



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
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December 21, 2020

Patrick V. Kinsman, P.E.
Colonel, United States Army Commanding
U.S. Army Corps of Engineers
Norfolk District
Fort Norfolk
803 Front Street
Norfolk, Virginia 23510-1011

RE: Section 401 Water Quality Certifications for the Proposed 2020 Nationwide Permits with General Conditions and the Proposed Norfolk District Regional Conditions

Dear Colonel Kinsman:

Attached herein are the Virginia Department of Environmental Quality's (DEQ) Section 401 Water Quality Certification (WQC) decisions with regard to the United States Army Corps of Engineers' (Corps) proposed 2020 Nationwide Permits (NWP) with General Conditions and the Corps-Norfolk District proposed 2020 Regional Conditions. The proposed NWP were published in the September 15, 2020 *Federal Register*, and the Norfolk District proposed Regional Conditions were issued via public notice dated September 30, 2020.

DEQ supports the issuance and use of NWP to expedite the processing of permits while safeguarding Virginia's environment and reducing duplication of effort by government regulatory agencies to the maximum extent possible. It is important to note, however, that providing Section 401 WQC decisions for proposed NWP and conditions is unprecedented, as is doing so within months of two significant federal rulemakings¹. In the past, Virginia has had this opportunity after the NWP and, to a great extent the associated conditions, were finalized. There has been little time for states or tribes to respond to the ramifications that these federal rulemakings have had on state or tribal regulatory programs. DEQ has navigated the changes to federal rules and regulations to the best of its ability in the absence of federal implementation guidance or training focused on certification of these federal general permits specifically. The attached WQC decisions are applicable to the terms of the proposed 2020 Nationwide Permits

¹ Navigable Water Protection Rule, effective June 22, 2020; Clean Water Act Section 401 Certification Rule, effective September 11, 2020.

with General Conditions and the proposed 2020 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 2020 Nationwide Permits with General Conditions and the proposed 2020 Norfolk District Regional Conditions. DEQ reserves its right to revise one or more § 401 WQC decisions based on the final Nationwide Permits with General Conditions and the final Norfolk District Regional Conditions.

DEQ offers the attached § 401 WQC decisions pursuant to 40 C.F.R. § 121 *et seq.*, after having (i) reviewed the final federal rules referenced above; (ii) examined the *proposed* NWP, the Norfolk District *proposed* Regional Conditions, and other documents provided by the Corps related to its water quality certification request; and (ii) advertised and accepted public comment for at least 30 days on DEQ's intent to provide these certification decisions, pursuant to Virginia Water Protection (VWP) Permit Regulation 9VAC25-210-130 H and I.

Sincerely,



Melanie D. Davenport
Director, Water Permitting Division

Attachments:

1. § 401 Water Quality Certification with Conditions: NWP 3, 4, 5, 6, 7, 8, 11, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, A, B, C, D, and E
2. § 401 Water Quality Certification with Conditions: NWP 12
3. Waiver of § 401 Water Quality Certification: NWP 1, 2, 9, 10, 24, and 32
4. Denial of § 401 Water Quality Certification: NWP 17

cc: Mr. William T. Walker, Corps-Norfolk District Regulatory Branch
Mr. Daniel P. Swenson, Corps-Baltimore District Regulatory Branch
Lt. Col. Sonny B. Avichal, Corps-Nashville District Regulatory Branch
Anthony Watkinson, Virginia Marine Resources Commission
Bettina Sullivan, DEQ-OEIR
DEQ Regional VWP Permit Program Managers



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Section 401 Water Quality Certification with Conditions

The Department of Environmental Quality (DEQ) is granting this water quality certification (WQC) with conditions for the United States Army Corps of Engineers (Corps) proposed 2020 Nationwide Permits with General Conditions and proposed Norfolk District Regional Conditions, pursuant to § 401 of the Clean Water Act of 1977, as amended (33 U.S.C. §1341; Public Law 95-217); the Constitution of Virginia, Article XI, Section 1; Title 62.1 of the Code of Virginia, including Chapter 3.1 (State Water Control Law); the following Virginia Water Protection Permit Program regulations as applicable: 9VAC25-210 *et seq.*, 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.*, 9VAC25-690 *et seq.*; and Virginia Water Quality Standards 9VAC25-260 *et seq.*

This WQC with conditions is applicable to the terms of the proposed 2020 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 2020 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 Nationwide Permits with General Conditions and the final Norfolk District Regional Conditions. DEQ's WQC decisions neither replace or supersede requirements set forth by other local, state, federal, and Tribal laws, nor eliminate the need to obtain additional permits, approvals, consultations, or authorizations as required by law before proposed activities may commence.

This certification and its conditions apply to any activity or activities (hereafter "activities") in those waters meeting the definition of waters of the United States (40 C.F.R. § 120.2). Because activities in all state waters are regulated in Virginia pursuant to the laws and regulations of the Commonwealth as noted herein, this certification and its conditions also apply to activities in those state surface waters that overlap federal waters of the United States. Activities conducted under these NATIONWIDE PERMITS must meet the certification conditions and requirements specified herein in addition to all applicable federal requirements. Non-compliance with Title 62.1 of the Code of Virginia, including the State Water Control Law, or Virginia Water Protection Permit Program

regulations, or otherwise violating Virginia state water quality standards, may result in civil penalties.

For this certification with conditions, the following terms apply as defined in § 62.1-44.3 of the Code of Virginia and Virginia Administrative Code 9VAC25-210-10: “open water”, “perennial stream”, “state waters”, “stream bed” or “stream channel”, “surface water”, and “wetlands”.

DEQ finds that the activities covered under the NATIONWIDE PERMITS listed in “A” and “B” below will comply¹ with i) the requirements of the applicable water quality standards under Virginia Administrative Code 9VAC25-260 *et seq.*, as established pursuant to Sections 301, 302, 304, 306 and 307 of the CWA; ii) Title 62.1 of the Code of Virginia; and iii) the applicable Virginia Administrative Code regulations, provided all of the following certification conditions are met:

A. DEQ WQC conditions applicable to NATIONWIDE PERMITS 3, 4, 5, 6, 7, 8, 11, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 25, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, A, B, C, D, and E:

1. For activities that are proposed to occur in state surface waters as defined in § 62.1-44.3 of the Code of Virginia: Once an activity is proposed to occur in any surface water that is not subject to federal jurisdiction, and as such not subject to a NATIONWIDE PERMIT, application to DEQ shall be required in accordance with Virginia Administrative Code 9VAC25-210 *et seq.*, 9VAC25-660 *et seq.* through -690 *et seq.* as applicable, and State Water Control Law for i) coverage under a Virginia Water Protection (VWP) general permit, ii) a VWP individual permit, or iii) a decision that no permit is required (in situations where VWP permitting exclusions apply). A DEQ VWP permit or decision shall need to have been finalized prior to the project proponent impacting any surface waters. If a DEQ VWP general permit coverage or individual permit is issued, it shall be based on all impacts of the proposed activities in surface waters under both state and federal jurisdiction, pursuant to applicable permit regulations and State Water Control Law. Other permits may be required from DEQ based on the proposed activities or impacts.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

¹ In the Federal Register Vol. 85, No. 134 on page 42278, EPA states “The Agency does not intend or believe that the statutory language requires States to ensure that a project will maintain strict compliance, in every respect, throughout its entire existence. The inclusion of the statutory language ‘will comply’ does not require certifying authorities to provide absolute certainty that applicants for a federal license or permit will never violate water quality requirements. Indeed, future compliance depends on many factors besides just facility design and operation, and it would not be reasonable for an authority to certify that no unknown future event could ever result in a violation of the certification.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:4.1, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:40, § 62.1-44.15:50, § 62.1-44.15:52, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), § 62.1-44.19:5]; § 10.1-400 *et seq.*; § 10.1-604 *et seq.*; § 10.1-1408.5; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; § 62.1-194 through -194.3; 9VAC25 - Preface (Agency Summary); 9VAC25-31 *et seq.*; 9VAC25-40 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-630 *et seq.*; 9VAC25-660 *et seq.*; 9VAC25-670 *et seq.*; 9VAC25-680 *et seq.*; 9VAC25-690 *et seq.*; 9VAC25-720 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

2. For activities in wetlands, open water, streams, or mitigation sites that are under a deed restriction, conservation easement, declaration of restrictive covenant, or other land use protective instrument (“protected areas”), and when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, application to DEQ shall be required in accordance with Virginia Administrative Code 9VAC25-210 *et seq.*, 9VAC25-660 *et seq.* through -690 *et seq.*, and State Water Control Law for i) coverage under a Virginia Water Protection (VWP) general permit, ii) a VWP individual permit, or iii) a decision that no permit is required (in situations where VWP permitting exclusions apply). A DEQ VWP permit or decision shall need to have been finalized prior to the project proponent impacting any surface waters. If a DEQ VWP general permit coverage or individual permit is issued, it shall be based on all impacts of the proposed activities in surface waters under both state and federal jurisdiction, pursuant to applicable permit regulations and State Water Control Law. Compensatory mitigation may be required for all permanent impacts. Other permits may be required from DEQ based on the proposed activities or impacts.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:5.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:23, § 62.1-44.19:5; § 62.1-44.34:18]; § 28.2-1300 *et seq.*; 9VAC25 - Preface (Agency Summary); 9VAC25-31 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-380 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-770 *et seq.*; 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 230 *et seq.*

3. Activities conducted in state surface waters shall not cause or contribute to a significant impairment of state fish and wildlife resources, including but not limited to: 1) documented spawning habitat or a migratory pathways for anadromous fish; 2) trout waters in specified locations of Virginia, as provided by the Virginia State Water Control Board’s Water Quality Standards 9VAC25-260-370 *et seq.*

and 9VAC25-260-390 *et seq.*; 3) state-listed threatened or endangered species or designated critical habitat; and 4) areas that contain submerged aquatic vegetation (SAV). This certification condition does not preclude compliance by the permittee with all applicable state laws and regulations concerning Virginia's fish and wildlife or critical habitat resources.

- a. The project proponent shall ensure the activities do not cause or contribute to a significant impairment of state waters or fish and wildlife resources, including state listed threatened or endangered species or critical habitat, through screening or coordination with state resource agencies prior to doing work in surface waters. This requirement is in addition to identifying any potential or actual impacts to federal listed threatened or endangered species or critical habitat that may be required by the NATIONWIDE PERMIT or regional conditions.
 - (i) Where a project proponent is not required to obtain a verification from the Corps that the proposed activities qualify for the NATIONWIDE PERMIT, the project proponent shall follow all Time-of-Year Restrictions (TOYRs) applicable to state surface waters that are recommended by the state resource agencies and other interested and affected agencies in the results or information provided to the project proponent. Results or information may include correspondence or documentation from state resource agencies and other interested and affected agencies addressing potential impacts, or reference materials that address potential impacts such as database search results or confirmed waters and wetlands delineations or jurisdictional determinations, or a combination thereof.
 - (ii) Where the project proponent receives a verification from the Corps that the proposed activities qualify for the NATIONWIDE PERMIT, the project proponent or authorized agent shall submit upon receipt or the next business day the screening or coordination results or information concerning the potential for activities to impact state threatened and endangered species (listed or proposed) or critical habitat to the Corps office having responsibility over the proposed project. Results or information may include correspondence or documentation from state resource agencies and other interested and affected agencies addressing potential impacts, or reference materials that address potential impacts such as database search results or confirmed waters and wetlands delineations or jurisdictional determinations, or a combination thereof. Time-of-year restrictions (TOYRs) recommended by state resource agencies and other interested and affected agencies shall be applied to any Corps verification of the NATIONWIDE PERMIT.

State resource agencies include the Virginia Department of Wildlife Resources (DWR), the Virginia Department of Conservation and Recreation (DCR), the Virginia Marine Resources Commission (MRC) at minimum. Other

interested and affected agencies may include the Virginia Department of Health (VDH) or the Maryland Department of the Environment where activities occur in the Potomac River. The Virginia DWR has developed an online system that allows users to find information about sensitive state resources that may occur within the vicinity of a proposed project. This system named the *Virginia Fish and Wildlife Information System* is located at <https://vafwis.dgif.virginia.gov/fwis/>. This system may be used to determine if any state listed threatened or endangered species or designated critical habitat may be affected by the proposed activities.

- b. Notification to the Corps is required prior to conducting any activities in state surface waters if they contain submerged aquatic vegetation (SAV). Information regarding submerged aquatic vegetation can be located on the Virginia Institute of Marine Science's SAV website at <http://mobjack.vims.edu/sav/savwabmap/>. Additional avoidance and minimization measures, such as relocating a structure or time-of-year restrictions (TOYR), may be required to reduce impacts to SAV habitat in state surface waters.
- c. Activities in surface waters shall be performed behind cofferdams, turbidity curtains, or other methods to control turbidity when operationally feasible and state listed threatened or endangered species may be present.
- d. No activities may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:4.1, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:23, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:37.1, § 62.1-44.15:40, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.17:2, § 62.1-44.17:3, § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3, § 62.1-44.19:5, § 62.1-44.33, §§ 62.1-44.34:14 through § 62.1-44.34:19, § 62.1-44.34:23, § 62.1-44.34:26]; §§ 3.2-1000 through 3.2-1011; § 10.1-400 *et seq.*; § 10.1-604 *et seq.*; § 28.2-1200 *et seq.*; § 28.2-1300 *et seq.*; § 29.1-500 through -579; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; § 62.1-194 through -194.3; 4VAC15-20 *et seq.*; 4VAC15-30 *et seq.*; 4VAC15-290-60; 4VAC15-320-100; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-190 *et seq.*; 9VAC25-191 through -196 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-370 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-390 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-630 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-740 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*;

9VAC25-840 *et seq.*; 9VAC25-860 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

4. Plant species listed in the most current *Virginia Department of Conservation and Recreation's (DCR) Virginia Invasive Plant Species List* shall not be used for re-vegetation. The list of invasive plants in Virginia is found at: <http://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>. See also DCR's native plant finder at <https://www.dcr.virginia.gov/natural-heritage/native-plants-finder>.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:23, § 62.1-44.15:50]; §§ 3.2-800 through -805; 2VAC5-317 *et seq.*; 4VAC15-20-210; 4VAC15-30-20; 4VAC15-30-40; 4VAC15-20-130 B and C; 4VAC15-290-60; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-380 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.*, or 9VAC25-690 *et seq.* as applicable; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 230 *et seq.*

5. Stormwater management facilities, as defined in 9VAC25-870-10, shall not be constructed in a perennial stream bed or stream channel, as defined in 9VAC25-210-10, or in waters designated as oxygen-impaired or temperature-impaired (does not include wetlands).

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.15, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.19:5]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

6. Compensatory mitigation for unavoidable permanent impacts, including the conversion of forested wetlands, that are greater than 1/10 of an acre of wetlands or greater than 300 linear feet of stream bed or stream channel as defined by 9VAC25-210-10 shall be provided in accordance with Section 62.1-44.15:23 A through C of the Code of Virginia, as applicable to the project activities and Virginia Water Protection Permit Program regulations.
 - a. Stream bed or stream channel impacts shall be determined by utilizing a stream impact assessment methodology acceptable to the Department of Environmental Quality.
 - b. The mitigation shall be sufficient to achieve no net loss of existing wetland acreage and functions or stream functions and water quality benefits. In the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single-family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.
 - c. Unless the area is outside of permittee control, the permittee shall have all non-impacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:5.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:23]; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-380 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-770 *et seq.*; 9VAC25-800 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 230 *et seq.*

7. The following information associated with activities in state surface waters, as applicable, shall be submitted by the permittee to the Virginia Water Protection Permit Program at the DEQ office having responsibility over the project location. The Joint Permit Application process may be used to meet this condition, provided all required information is included.

- a. When required, any pre-construction notification (PCN) materials or information shall be concurrently submitted to DEQ and the Corps.
- b. All jurisdictional determination information provided to the Corps and issued from the Corps, such as jurisdictional determination requests, maps, forms, photos, correspondence, Corps determinations or confirmations, shall be concurrently submitted to or shared with DEQ. Delineation of state surface waters on the entire project site is strongly encouraged prior to submitting an application to expedite state permit processing, if required.
- c. Proof of coverage (“verification”) under one or more NATIONWIDE PERMITS, upon issuance by the Corps or on the next business day, unless the activities are excluded from permitting under the Virginia Water Protection Permit Program or no NATIONWIDE PERMIT verification is issued by the Corps.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.3, § 62.1-44.6, § 62.1-44.13, § 62.1-44.19:5, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:5.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:23]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-380 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 230 *et seq.*; Public Law 95-217

8. Activities shall include measures to prevent spills of fuels or lubricants into state waters. Any fish kills or spills of fuels or oils shall be reported to DEQ immediately upon discovery. If DEQ cannot be reached, the spill or fish kill shall be reported to the Virginia Department of Emergency Management (VDEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802. Any spill of oil as defined in § 62.1-44.34:14 of the Code of Virginia that is less than 25 gallons, and that reaches or is expected to reach land only, is not reportable if recorded per § 62.1-44.34:19.2 of the Code of Virginia and if properly cleaned up. If unauthorized impacts have occurred, the permittee shall notify DEQ within 24 hours of discovery.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:4.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:40, § 62.1-44.15:50, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.17:2, § 62.1-44.17:3, § 62.1-44.34:19.2, § 62.1-44.19:5, § 62.1-44.33, §§ 62.1-44.34:14 through § 62.1-44.34:19, § 62.1-44.34:23, § 62.1-44.34:26]; § 62.1-10; § 62.1-11; § 62.1-194 through -194.3; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-71 *et seq.*; 9VAC25-101 *et seq.*; 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-190 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 140; Public Law 95-217

9. Activities shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.15, § 62.1-44.15:4.1, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:37.1, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.17:2, § 62.1-44.17:3, § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3, § 62.1-44.19:5, § 62.1-44.33, §§ 62.1-44.34:14 through § 62.1-44.34:19, § 62.1-44.34:23, § 62.1-44.34:26]; § 10.1-400 *et seq.*; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; § 62.1-194 through -194.3; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-71 *et seq.*; 9VAC25-101 *et seq.*; 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-190 *et seq.*; 9VAC25-191 through -196 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-370 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-630 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-740 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-860 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 140; 40 C.F.R. § 230 *et seq.*; Public Law 95-217

10. All fill material in state surface waters shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable state laws and regulations.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii); Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.4 through -44.6, § 62.1-44.15, § 62.1-44.15:5.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.17:2, § 62.1-44.17:3, § 62.1-44.19:5]; § 62.1-194 through -194.3; 9VAC25 - Preface (Agency Summary); 9VAC25-40 *et seq.*; 9VAC25-190 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

11. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable.

- a. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted stream beds or stream channels and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used without prior approval from the Department of Environmental Quality.
- b. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands, and heavy equipment in temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material; shall be immediately stabilized to prevent entry into state waters; shall be managed such that leachate does not enter state waters; and shall be completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

- c. All construction, construction access (e.g., cofferdams, sheet piling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:4.1, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37.1, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.19:5]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; § 62.1-194 through -194.3; 9VAC25 - Preface (Agency Summary); 9VAC25-40 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-770 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 230 *et seq.*; Public Law 95-217

12. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream bed or stream channel can begin.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.5, § 62.1-44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:5.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79)]; § 62.1-10; § 62.1-11; § 62.1-194 through -194.3; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-800 *et seq.*; 9VAC25-840 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*

13. DEQ § 401 WQC decisions and certification conditions, except DEQ WQC condition A.13, shall not apply to any project or activity that obtains a Virginia Water Protection (VWP) permit or waiver from DEQ for the project or activity. For such projects or activities, the VWP permit or waiver shall constitute the DEQ's WQC decision under 33 U.S.C. § 1341.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

40 C.F.R. § 121.7(d)(2)(ii): 40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:4.1, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:40, § 62.1-44.15:50, § 62.1-44.15:52, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), § 62.1-44.19:5]; § 10.1-400 *et seq.*; § 10.1-604 *et seq.*; § 10.1-1408.5; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; § 62.1-194 through -194.3; 9VAC25 - Preface (Agency Summary); 9VAC25-31 *et seq.*; 9VAC25-40 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-630 *et seq.*; 9VAC25-660 *et seq.*; 9VAC25-670 *et seq.*; 9VAC25-680 *et seq.*; 9VAC25-690 *et seq.*; 9VAC25-720 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

B. DEQ WQC conditions applicable to specific NATIONWIDE PERMITS as stated:

NATIONWIDE PERMIT 3

3-1. Activities conducted under NATIONWIDE PERMIT 3 shall not modify the original configuration or filled area such that the character, scope, or size of the original or DEQ-approved alternative design is changed.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.4 through -44.6, § 62.1-44.15, § 62.1-44.13, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79)]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-770 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

3-2. Activities conducted under NATIONWIDE PERMIT 3 that involve emergency reconstruction shall occur as soon as practicable after damage occurs or is discovered.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): 40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.4 through -44.6, § 62.1-44.15, § 62.1-44.13, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through 62.1-44.15:79)]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-770 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

3-3. Discharges conducted under NATIONWIDE PERMIT 3 shall not increase the capacity of an impoundment or reduce instream flows.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): 40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.4 through -44.6, § 62.1-44.15, § 62.1-44.13, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through 62.1-44.15:79)]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-770 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

NATIONWIDE PERMIT 13

13-1. Stabilization activities conducted under NATIONWIDE PERMIT 13 shall not channelize the stream bed or stream channel as defined in 9VAC25-210-10, or permanently impact more than 1,500 linear feet below the ordinary water mark of any type of nontidal stream bed or stream channel as defined in 9VAC25-210-10,

regardless of any waiver decision made by the United States Army Corps of Engineers.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:5.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79)]; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

NATIONWIDE PERMIT 14

14-1. Activities conducted under NATIONWIDE PERMIT 14 shall not cumulatively impact more than 1/10 of an acre of wetlands or open water or more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.3, § 62.1-44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:40, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, § 62.1-44.15:66, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3]; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-193 and -194 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-770 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-860 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

NATIONWIDE PERMIT 16

16-1. Return flow discharges from dredge disposal sites conducted under NATIONWIDE PERMIT 16 shall not occur where prohibited by state law or without applicable authorization from the Department of Environmental Quality.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.4 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), § 62.1-44.19:5, § 62.1-44.33, § 62.1-44.34:26]; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-190 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-740 *et seq.*; 9VAC25-770 *et seq.*; 9VAC25-820 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

NATIONWIDE PERMIT 18

18-1. Discharges conducted under NATIONWIDE PERMIT 18 shall comply with Virginia Department of Environmental Quality law and regulations for discharge of sewage and other wastes from boats, if applicable.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:4.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3, § 62.1-44.19:5, § 62.1-44.33, §§ 62.1-44.34:14 through § 62.1-44.34:19, § 62.1-44.34:23, § 62.1-44.34:26]; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-71 *et seq.*; 9VAC25-101 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-860 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 140; Public Law 95-217

NATIONWIDE PERMIT 21

21-1. Activities conducted under NATIONWIDE PERMIT 21 shall not impact more than 300 linear feet of stream bed or stream channel as defined in 9VAC25-210-10.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to

sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:66, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.34:14 through § 62.1-44.34:19, § 62.1-44.34:23, § 62.1-44.34:26]; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-151 *et seq.*; 9VAC25-190 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-660 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-740 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*

NATIONWIDE PERMIT 22

22-1. Discharges conducted under NATIONWIDE PERMIT 22 shall comply with Virginia Department of Environmental Quality law and regulations for discharge of sewage and other wastes from boats, if applicable.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:4.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3, § 62.1-44.19:5, § 62.1-44.33, §§ 62.1-44.34:14 through § 62.1-44.34:19, § 62.1-44.34:23, § 62.1-44.34:26]; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-71 *et seq.*; 9VAC25-101 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-860 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 140; Public Law 95-217

NATIONWIDE PERMIT 27

27-1. When NATIONWIDE PERMIT 27 authorizes wetland or stream mitigation banks or in-lieu fee mitigation sites, compensation required for any surface water impacts shall be debited from the bank’s or in-lieu fee program’s credits.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:5.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:23, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79)]; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 230 *et seq.*; Public Law 95-217

27-2. Natural stream channel design methods shall be used for stream restoration projects authorized by NATIONWIDE PERMIT 27.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:5.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:23, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79)]; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 230 *et seq.*; Public Law 95-217

27-3. Performance monitoring shall be conducted for projects authorized by NATIONWIDE PERMIT 27.

- a. Reports shall be submitted with the as-built during post-construction monitoring years, at a frequency and duration adequate to observe performance according to project objectives. If there is no monitoring schedule otherwise specified, then an as-built and a minimum of five years of annual post-construction monitoring will be required.
- b. The as-built report may include final grade topographic surveys (plan, profile, and cross sections, as appropriate, and approved by DEQ), final location of all planted riparian buffer vegetation (as appropriate and approved by DEQ), site photographs, and a discussion of project design versus as-built conditions.
- c. As approved by the Department of Environmental Quality, each post-construction monitoring report may include comparison of as-built to monitoring year surveys (plan, profile, and cross sections, as appropriate), vegetation surveys (as appropriate), site photographs/ and a discussion of project performance.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant

impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:5.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:23, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79)]; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 230 *et seq.*; Public Law 95-217

NATIONWIDE PERMIT 29

29-1. Activities conducted under NATIONWIDE PERMIT 29 shall not cumulatively impact more than 1/10 of an acre of wetlands or open water or more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.3, § 62.1-44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:40, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, § 62.1-44.15:66, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3]; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-193 and -194 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-770 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-860 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

NATIONWIDE PERMIT 33

33-1. Activities conducted under NATIONWIDE PERMIT 33 that involve emergency reconstruction shall occur as soon as practicable after damage occurs or is discovered.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established

standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.4 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:66, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.19:5]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-151 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-740 *et seq.*; 9VAC25-770 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

33-2. Discharges conducted under NATIONWIDE PERMIT 33 shall not increase the capacity of an impoundment or reduce instream flows.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.4 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:66, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.19:5]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-151 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-740 *et seq.*; 9VAC25-770 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

NATIONWIDE PERMIT 36

36-1. Activities conducted under NATIONWIDE PERMIT 36 shall not impact more than 1/10 of an acre of wetlands or more than 1,500 linear feet of stream bed or stream channel as defined in 9VAC25-210-10.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.3, § 62.1-44.5, § 62.1-44.6, § 62.1-

44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:34, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3, § 62.1-44.33, §§ 62.1-44.34:14 through § 62.1-44.34:19]; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-151 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-770 *et seq.*; 9VAC25-840 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

36-2. Excavation conducted under NATIONWIDE PERMIT 36 shall be limited to the area necessary for site preparation and all excavated material shall be removed to an area that has no surface waters. Deviations from the original configuration or filled area shall not change the character, scope, or size of the original or DEQ-approved alternative design.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.3, § 62.1-44.5, § 62.1-44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:34, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3, § 62.1-44.33, §§ 62.1-44.34:14 through § 62.1-44.34:19]; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-151 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-770 *et seq.*; 9VAC25-840 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

NATIONWIDE PERMIT 39

39-1. Activities conducted under NATIONWIDE PERMIT 39 shall not cumulatively impact more than 1/10 of an acre of wetlands or open water or more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.3, § 62.1-44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:40, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, § 62.1-44.15:66, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3]; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-193 and -194 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*,

9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-770 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-860 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

NATIONWIDE PERMIT 40

40-1. Discharges conducted under NATIONWIDE PERMIT 40 shall not increase the capacity of an impoundment or reduce instream flows unless otherwise authorized by a Virginia Water Protection permit when required.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.4 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:50, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), § 62.1-44.19:5]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, or 9VAC25-690 *et seq.* as applicable; 9VAC25-740 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

40-2. Activities conducted under NATIONWIDE PERMIT 40 shall not cumulatively impact more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.4 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:50, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), § 62.1-44.19:5]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, or 9VAC25-690 *et seq.* as applicable; 9VAC25-740 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

NATIONWIDE PERMIT 42

42-1. Activities conducted under NATIONWIDE PERMIT 42 shall not cumulatively impact more than 1/10 of an acre of wetlands or open water or more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.3, § 62.1-44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:40, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, § 62.1-44.15:66, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3]; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-193 and -194 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-770 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-860 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

NATIONWIDE PERMIT 43

43-1. Activities conducted under NATIONWIDE PERMIT 43 shall not cumulatively impact more than 1/10 of an acre of wetlands or open water or more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.3, § 62.1-44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:40, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, § 62.1-44.15:66, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3]; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-193 and -194 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-770 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-860 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

NATIONWIDE PERMIT 44

44-1. Activities conducted under NATIONWIDE PERMIT 44 shall not impact more than 300 linear feet of stream bed or stream channel as defined in 9VAC25-210-10.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:50, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:66, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.34:14 through § 62.1-44.34:19, § 62.1-44.34:23, § 62.1-44.34:26]; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-151 *et seq.*; 9VAC25-190 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-660 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-740 *et seq.*; 9VAC25-770 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

NATIONWIDE PERMIT 50

50-1. Activities conducted under NATIONWIDE PERMIT 50 shall not impact more than 300 linear feet of stream bed or stream channel as defined in 9VAC25-210-10.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:66, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.34:14 through § 62.1-44.34:19, § 62.1-44.34:23, § 62.1-44.34:26]; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-151 *et seq.*; 9VAC25-190 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-660 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-740 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*

NATIONWIDE PERMIT 51

51-1. Activities conducted under NATIONWIDE PERMIT 51 shall not cumulatively impact more than 1/10 of an acre of wetlands or open water or more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.3, § 62.1-44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:40, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, § 62.1-44.15:66, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3]; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-193 and -194 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-770 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-860 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

NATIONWIDE PERMIT 52

52-1. Activities conducted under NATIONWIDE PERMIT 52 shall not impact more than 1/10 of an acre of wetlands or more than 300 linear feet of stream bed or stream channel, as defined in 9VAC25-210-10.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.3, § 62.1-44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.33, §§ 62.1-44.34:14 through § 62.1-44.34:19, § 62.1-44.34:23]; § 62.1-7; § 62.1-8; 9VAC25 - Preface (Agency Summary); 9VAC25-71 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-740 *et seq.*; 9VAC25-840 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 140; Public Law 95-217

NATIONWIDE PERMIT E [#PENDING]

E[#]-1. Construction or expansion activities conducted under NATIONWIDE PERMIT E [#pending] shall not impact more than 1/4 of an acre of wetlands or 300 linear feet of stream bed or stream channel as defined in 9VAC25-210-10. Maintenance activities conducted under NATIONWIDE PERMIT E [#pending] shall not impact more than 300 linear feet of stream bed or stream channel when conducted in

impact areas not previously authorized by DEQ or when located on or in existing, currently serviceable structures or fills.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:4.1, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:40, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3, § 62.1-44.19:5, § 62.1-44.34:26]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-32 *et seq.*; 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-191 and -192 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-630 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-740 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-860 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

E[#]-2. Activities conducted under NATIONWIDE PERMIT E [#pending] that involve emergency reconstruction shall occur as soon as practicable after damage occurs or is discovered.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:4.1, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:40, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3, § 62.1-44.19:5, § 62.1-44.34:26]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-32 *et seq.*; 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-191 and -192 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-630 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-740 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-860 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

E[#]-3. Discharges conducted under NATIONWIDE PERMIT E [#pending] shall not increase the capacity of an impoundment or reduce instream flows.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:4.1, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:40, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3, § 62.1-44.19:5, § 62.1-44.34:26]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-32 *et seq.*; 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-191 and -192 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-630 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-740 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-860 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217



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Section 401 Water Quality Certification with Conditions

Nationwide Permit 12 – Oil or Natural Gas Pipeline Activities

The Department of Environmental Quality (DEQ) is granting this water quality certification (WQC) with conditions for the United States Army Corps of Engineers (Corps) proposed 2020 NATIONWIDE PERMIT 12 with General Conditions and all proposed Norfolk District Regional Conditions applicable to NATIONWIDE PERMIT 12, pursuant to § 401 of the Clean Water Act of 1977, as amended (33 U.S.C. §1341; Public Law 95-217); the Constitution of Virginia, Article XI, Section 1; Title 62.1 of the Code of Virginia, including Chapter 3.1 (State Water Control Law); the following Virginia Water Protection Permit Program regulations as applicable: 9VAC25-210 *et seq.*, 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.*, 9VAC25-690 *et seq.*; and Virginia Water Quality Standards 9VAC25-260 *et seq.*

This WQC with conditions is applicable to the terms of the proposed 2020 NATIONWIDE PERMIT 12 with General Conditions and all proposed Norfolk District Regional Conditions applicable to NATIONWIDE PERMIT 12, and only applies if the final 2020 NATIONWIDE PERMIT 12 with General Conditions and all final Norfolk District Regional Conditions applicable to NATIONWIDE PERMIT 12 are issued as no less restrictive than the proposed 2020 NATIONWIDE PERMIT 12 with General Conditions and all proposed Norfolk District Regional Conditions applicable to NATIONWIDE PERMIT 12. DEQ reserves its right to revise one or more § 401 WQC decisions based on the final 2020 NATIONWIDE PERMIT 12 with General Conditions and all proposed Norfolk District Regional Conditions applicable to NATIONWIDE PERMIT 12. DEQ's WQC decisions neither replace or supersede requirements set forth by other local, state, federal, and Tribal laws, nor eliminate the need to obtain additional permits, approvals, consultations, or authorizations as required by law before proposed activities may commence.

This certification and its conditions apply to any activity or activities (hereafter "activities") in those waters meeting the definition of waters of the United States (40 C.F.R. § 120.2). Because activities in all state waters are regulated in Virginia pursuant to the laws and regulations of the Commonwealth as noted herein, this certification and

its conditions also apply to activities in those state surface waters that overlap federal waters of the United States. Activities conducted under the proposed 2020 NATIONWIDE PERMIT 12 must meet the certification conditions and requirements specified herein in addition to all applicable federal requirements. Non-compliance with Title 62.1 of the Code of Virginia, including the State Water Control Law, or Virginia Water Protection Permit Program regulations, or otherwise violating Virginia state water quality standards, may result in civil penalties.

For this certification with conditions, the following terms apply as defined in § 62.1-44.3 of the Code of Virginia and Virginia Administrative Code 9VAC25-210-10: “open water”, “perennial stream”, “state waters”, “stream bed” or “stream channel”, “surface water”, and “wetlands”.

DEQ finds that the activities covered under the proposed 2020 NATIONWIDE PERMIT 12 with General Conditions and all proposed Norfolk District Regional Conditions applicable to NATIONWIDE PERMIT 12 will comply¹ with i) the requirements of the applicable water quality standards under Virginia Administrative Code 9VAC25-260 *et seq.*, as established pursuant to Sections 301, 302, 304, 306 and 307 of the CWA; ii) Title 62.1 of the Code of Virginia; and iii) the applicable Virginia Administrative Code regulations, provided all of the following certification conditions are met:

12-1. The Virginia Department of Environmental Quality (DEQ) denies water quality certification (WQC) under the NATIONWIDE PERMIT 12 specifically for any applicant to the Federal Energy Regulatory Commission for a certificate of public convenience and necessity pursuant to § 7c of the federal Natural Gas Act (15 U.S.C. § 717f(c)) to construct any natural gas transmission pipeline greater than 36 inches inside diameter, in which case issuance of a Virginia Water Protection Permit pursuant to this article and a certification issued pursuant to Article 2.6 (§ 62.1-44.15:80 *et seq.*).

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.4 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:4.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:37.1, § 62.1-44.15:40, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), Article 2.6 of Title 62.1 (§ 62.1-44.15:80 *et seq.*), § 62.1-44.19:5, §

¹ In the Federal Register Vol. 85, No. 134 on page 42278, EPA states “The Agency does not intend or believe that the statutory language requires States to ensure that a project will maintain strict compliance, in every respect, throughout its entire existence. The inclusion of the statutory language ‘will comply’ does not require certifying authorities to provide absolute certainty that applicants for a federal license or permit will never violate water quality requirements. Indeed, future compliance depends on many factors besides just facility design and operation, and it would not be reasonable for an authority to certify that no unknown future event could ever result in a violation of the certification.”

62.1-44.34:26]; § 28.2-1300 *et seq.*; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

40 C.F.R. § 121.7(e)(2)(i): See citations above, and 9VAC25-210-50.

40 C.F.R. § 121.7(e)(2)(ii): All state waters, including wetlands, are designated for the following uses: recreational uses, e.g., swimming and boating; the propagation and growth of a balanced, indigenous population of aquatic life, including game fish, which might reasonably be expected to inhabit them; wildlife; and the production of edible and marketable natural resources, e.g., fish and shellfish (9VAC25-260-20 A). Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; excavate in wetlands; or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions (§ 62.1-44.5; 9VAC25-210-50 A). State review is required to determine if any activity in state waters, not just potential point source discharges to the waters of the United States, will need a permit or permits. No VWP permit shall be issued: 1. Where the proposed activity or the terms or conditions of the VWP permit do not comply with state law or regulations including [but not limited to] § 10.1-1408.5 of the Code of Virginia; 2. For the discharge of any radiological, chemical, or biological warfare agent or high level radioactive material into surface waters (Article 2.6 (§ 62.1-44.15:80 *et seq.*); 9VAC25-210-50 B). A VWP permit (or combined VWP permit and certification pursuant to Article 2.6 (§ 62.1-44.15:80 *et seq.*)) include requirements for utilization of cost-effective and reasonable best management practices for nonpoint source control, and when combined with other DEQ water permits that impose effluent limits required under §§ 301(b)(1)(A) and (B) and 306 of the Clean Water Act, where required, achieve protection of water quality (9VAC25-260-10 E). Such actions also apply requirements that specifically control such substances as: floating debris, oil, scum, and other floating materials; toxic substances (including those which bioaccumulate); substances that produce color, tastes, turbidity, odors, or settle to form sludge deposits; and substances which nourish undesirable or nuisance aquatic plant life, and effluents which tend to raise the temperature of the receiving water (9VAC25-260-20 A).

- 12-2. For activities that are proposed to occur in state surface waters as defined in § 62.1-44.3 of the Code of Virginia: Once an activity is proposed to occur in any surface water that is not subject to federal jurisdiction, and as such not subject to a NATIONWIDE PERMIT, application to DEQ shall be required in accordance with Virginia Administrative Code 9VAC25-210 *et seq.*, 9VAC25-660 *et seq.* through -690 *et seq.* as applicable, and State Water Control Law for i) coverage under a Virginia Water Protection (VWP) general permit, ii) a VWP individual permit, or iii) a decision that no permit is required (in situations where VWP permitting exclusions apply). A DEQ VWP permit or decision shall need to have been finalized prior to the project proponent impacting any surface waters. If a DEQ VWP general permit coverage or individual permit is issued, it shall be based on all impacts of the proposed activities in surface waters under both state and federal jurisdiction, pursuant to applicable permit regulations and State Water Control Law. Other permits may be required from DEQ based on the proposed activities or impacts.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a

significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:4.1, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:40, § 62.1-44.15:50, § 62.1-44.15:52, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), § 62.1-44.19:5]; § 10.1-400 *et seq.*; § 10.1-604 *et seq.*; § 10.1-1408.5; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; § 62.1-194 through -194.3; 9VAC25 - Preface (Agency Summary); 9VAC25-31 *et seq.*; 9VAC25-40 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-630 *et seq.*; 9VAC25-660 *et seq.*; 9VAC25-670 *et seq.*; 9VAC25-680 *et seq.*; 9VAC25-690 *et seq.*; 9VAC25-720 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

- 12-3. For activities in wetlands, open water, streams, or mitigation sites that are under a deed restriction, conservation easement, declaration of restrictive covenant, or other land use protective instrument (“protected areas”), and when such restriction, easement, covenant, or instrument is the result of a federal or state permit action and is specific to activities in wetlands and compensatory mitigation sites, application to DEQ shall be required in accordance with Virginia Administrative Code 9VAC25-210 *et seq.*, 9VAC25-660 *et seq.* through -690 *et seq.*, and State Water Control Law for i) coverage under a Virginia Water Protection (VWP) general permit, ii) a VWP individual permit, or iii) a decision that no permit is required (in situations where VWP permitting exclusions apply). A DEQ VWP permit or decision shall need to have been finalized prior to the project proponent impacting any surface waters. If a DEQ VWP general permit coverage or individual permit is issued, it shall be based on all impacts of the proposed activities in surface waters under both state and federal jurisdiction, pursuant to applicable permit regulations and State Water Control Law. Compensatory mitigation may be required for all permanent impacts. Other permits may be required from DEQ based on the proposed activities or impacts.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:5.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:23, § 62.1-44.19:5; § 62.1-44.34:18]; § 28.2-1300 *et seq.*; 9VAC25 - Preface (Agency Summary); 9VAC25-31 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-380 *et seq.*; 9VAC25-660 *et seq.*; 9VAC25-670 *et seq.*; 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-770 *et seq.*; 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 230 *et seq.*

- 12-4. Activities conducted in state surface waters shall not cause or contribute to a significant impairment of state fish and wildlife resources, including but not limited to: 1) documented spawning habitat or a migratory pathways for anadromous fish; 2) trout waters in specified locations of Virginia, as provided by the Virginia State Water Control Board's Water Quality Standards 9VAC25-260-370 *et seq.* and 9VAC25-260-390 *et seq.*; 3) state-listed threatened or endangered species or designated critical habitat; and 4) areas that contain submerged aquatic vegetation (SAV). This certification condition does not preclude compliance by the permittee with all applicable state laws and regulations concerning Virginia's fish and wildlife or critical habitat resources.
- a. The project proponent shall ensure the activities do not cause or contribute to a significant impairment of state waters or fish and wildlife resources, including state listed threatened or endangered species or critical habitat, through screening or coordination with state resource agencies prior to doing work in surface waters. This requirement is in addition to identifying any potential or actual impacts to federal listed threatened or endangered species or critical habitat that may be required by NATIONWIDE PERMIT 12 or regional conditions.
- (i) Where a project proponent is not required to obtain a verification from the Corps that the proposed activities qualify for NATIONWIDE PERMIT 12, the project proponent shall follow all Time-of-Year Restrictions (TOYRs) applicable to state surface waters that are recommended by the state resource agencies and other interested and affected agencies in the results or information provided to the project proponent. Results or information may include correspondence or documentation from state resource agencies and other interested and affected agencies addressing potential impacts, or reference materials that address potential impacts such as database search results or confirmed waters and wetlands delineations or jurisdictional determinations, or a combination thereof.
- (ii) Where the project proponent receives a verification from the Corps that the proposed activities qualify for NATIONWIDE PERMIT 12, the project proponent or authorized agent shall submit upon receipt or the next business day the screening or coordination results or information concerning the potential for activities to impact state threatened and endangered species (listed or proposed) or critical habitat to the Corps office having responsibility over the proposed project. Results or information may include correspondence or documentation from state resource agencies and other interested and affected agencies addressing potential impacts, or reference materials that address potential impacts such as database search results or confirmed waters and wetlands delineations or jurisdictional determinations, or a combination thereof. Time-of-year restrictions (TOYRs) recommended by state resource

agencies and other interested and affected agencies shall be applied to any Corps verification of NATIONWIDE PERMIT 12.

- (iii) If only state-listed or -proposed threatened or endangered species or critical habitat are identified, and no federal-listed threatened or endangered species or critical habitat are identified, then the project proponent shall apply for a Virginia Water Protection (VWP) permit in accordance with VWP regulations, and shall include all screening or coordination results or information received from state resource agencies. If a VWP permit or coverage is required, no work in state surface waters shall occur until the permit or coverage is issued.

State resource agencies include the Virginia Department of Wildlife Resources (DWR), the Virginia Department of Conservation and Recreation (DCR), the Virginia Marine Resources Commission (MRC) at minimum. Other interested and affected agencies may include the Virginia Department of Health (VDH) or the Maryland Department of the Environment where activities occur in the Potomac River. The Virginia DWR has developed an online system that allows users to find information about sensitive state resources that may occur within the vicinity of a proposed project. This system named the *Virginia Fish and Wildlife Information System* is located at <https://vafwis.dgif.virginia.gov/fwis/>. This system may be used to determine if any state listed threatened or endangered species or designated critical habitat may be affected by the proposed activities.

- b. Notification to the Corps is required prior to conducting any activities in state surface waters if they contain submerged aquatic vegetation (SAV). Information regarding submerged aquatic vegetation can be located on the Virginia Institute of Marine Science's SAV website at <http://mobjack.vims.edu/sav/savwabmap/>. Additional avoidance and minimization measures, such as relocating a structure or time-of-year restrictions (TOYR), may be required to reduce impacts to SAV habitat in state surface waters.
- c. Activities in surface waters shall be performed behind cofferdams, turbidity curtains, or other methods to control turbidity when operationally feasible and state listed threatened or endangered species may be present.
- d. No activities may substantially disrupt the movement of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the primary purpose of the activity is to impound water.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations

which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:4.1, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:23, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:37.1, § 62.1-44.15:40, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.17:2, § 62.1-44.17:3, § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3, § 62.1-44.19:5, § 62.1-44.33, §§ 62.1-44.34:14 through § 62.1-44.34:19, § 62.1-44.34:23, § 62.1-44.34:26]; §§ 3.2-1000 through 3.2-1011; § 10.1-400 *et seq.*; § 10.1-604 *et seq.*; § 28.2-1200 *et seq.*; § 28.2-1300 *et seq.*; § 29.1-500 through -579; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; § 62.1-194 through -194.3; 4VAC15-20 *et seq.*; 4VAC15-30 *et seq.*; 4VAC15-290-60; 4VAC15-320-100; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-190 *et seq.*; 9VAC25-191 through -196 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-370 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-390 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-630 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-740 *et seq.*; 9VAC25-790 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-860 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

- 12-5. Plant species listed in the most current *Virginia Department of Conservation and Recreation's (DCR) Virginia Invasive Plant Species List* shall not be used for re-vegetation. The list of invasive plants in Virginia is found at: <http://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>. See also DCR's native plant finder at <https://www.dcr.virginia.gov/natural-heritage/native-plants-finder>.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:23, § 62.1-44.15:50]; §§ 3.2-800 through -805; 2VAC5-317 *et seq.*; 4VAC15-20-210; 4VAC15-30-20; 4VAC15-30-40; 4VAC15-20-130 B and C; 4VAC15-290-60; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-380 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-800 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 230 *et seq.*

- 12-6. Stormwater management facilities, as defined in 9VAC25-870-10, shall not be constructed in a perennial stream bed or stream channel, as defined in 9VAC25-210-10, or in waters designated as oxygen-impaired or temperature-impaired (does not include wetlands).

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.15, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.19:5]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

12-7. Compensatory mitigation for unavoidable permanent impacts, including the conversion of forested wetlands, that are greater than 1/10 of an acre of wetlands or greater than 300 linear feet of stream bed or stream channel as defined by 9VAC25-210-10 shall be provided in accordance with Section 62.1-44.15:23 A through C of the Code of Virginia, as applicable to the project activities and Virginia Water Protection Permit Program regulations.

- a. Stream bed or stream channel impacts shall be determined by utilizing a stream impact assessment methodology acceptable to the Department of Environmental Quality.
- b. The mitigation shall be sufficient to achieve no net loss of existing wetland acreage and functions or stream functions and water quality benefits. In the absence of same river watershed alternatives in Hydrologic Unit Codes (HUC) 02040303 and 02040304, single-family dwellings or locality projects may use compensatory mitigation in HUC 02080102, 02080108, 02080110, or 02080111 in Virginia.
- c. Unless the area is outside of permittee control, the permittee shall have all non-impacted surface waters and compensatory mitigation areas within 50 feet of authorized activities and within the project or right-of-way limits clearly flagged or marked for the life of the construction activity at that location to preclude unauthorized disturbances to these surface waters and compensatory mitigation areas during construction. The permittee shall notify contractors that no activities are to occur in these marked surface waters.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations

which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.5, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:5.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:23]; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-380 et seq.; 9VAC25-660 et seq., 9VAC25-670 et seq., 9VAC25-680 et seq. or 9VAC25-690 et seq. as applicable; 9VAC25-770 et seq.; 9VAC25-800 et seq.; 33 U.S.C § 1341 et seq.; 33 U.S.C § 1344 et seq.; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 et seq.; 40 C.F.R. § 131 et seq.; 40 C.F.R. § 230 et seq.

12-8. The following information associated with activities in state surface waters, as applicable, shall be submitted by the permittee to the Virginia Water Protection Permit Program at the DEQ office having responsibility over the project location. The Joint Permit Application process may be used to meet this condition, provided all required information is included.

- a. When required, any pre-construction notification (PCN) materials or information shall be concurrently submitted to DEQ and the Corps.
- b. All jurisdictional determination information provided to the Corps and issued from the Corps, such as jurisdictional determination requests, maps, forms, photos, correspondence, Corps determinations or confirmations, shall be concurrently submitted to or shared with DEQ. Delineation of state surface waters on the entire project site is strongly encouraged prior to submitting an application to expedite state permit processing, if required.
- c. Proof of coverage (“verification”) under one or more NATIONWIDE PERMITS, upon issuance by the Corps or on the next business day, unless the activities are excluded from permitting under the Virginia Water Protection Permit Program or no NATIONWIDE PERMIT verification is issued by the Corps.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.3, § 62.1-44.6, § 62.1-44.13, § 62.1-44.19:5, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:5.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:23]; § 10.1-604 et seq.; § 28.2-1300 et seq.; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-380 et seq.; 9VAC25-660 et seq., 9VAC25-670 et seq., 9VAC25-680 et seq. or 9VAC25-690 et seq. as applicable; 33 U.S.C. § 1251 et seq.; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C § 1341 et seq.; 33 U.S.C § 1344 et seq.; 33 U.S.C. § 1370; 40 C.F.R. § 121 et seq.; 40 C.F.R. § 131 et seq.; 40 C.F.R. § 230 et seq.; Public Law 95-217

12-9. Activities shall include measures to prevent spills of fuels or lubricants into state waters. Any fish kills or spills of fuels or oils shall be reported to DEQ immediately upon discovery. If DEQ cannot be reached, the spill or fish kill shall

be reported to the Virginia Department of Emergency Management (VDEM) at 1-800-468-8892 or the National Response Center (NRC) at 1-800-424-8802. Any spill of oil as defined in § 62.1-44.34:14 of the Code of Virginia that is less than 25 gallons, and that reaches or is expected to reach land only, is not reportable if recorded per § 62.1-44.34:19.2 of the Code of Virginia and if properly cleaned up. If unauthorized impacts have occurred, the permittee shall notify DEQ within 24 hours of discovery.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:4.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:40, § 62.1-44.15:50, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.17:2, § 62.1-44.17:3, § 62.1-44.34:19.2, § 62.1-44.19:5, § 62.1-44.33, §§ 62.1-44.34:14 through § 62.1-44.34:19, § 62.1-44.34:23, § 62.1-44.34:26]; § 62.1-10; § 62.1-11; § 62.1-194 through -194.3; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-71 *et seq.*; 9VAC25-101 *et seq.*; 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-190 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 140; Public Law 95-217

12-10. Activities shall be executed in a manner so as to minimize adverse impacts on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.15, § 62.1-44.15:4.1, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:37.1, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.17:2, § 62.1-44.17:3, § 62.1-44.18, § 62.1-44.19, § 62.1-44.19:3, § 62.1-44.19:5, § 62.1-44.33, §§ 62.1-44.34:14 through § 62.1-44.34:19, § 62.1-44.34:23, § 62.1-44.34:26]; § 10.1-400 *et seq.*; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; § 62.1-194 through -194.3; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-71 *et seq.*; 9VAC25-101 *et seq.*; 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-190 *et seq.*; 9VAC25-191 through -196 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-370 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-630 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-740 *et seq.*; 9VAC25-

790 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-860 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 140; 40 C.F.R. § 230 *et seq.*; Public Law 95-217

12-11. All fill material in state surface waters shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all applicable state laws and regulations.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.4 through -44.6, § 62.1-44.15, § 62.1-44.15:5.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.17:2, § 62.1-44.17:3, § 62.1-44.19:5]; § 62.1-194 through -194.3; 9VAC25 - Preface (Agency Summary); 9VAC25-40 *et seq.*; 9VAC25-190 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

12-12. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable.

a. All temporarily disturbed wetland areas shall be restored to preexisting conditions within 30 days of completing work at each respective temporary impact area, which shall include reestablishing preconstruction elevations and contours with topsoil from the impact area where practicable and planting or seeding with appropriate wetland vegetation according to cover type (i.e., emergent, scrub-shrub, or forested). The permittee shall take all appropriate measures to promote and maintain revegetation of temporarily disturbed wetland areas with wetland vegetation through the second year post-disturbance. All temporarily impacted stream beds or stream channels and streambanks shall be restored to their preconstruction elevations and contours with topsoil from the impact area where practicable within 30 days following the construction at that stream segment. Streambanks shall be seeded or planted with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used without prior approval from the Department of Environmental Quality.

b. Materials (including fill, construction debris, and excavated and woody materials) temporarily stockpiled in wetlands, and heavy equipment in

temporarily impacted wetland areas shall be placed on mats, geotextile fabric, or other suitable material; shall be immediately stabilized to prevent entry into state waters; shall be managed such that leachate does not enter state waters; and shall be completely removed within 30 days following completion of that construction activity. Disturbed areas shall be returned to preconstruction elevations and contours with topsoil from the impact area where practicable; restored within 30 days following removal of the stockpile; and restored with the same vegetation cover type originally present, including any necessary supplemental erosion control grasses. Invasive species identified on the Department of Conservation and Recreation's Virginia Invasive Plant Species List shall not be used to the maximum extent practicable or without prior approval from the Department of Environmental Quality.

- c. All construction, construction access (e.g., cofferdams, sheet piling, and causeways) and demolition activities associated with the project shall be accomplished in a manner that minimizes construction or waste materials from entering surface waters to the maximum extent practicable.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): "State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life."

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:4.1, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37.1, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), §§ 62.1-44.16 through § 62.1-44.17, § 62.1-44.19:5]; § 10.1-604 *et seq.*; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; § 62.1-194 through -194.3; 9VAC25 - Preface (Agency Summary); 9VAC25-40 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-770 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; 40 C.F.R. § 230 *et seq.*; Public Law 95-217

- 12-13. If stream channelization or relocation is required, all work in surface waters shall be done in the dry, unless otherwise authorized by the Department of Environmental Quality, and all flows shall be diverted around the channelization or relocation area until the new channel is stabilized. This work shall be accomplished by leaving a plug at the inlet and outlet ends of the new channel during excavation. Once the new channel has been stabilized, flow shall be routed into the new channel by first removing the downstream plug and then the upstream plug. The rerouted stream flow must be fully established before construction activities in the old stream bed or stream channel can begin.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.5, § 62.1-44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:5.1, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79)]; § 62.1-10; § 62.1-11; § 62.1-194 through -194.3; 9VAC25 - Preface (Agency Summary); 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.*, 9VAC25-680 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-800 *et seq.*; 9VAC25-840 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*

12-14. Corps-Norfolk District Regional Conditions applicable to any “utility line” under NATIONWIDE PERMIT 12 shall also apply to pipelines, pipeline activities, pipeline rights-of-way, pipeline corridors, easements for pipelines, buried pipelines, submerged pipelines, pipeline crossings, pipeline projects, and pipelines and associated facilities. The Corps’ definition of “utility line” precludes oil, natural gas, and petrochemicals.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.4 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:4.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:40, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), Article 2.6 of Title 62.1 (§ 62.1-44.15:80 *et seq.*), § 62.1-44.19:5, § 62.1-44.34:26]; § 28.2-1300 *et seq.*; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C § 1341 *et seq.*; 33 U.S.C § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

12-15. Material resulting from trench excavation may be temporarily sidecast into wetlands not to exceed a total of 90 calendar days, provided the material is not placed in a manner such that it is dispersed by currents or other forces.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations

which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.4 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:4.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:37.1, § 62.1-44.15:40, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), Article 2.6 of Title 62.1 (§ 62.1-44.15:80 *et seq.*), § 62.1-44.19:5, § 62.1-44.34:26]; § 28.2-1300 *et seq.*; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

12-16. The trench for a pipeline cannot be constructed in a manner that drains wetlands (e.g., backfilling with extensive gravel layers creating a French drain effect).

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii): Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2, § 62.1-44.4 through -44.6, § 62.1-44.13, § 62.1-44.15, § 62.1-44.15:4.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:27, § 62.1-44.15:28, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:37, § 62.1-44.15:37.1, § 62.1-44.15:40, § 62.1-44.15:50, § 62.1-44.15:52, § 62.1-44.15:54, § 62.1-44.15:55, § 62.1-44.15:56, § 62.1-44.15:58, § 62.1-44.15:58.1, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), Article 2.6 of Title 62.1 (§ 62.1-44.15:80 *et seq.*), § 62.1-44.19:5, § 62.1-44.34:26]; § 28.2-1300 *et seq.*; § 62.1-10; § 62.1-11; 9VAC25 - Preface (Agency Summary); 9VAC25-31 Sections 10 through 60, 120, 150 through 220, 330, and if applicable, 420 through 1030; 9VAC25-40 *et seq.*; 9VAC25-120 *et seq.*; 9VAC25-151 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-660 *et seq.*, 9VAC25-670 *et seq.* or 9VAC25-690 *et seq.* as applicable; 9VAC25-720 *et seq.*; 9VAC25-800 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. 403 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217

12-17. DEQ § 401 WQC decisions and certification conditions, except DEQ WQC condition 12-17, shall not apply to any project or activity that obtains a Virginia Water Protection (VWP) permit or a waiver from DEQ for the project or activity. For such projects or activities, the VWP permit or the waiver shall constitute the DEQ’s WQC decision under 33 U.S.C. § 1341.

40 C.F.R. § 121.7(d)(2)(i): This condition is necessary in order to assure that i) any discharge authorized under the general license or permit will comply with water quality requirements; ii) activities will not cause or contribute to a significant impairment of state waters or fish and wildlife resources; and iii) state water quality requirements are met, including the General Criteria (9VAC25-260-20 *et seq.*): “State waters, including wetlands, shall be free from substances attributable to sewage, industrial waste, or other waste in concentrations, amounts, or combinations

which contravene established standards or interfere directly or indirectly with designated uses of such water or which are inimical or harmful to human, animal, plant, or aquatic life.”

40 C.F.R. § 121.7(d)(2)(ii); 40 C.F.R. § 121.7(d)(2)(ii); Article XI, Section 1 Constitution of VA; Title 62.1 of the Code of Virginia; Chapter 3.1 of Title 62.1 of the Code of Virginia (§§ 62.1-44.2 through 62.1-44.34:28) [§ 62.1-44.2 through -44.6, § 62.1-44.15, § 62.1-44.15:01, § 62.1-44.15:4.1, § 62.1-44.15:5.1, § 62.1-44.15:5.2, § 62.1-44.15:20, § 62.1-44.15:21, § 62.1-44.15:24, § 62.1-44.15:25, § 62.1-44.15:28, § 62.1-44.15:28.1, § 62.1-44.15:31, § 62.1-44.15:34, § 62.1-44.15:40, § 62.1-44.15:50, § 62.1-44.15:52, Article 2.5 of Title 62.1 (§§ 62.1-44.15:67 through § 62.1-44.15:79), § 62.1-44.19:5]; § 10.1-400 *et seq.*; § 10.1-604 *et seq.*; § 10.1-1408.5; § 28.2-1300 *et seq.*; § 62.1-7; § 62.1-8; § 62.1-10; § 62.1-11; § 62.1-194 through -194.3; 9VAC25 - Preface (Agency Summary); 9VAC25-31 *et seq.*; 9VAC25-40 *et seq.*; 9VAC25-210 Sections 10 through 230 and 500; 9VAC25-260 *et seq.*; 9VAC25-380 *et seq.*; 9VAC25-401 *et seq.*; 9VAC25-410 and 415 *et seq.*; 9VAC25-630 *et seq.*; 9VAC25-660 *et seq.*; 9VAC25-670 *et seq.*; 9VAC25-680 *et seq.*; 9VAC25-690 *et seq.*; 9VAC25-720 *et seq.*; 9VAC25-820 *et seq.*; 9VAC25-830 *et seq.*; 9VAC25-840 *et seq.*; 9VAC25-870 through 890 *et seq.*; 33 U.S.C. § 1251 *et seq.*; 33 U.S.C. § 1313(d); 33 U.S.C. § 1315(b); 33 U.S.C. § 1317(a); 33 U.S.C. § 1341 *et seq.*; 33 U.S.C. § 1344 *et seq.*; 33 U.S.C. § 1370; 33 C.F.R. Part 332; 40 C.F.R. § 121 *et seq.*; 40 C.F.R. § 131 *et seq.*; Public Law 95-217



Commonwealth of Virginia

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Waiver of Section 401 Water Quality Certification

This Section 401 Water Quality Certification (WQC) decision applies to the following proposed 2020 NATIONWIDE PERMITS with General Conditions:

Nationwide Permit 1 - Aids to Navigation

Nationwide Permit 2 - Structures in Artificial Canals

Nationwide Permit 9 - Structures in Fleeting and Anchorage Areas

Nationwide Permit 10 - Mooring Buoys

Nationwide Permit 24 - Indian Tribe or State Administered Section 404 Programs

Nationwide Permit 32 - Completed Enforcement Actions

The Virginia Department of Environmental Quality (DEQ) is waiving its authority to act on the United States Army Corps of Engineers (Corps) certification request for water quality certification (WQC) for the proposed 2020 NATIONWIDE PERMITS 1, 2, 9, 10, 24, and 32 with General Conditions and proposed 2020 Norfolk District Regional Conditions applicable to these NATIONWIDE PERMITS, pursuant to § 401 of the Clean Water Act of 1977, as amended (33 U.S.C. §1341; Public Law 95-217).

This WQC decision is applicable to the terms of the proposed 2020 Nationwide Permits with General Conditions and the proposed 2020 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 2020 Nationwide Permits with General Conditions and the proposed 2020 Norfolk District Regional Conditions. DEQ reserves its right to revise one or more § 401 WQC decisions based on the final Nationwide Permits with General Conditions and the final Norfolk District Regional Conditions. DEQ's WQC decisions neither replace or supersede requirements set forth by other local, state, federal, and Tribal laws, nor eliminate the need to obtain additional permits, approvals, consultations, or authorizations as required by law before proposed activities may commence.



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Section 401 Water Quality Certification Denial

Nationwide Permit 17 – Hydropower Projects

The Virginia Department of Environmental Quality (DEQ) is denying water quality certification (WQC) for the proposed 2020 NATIONWIDE PERMIT 17 with General Conditions and the proposed 2020 Norfolk Regional Conditions applicable to NATIONWIDE PERMIT 17, pursuant to § 401 of the Clean Water Act of 1977, as amended (33 U.S.C. §1341; Public Law 95-217); the Constitution of Virginia, Article XI, Section 1; Title 62.1 of the Code of Virginia, including Chapter 3.1 (State Water Control Law); Virginia Water Protection (VWP) Permit Program regulation 9VAC25-210 *et seq.*; and Virginia Water Quality Standards 9VAC25-260 *et seq.*

DEQ reserves its right to revise one or more § 401 WQC decisions based on the final Nationwide Permits with General Conditions and the final Norfolk District Regional Conditions. DEQ's WQC decisions neither replace or supersede requirements set forth by other local, state, federal, and Tribal laws, nor eliminate the need to obtain additional permits, approvals, consultations, or authorizations as required by law before proposed activities may commence.

The United States Army Corps of Engineers public notice in the Federal Register dated September 15, 2020 states for this proposed 2020 NATIONWIDE PERMIT 17: "17. *Hydropower Projects*. Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 10,000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and section 30 of the Federal Power Act, as amended. *Notification*: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)."

40 C.F.R § 121.7(e)(2)

A. Along with other portions of Virginia Administrative Code 9VAC25-210 *et seq.*, Part V-*Surface Water Withdrawals* (Sections 300 through 390) specifically applies to surface water withdrawal activities, some or all of which may be authorized under NATIONWIDE PERMIT 17. NATIONWIDE PERMIT 17 will not comply with Virginia water quality requirements in state waters because DEQ must determine through its review of an application for a Virginia Water Protection (VWP) Permit that the proposed activity is i) consistent with the provisions of the Clean Water Act, the State Water Control Law, and 9VAC25-210 and ii) will protect instream beneficial uses, as defined in § 62.1-10 (b). The following provisions and requirements in addition to Part V of 9VAC25-210 differ from Virginia law and regulation provisions and requirements, as follows:

- § 62.1-44.15: It shall be the duty of the Board and it shall have the authority: ...(17) To establish additional procedures for obtaining a Virginia Water Protection Permit pursuant to §§ 62.1-44.15:20 and 62.1-44.15:22 for a proposed water withdrawal involving the transfer of water resources between major river basins within the Commonwealth that may impact water basins in another state. Such additional procedures shall not apply to any water withdrawal in existence as of July 1, 2012, except where the expansion of such withdrawal requires a permit under §§ 62.1-44.15:20 and 62.1-44.15:22, in which event such additional procedures may apply to the extent of the expanded withdrawal only. The applicant shall provide as part of the application (i) an analysis of alternatives to such a transfer, (ii) a comprehensive analysis of the impacts that would occur in the source and receiving basins, (iii) a description of measures to mitigate any adverse impacts that may arise, (iv) a description of how notice shall be provided to interested parties, and (v) any other requirements that the Board may adopt that are consistent with the provisions of this section and §§ 62.1-44.15:20 and 62.1-44.15:22 or regulations adopted thereunder. This subdivision shall not be construed as limiting or expanding the Board's authority under §§ 62.1-44.15:20 and 62.1-44.15:22 to issue permits and impose conditions or limitations on the permitted activity.
- § 62.1-44.15:20 A. Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this article, it shall be unlawful to: 3. Alter the physical, chemical, or biological properties of state waters and make them detrimental to the public health, animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses unless authorized by a certificate issued by the Board. B. The Board shall, after providing an opportunity for public comment, issue a Virginia Water Protection Permit if it has determined that the proposed activity is consistent with the provisions of the Clean Water Act and the State Water Control Law and will protect instream beneficial uses. C. Prior to the issuance of a Virginia Water Protection Permit, the Board shall consult with and give full consideration to any relevant information contained in the state water supply plan described in subsection A of § 62.1-44.38:1 as well as to the

written recommendations of the following agencies: the Department of Wildlife Resources, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, the Department of Agriculture and Consumer Services, and any other interested and affected agencies. When considering the state water supply plan, nothing shall be construed to limit the operation or expansion of an electric generation facility located on a man-made lake or impoundment built for the purpose of providing cooling water to such facility. Such consultation shall include the need for balancing instream uses with offstream uses. Agencies may submit written comments on proposed permits within 45 days after notification by the Board. If written comments are not submitted by an agency within this time period, the Board shall assume that the agency has no comments on the proposed permit and deem that the agency has waived its right to comment. After the expiration of the 45-day period, any such agency shall have no further opportunity to comment.

- Per § 62.1-44.15:22, conditions contained in a Virginia Water Protection Permit may include but are not limited to the volume of water which may be withdrawn as a part of the permitted activity and conditions necessary to protect beneficial uses. ...B. Notwithstanding any other provision, no Virginia Water Protection Permit shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal. No Virginia Water Protection Permit shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification. C. The Board may issue an Emergency Virginia Water Protection Permit for a new or increased withdrawal when it finds that because of drought there is an insufficient public drinking water supply that may result in a substantial threat to human health or public safety. Such a permit may be issued to authorize the proposed activity only after conservation measures mandated by local or state authorities have failed to protect public health and safety and notification of the agencies designated in § 62.1-44.15:20 C and only for the amount of water necessary to protect public health and safety. These agencies shall have five days to provide comments or written recommendations on the issuance of the permit. Notwithstanding the provisions of § 62.1-44.15:20 B, no public comment shall be required prior to issuance of the emergency permit. Not later than 14 days after the issuance of the emergency permit, the permit holder shall apply for a Virginia Water Protection Permit authorized under the other provisions of this section. The application for the Virginia Water Protection Permit shall be subject to public comment for a period established by the Board. Any Emergency Virginia Water Protection Permit issued under this section shall be valid until the Board approves or denies the subsequent request for a Virginia Water Protection Permit or for a period of one year, whichever occurs sooner. The fee for the emergency permit shall be 50 percent of the fee charged for a comparable Virginia Water Protection Permit.

- 9VAC25-210-50 A: Except in compliance with a VWP permit, unless the activity is otherwise exempted or excluded, no person shall dredge, fill, or discharge any pollutant into, or adjacent to surface waters; withdraw surface water; otherwise alter the physical, chemical, or biological properties of state waters regulated under this chapter and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; excavate in wetlands; or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions. State review is required to determine if any activity in state waters, not just potential point source discharges to the waters of the United States, will need a permit or permits, as supported by the provisions below.
- 9VAC25-210-90. Conditions applicable to all VWP permits. A. Duty to comply. The permittee shall comply with all conditions and limitations of the VWP permit. Nothing in this chapter shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations, toxic standards, and prohibitions. Any VWP permit violation or noncompliance is a violation of the Clean Water Act and State Water Control Law and is grounds for enforcement action, VWP permit termination, VWP permit revocation, VWP permit modification, or denial of an application for a VWP permit extension or reissuance. ...
- 9VAC25-210-110. Establishing applicable standards, limitations, or other VWP permit conditions. A. In addition to the conditions established in 9VAC25-210-90 and 9VAC25-210-100, and for surface water withdrawals in 9VAC25-210-370, each VWP permit shall include conditions meeting the requirements established in this section where applicable. B. Water quality standards and state requirements. The VWP permit shall include requirements to comply with all appropriate provisions of state laws and regulations. C. Toxic pollutants. 1. Where the board finds that appropriate limitations may not ensure compliance with the law or state water quality standards the board shall require the permittee to follow a program of biological or chemical toxics monitoring. The requirement may include a VWP permit reopener to allow the imposition of toxicity reduction or elimination measures determined to be necessary as a result of the board's evaluation of the results of the toxic monitoring and other available information. Based upon this determination, appropriate limitations will be included in the VWP permit to ensure the reduction or elimination of toxic pollutants and allow the board to ensure that the proposed project will comply with water quality standards and other appropriate requirements of the law. ...G. Reopening VWP permits. Each VWP permit shall have a condition allowing the reopening of the VWP permit for the purpose of modifying the conditions of the VWP permit to meet new regulatory standards duly adopted by the board. Cause for reopening VWP permits includes, but is not limited to when the circumstances on which the previous VWP permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material

and substantial change, since the time the VWP permit was issued and thereby constitute cause for VWP permit modification or revocation and reissuance.

- 9VAC25-210-120. Draft VWP permit formulation. ...B. If the tentative decision is to issue the VWP permit then a draft VWP permit shall be prepared in advance of public notice. The following tentative determinations shall be incorporated into a draft VWP permit: 1. Conditions, discharge limitations, standards and other requirements applicable to the VWP permit; ...
- 9VAC25-210-230. Denial of the VWP permit or variance request. A. The board shall make a decision to tentatively deny the VWP permit or variance request if the requirements of this chapter are not met. Basis for denial include, but are not limited to, the following: 1. The project will result in violations of water quality standards or will impair the beneficial uses of state waters. ...
- 9VAC25-210-500: The board may enforce the provisions of this chapter utilizing all applicable procedures under the law and § 10.1-1186 of the Code of Virginia.
- 9VAC25-260-10: A. All state waters, including wetlands, are designated for the following uses: recreational uses, e.g., swimming and boating; the propagation and growth of a balanced, indigenous population of aquatic life, including game fish, which might reasonably be expected to inhabit them; wildlife; and the production of edible and marketable natural resources, e.g., fish and shellfish. ...H. The board may remove a designated use which is not an existing use, or establish subcategories of a use, if the board can demonstrate that attaining the designated use is not feasible because: ...4. Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use;...
- 9VAC25-260-80. In lakes and impoundments receiving thermal discharges, the temperature of the epilimnion, or surface water when there is no stratification, shall not be raised more than 3°C above that which existed before the addition of heat of artificial origin. The board may, on a case-by-case basis, impose a more stringent limit on temperature rise. The increase shall be based on the monthly average of the maximum daily temperature. The temperature of releases from these lakes and impoundments shall be consistent with standards established for the receiving waters. When an applicant for a permit proposes either a discharge of heated effluent into the hypolimnion or the pumping of water from the hypolimnion for return back into the same body of water, such practice shall not be approved unless a special study shows that the practice will not produce adverse effects.

B. The following federal provisions support DEQ's denial of water quality certification for NATIONWIDE PERMIT 17:

- 33 U.S.C. § 1251: ... (g) It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act. It is the further policy of Congress that nothing in this Act shall be construed to supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.
- 33 U.S.C. § 1370: Except as expressly provided in this chapter, nothing in this chapter shall... (2) be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.
- 40 C.F.R. § 131.10: Designation of uses. (a) Each State must specify appropriate water uses to be achieved and protected. The classification of the waters of the State must take into consideration the use and value of water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on the water, agricultural, industrial, and other purposes including navigation. If adopting new or revised designated uses other than the uses specified in section 101(a)(2) of the Act, or removing designated uses, States must submit documentation justifying how their consideration of the use and value of water for those uses listed in this paragraph appropriately supports the State's action. A use attainability analysis may be used to satisfy this requirement. In no case shall a State adopt waste transport or waste assimilation as a designated use for any waters of the United States. (b) In designating uses of a water body and the appropriate criteria for those uses, the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters.