inland boundary of anticipated sea level rise.

“State agency” shall mean all entities in the executive branch, including agencies, offices, authorities, commissions, departments, and all institutions of higher education.

“Reconstructed” means a building that has been substantially damaged or substantially improved, as defined by the NFIP and the Virginia Uniform Statewide Building Code.

Federal Agency Projects Only

Projects conducted by federal agencies within the SFHA must comply with federal Executive Order 11988: Floodplain Management.

DCR’s Floodplain Management Program does not have regulatory authority for projects in the SFHA. The applicant/developer must reach out to the local floodplain administrator for an official floodplain determination and comply with the community’s local floodplain ordinance, including receiving a local permit. Failure to comply with the local floodplain ordinance could result in enforcement action from the locality. For state projects, DCR recommends that compliance documentation be provided prior to the project being funded. For federal projects, the applicant/developer is encouraged reach out to the local floodplain administrator and comply with the community’s local floodplain ordinance.

To find flood zone information, use the Virginia Flood Risk Information System (VFRIS):

www.dcr.virginia.gov/vfris

To find community NFIP participation and local floodplain administrator contact information, use DCR’s Local Floodplain Management Directory: www.dcr.virginia.gov/dam-safety-and-floodplains/floodplain-directory

Division of Soil & Water Conservation

The Department of Conservation and Recreation (DCR) Division of Soil and Water Conservation coordinates and directs programs and services to prevent degradation of the commonwealth's water quality caused by nonpoint source pollution. Statewide nonpoint source pollution control programs and services support both individual natural resource stewardship and assist local governments with resource management. These programs include nutrient management, agricultural best management practices, resource management planning, shoreline erosion advice, and assistance for Virginia's water conservation districts.

Office of Land Conservation

The remaining DCR divisions have no comments regarding the scope of this project. Thank you for the opportunity to comment.

**DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF AIR PROGRAM COORDINATION**

ENVIRONMENTAL REVIEW COMMENTS APPLICABLE TO AIR QUALITY

TO: John Fisher

We thank **OEIR** for providing DEQ-AIR an opportunity to review the following project:

Document Type: **Federal Consistency Determination**

Project Sponsor: **Army Corps of Engineers**

Project Title: **Revision & Reissuance of the Nationwide Permits and Virginia Regional Conditions**

Project Number: **DEQ #20-143F**

Accordingly, I am providing following comments for consideration.

PROJECT LOCATION: ☐ OZONE ATTAINMENT
AND EMISSION CONTROL AREA FOR NOX & VOC

REGULATORY REQUIREMENTS MAY BE APPLICABLE TO: ☐ CONSTRUCTION
☐ OPERATION

STATE AIR POLLUTION CONTROL BOARD REGULATIONS THAT MAY APPLY:

1. ☐ 9 VAC 5-40-5200 C & 9 VAC 5-40-5220 E – STAGE I
2. ☐ 9 VAC 5-45-760 et seq. – Asphalt Paving operations
3. **X** **9 VAC 5-130 et seq. – Open Burning**
4. **X** **9 VAC 5-50-60 et seq. Fugitive Dust Emissions**
5. ☐ 9 VAC 5-50-130 et seq. - Odorous Emissions; Applicable to _____
6. ☐ 9 VAC 5-60-300 et seq. – Standards of Performance for Toxic Pollutants
7. ☐ 9 VAC 5-50-400 Subpart_____, Standards of Performance for New Stationary Sources, designates standards of performance for the _____
8. ☐ 9 VAC 5-80-1100 et seq. of the regulations – Permits for Stationary Sources
9. ☐ 9 VAC 5-80-1605 et seq. Of the regulations – Major or Modified Sources located in PSD areas. This rule may be applicable to the _____
10. ☐ 9 VAC 5-80-2000 et seq. of the regulations – New and modified sources located in non-attainment areas
11. ☐ 9 VAC 5-80-800 et seq. Of the regulations – State Operating Permits. This rule may be applicable to _____

COMMENTS SPECIFIC TO THE PROJECT:

Issue of permits may keep in view, In addition to the above two regulations, all precautions are necessary to restrict the emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO_x) in ozone sensitive areas.



(Kotur S. Narasimhan)
Office of Air Data Analysis

DATE: October 29, 2020



MEMORANDUM

TO: John Fisher, DEQ/EIR Environmental Program Planner

FROM: Carlos A. Martinez, Division of Land Protection & Revitalization Review Coordinator

DATE: November 20, 2020

COPIES: Sanjay Thirunagari, Division of Land Protection & Revitalization Review Manager; file

SUBJECT: Environmental Impact Review: 20-143F Revision and Reissuance of the Nationwide Permits and Virginia Regional Conditions.

The Division of Land Protection & Revitalization (DLPR) has completed its review of the Army Corps of Engineers' October 26, 2020 EIR for Revision and Reissuance of the Nationwide Permits and Virginia Regional Conditions.

In response, DLPR staff recommends a search (of at least 200 ft. radius) of any land-based project areas using the following solid and hazardous waste databases to identify waste sites (including petroleum releases) in close proximity to the project area:

- Environmental Protection Agency (EPA) Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) Database: Superfund Information Systems Information on hazardous waste sites, potentially hazardous waste sites and remedial activities across the nation, including sites that are on the National Priorities List (NPL) or being considered for the NPL:
 - www.epa.gov/superfund/sites/cursites/index.htm
- DEQ Online Database: Virginia Environmental Geographic Information Systems Information on Permitted Solid Waste Management Facilities, Impaired Waters, Petroleum Releases, Registered Petroleum Facilities, Permitted Discharge (Virginia Pollution Discharge Elimination System Permits) Facilities, Resource Conservation and Recovery Act (RCRA) Sites, Water Monitoring Stations, National Wetlands Inventory:
 - www.deq.virginia.gov/ConnectWithDEQ/VEGIS.aspx

PROJECT SPECIFIC COMMENTS

None

GENERAL COMMENTS

Soil, Sediment, Groundwater, and Waste Management

Any soil, sediment or groundwater that is suspected of contamination or wastes that are generated must be tested and disposed of in accordance with applicable Federal, State, and local laws and regulations. Some of the applicable state laws and regulations are: Virginia Waste Management Act, Code of Virginia Section 10.1-1400 *et seq.*; Virginia Hazardous Waste Management Regulations (VHWMR) (9VAC 20-60); Virginia Solid Waste Management Regulations (VSWMR) (9VAC 20-81); Virginia Regulations for the Transportation of Hazardous Materials (9VAC 20-110). Some of the applicable Federal laws and regulations are: the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6901 *et seq.*, and the applicable regulations contained in Title 40 of the Code of Federal Regulations; and the U.S. Department of Transportation Rules for Transportation of Hazardous Materials, 49 CFR Part 107.

Asbestos and/or Lead-based Paint

Any structures being demolished/renovated/removed should be checked for asbestos-containing materials (ACM) and lead-based paint (LBP) prior to demolition. If ACM or LBP are found, in addition to the federal waste-related regulations mentioned above, State regulations 9VAC 20-81-620 for ACM and 9VAC 20-60-261 for LBP must be followed. Questions may be directed to the waste compliance staff at the appropriate DEQ's Regional Office.

Pollution Prevention – Reuse - Recycling

Please note that DEQ encourages all construction projects and facilities to implement pollution prevention principles, including the reduction, reuse, and recycling of all solid wastes generated. All generation of hazardous wastes should be minimized and handled appropriately.

If you have any questions or need further information, please contact Carlos A. Martinez by phone at (804) 698-4575 or email carlos.martinez@deq.virginia.gov.

Re: NEW PROJECT ACOE Revision and Reissuance of Nationwide Permits 20-143F

1 message

Gavan, Lawrence <larry.gavan@deq.virginia.gov>
To: "Fisher, John" <john.fisher@deq.virginia.gov>

Mon, Oct 26, 2020 at 3:30 PM

No comment