*Disclaimer: These Tables are intended to be a quick-reference tool for DEQ VWP Permit Program staff when processing applications that may involve U.S. Army Corps of Engineers (Corps) Nationwide Permits and SPGPs. These Tables are* ***subject to change by DEQ at any time*** *and do not supersede or replace existing state or federal laws, state or federal regulations, or official DEQ guidance. This document does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation.*

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# ***Table 1. 16 Nationwide Permits Effective March 15, 2021***

***When no Nationwide Permit (NWP) or State Programmatic General Permit (SPGP) verification or decision is likely to occur because impacts are not considered to be occurring in Waters of the United States (WOTUS), DEQ continues processing applications and projects in accordance with established applicable laws, regulations, policies, and procedures. Potential decision pathways include issue a VWP individual permit; issue a VWP general permit coverage, either through traditional pathway or 45-day coverage process/checklist; or provide a No Permit Required letter for a number of potential exclusions, waivers, or non-regulated activities.***

| **Guide for State Approvals under the Virginia Water Protection Permit Program and § 401 WQC - 16 Nationwide Permits Effective January 13, 2021**  **[*These procedures are subject to change*]** | | | | |
| --- | --- | --- | --- | --- |
| **NWP # / Title** | **DEQ WQC Limits** | **What does a Project Proponent need?** | **What does a Project Proponent send and to where?** | **What can a Project Proponent expect?** |
| 21 Surface Coal Mining Activities44 Mining Activities50 Underground Coal Mining Activities | 300 linear feet or less of stream bed or stream channel as defined in 9VAC25-210-10 | A VWP action is required. | Submit through VMRC:[[1]](#footnote-1)   1. PCN and delineation, when required 2. (optional but preferred) 401 compliance worksheet for *2021 NWPs* that require a PCN 3. JPA if DEQ needs to issue a VWP individual permit or general permit coverage 4. (optional) DEQ 45-day Coverage Checklist attached to the submitted JPA | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 21, 44, 50 | More than 300 linear feet of stream bed or stream channel as defined in 9VAC25-210-10 | An individual 401 WQC action from DEQ is required.[[2]](#footnote-2) | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5]   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. (optional but preferred) 401 compliance worksheet for *2021 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 40 Agricultural Activities | ***All*** of these limits must apply:  Cumulatively[[3]](#footnote-3) 300 linear feet or less of stream bed or stream channel as defined in 9VAC25-210-10  No increase in capacity of an impoundment  No reduction of instream flows | A VWP action is required. | Submit through VMRC:   1. PCN and delineation, when required 2. (optional but preferred) 401 compliance worksheet for *2021 NWPs* that require a PCN 3. JPA if DEQ needs to issue a VWP individual permit or general permit coverage 4. (optional) DEQ 45-day Coverage Checklist attached to the submitted JPA | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 40 | If ***any*** of these limits applies:  Cumulatively more than 300 linear feet of stream bed or stream channel as defined in 9VAC25-210-10  Increases the capacity of an impoundment  Reduces instream flows | An individual 401 WQC action from DEQ is required. | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5]   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. (optional but preferred) 401 compliance worksheet for *2021 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 42 Recreational Facilities43 Stormwater Management Facilities51 Land-Based Renewable Energy Generation Facilities | ***Both*** of these limits must apply:  Cumulatively 1/10 of an acre or less of wetlands or open water  Cumulatively 300 linear feet or less of stream bed or stream channel as defined in 9VAC25-210-10 | A VWP action is required. | Submit through VMRC:   1. PCN and delineation, when required 2. (optional but preferred) 401 compliance worksheet for *2021 NWPs* that require a PCN 3. JPA if DEQ needs to issue a VWP individual permit or general permit coverage 4. (optional) DEQ 45-day Coverage Checklist attached to the submitted JPA | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 42, 43, 51 | If ***either*** of these limits applies:  Cumulatively more than 1/10 of an acre of wetlands or open water  Cumulatively more than 300 linear feet of stream bed or stream channel as defined in 9VAC25-210-10 | DEQ: An individual 401 WQC action | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5]   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. (optional but preferred) 401 compliance worksheet for *2021 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60]   Provide a No Permit Required Letter for activities that do not impact surface waters |
| 29 Residential Developments *Unless the Norfolk District PM determines that a 22-SGPG is not applicable, NWP 29 may not be used for multiple unit residential developments, including subdivisions* 39 Commercial and Institutional Developments *Unless the Norfolk District determines that a 22-SGPG is not applicable, NWP 39 may not be used for commercial and institutional developments* | These WQC Limits are only used***if a 22-SPGP does not apply***to the activities.  ***Both*** of these limits must apply:  Cumulatively 1/10 of an acre or less of wetlands or open water  Cumulatively 300 linear feet or less of stream bed or stream channel as defined in 9VAC25-210-10 | A VWP Individual permit or general permit coverage is required in order to use a 22-SPGP.  A VWP action is required in cases where a 22-SPGP does not apply to the activities. | If a 22-SPGP applies, see current application procedures for the effective 22-SPGPs.  ***If a 22-SPGP does not apply***, submit through VMRC:   1. PCN and delineation, when required 2. (optional but preferred) 401 compliance worksheet for *2021 NWPs* that require a PCN 3. JPA if DEQ needs to issue a VWP individual permit or general permit coverage 4. (optional) DEQ 45-day Coverage Checklist attached to the submitted JPA | DEQ review of the submittals.  If the proposed activities qualify for a 22-SPGP, DEQ provides the SPGP verification. A VWP individual permit or general permit coverage must be issued in order for a 22-SPGP verification to be issued.  ***If a 22-SPGP does not apply***,DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 29, 39 | These WQC Limits are only used***if a 22-SPGP does not apply***to the activities.  If ***either*** of these limits applies:  Cumulatively more than 1/10 of an acre of wetlands or open water  Cumulatively more than 300 linear feet of stream bed or stream channel as defined in 9VAC25-210-10 | A VWP individual permit or general permit coverage is required in order to use a 22-SPGP.  An individual 401 WQC action from DEQ in cases **where a 22-SPGP does not apply** to the activities. | If a 22-SPGP applies, see current application procedures for the effective 22-SPGPs.  ***If a 22-SPGP does not apply***, submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5]   ***If a 22-SPGP does not apply***, submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. (optional but preferred) 401 compliance worksheet for *2021 NWPs* that require a PCN | DEQ review of the submittals.  If the proposed activities qualify for a 22-SPGP, DEQ provides the SPGP verification. A VWP individual permit or general permit coverage must be issued in order for a 22-SPGP verification to be issued.  ***If a 22-SPGP does not apply***, DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 52 Water-Based Renewable Energy Generation Pilot Projects | ***Both*** of these limits must apply:  Cumulatively 1/10 of an acre or less of wetlands  Cumulatively 300 linear feet or less of stream bed or stream channel as defined in 9VAC25-210-10 | A VWP action is required. | Submit through VMRC:   1. PCN and delineation, when required 2. (optional but preferred) 401 compliance worksheet for *2021 NWPs* that require a PCN 3. JPA if DEQ needs to issue a VWP individual permit or general permit coverage 4. (optional) DEQ 45-day Coverage Checklist attached to the submitted JPA | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 52 | If ***either*** of these limits applies:  Cumulatively more than 1/10 of an acre of wetlands  Cumulatively more than 300 linear feet of stream bed or stream channel as defined in 9VAC25-210-10 | An individual 401 WQC action from DEQ is required. | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5]   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. (optional but preferred) 401 compliance worksheet for *2021 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 48 Commercial Shellfish Mariculture Activities55 Seaweed Mariculture Activities56 Finfish Mariculture Activities57 Electric Utility Line and Telecommunications Activities58 Utility Line Activities for Water and Other Substances | None | A VWP action is required. | Submit through VMRC:   1. PCN and delineation, when required 2. (optional but preferred) 401 compliance worksheet for *2021 NWPs* that require a PCN 3. JPA if DEQ needs to issue a VWP individual permit or general permit coverage (optional if applicable) 4. DEQ 45-day Coverage Checklist attached to the submitted JPA | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 12 Oil or Natural Gas Pipeline Activities | Applicants to FERC 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 | A VWP action is required. | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5]   Submit through VMRC:   1. PCN and delineation, when required (preferred by Corps, for Corps use) 2. JPA, including all informational requirements for a complete application [§ 62.1-44.15:81; 9VAC25-210-80; 9VAC25-210-50.C] 3. (optional but preferred) 401 compliance worksheet for *2021 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as individual permit and upland water quality certification in accordance with § 62.1-44.15:20; § 62.1-44.15:21; § 62.1-44.15:80 through -:84. * Waive the requirement for a VWP permit action * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 12 | None (all other applicable project types, including natural gas pipelines =< 36” ID, whether or not FERC licensing applies | A VWP action is required. | Submit through VMRC:   1. PCN and delineation, when required 2. (optional but preferred) 401 compliance worksheet for *2021 NWPs* that require a PCN 3. JPA if DEQ needs to issue a VWP individual permit or general permit coverage (optional if applicable) 4. DEQ 45-day Coverage Checklist attached to the submitted JPA | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |

# ***Table 2. 41 Nationwide Permits Effective February 25, 2022***

***When no Nationwide Permit (NWP) or State Programmatic General Permit (SPGP) verification or decision is likely to occur because impacts are not considered to be occurring in Waters of the United States (WOTUS), DEQ continues processing applications and projects in accordance with established applicable laws, regulations, policies, and procedures. Potential decision pathways include issue a VWP individual permit; issue a VWP general permit coverage, either through traditional pathway or 45-day coverage process/checklist; or provide a No Permit Required letter for a number of potential exclusions, waivers, or non-regulated activities.***

| **Guide for State Approvals under the Virginia Water Protection Permit Program and § 401–WQC - 41 Nationwide Permits Effective February 25, 2022**  ***[These procedures are subject to change]*** | | | | |
| --- | --- | --- | --- | --- |
| **NWP # / Title** | **DEQ WQC Limits** | **What does a Project Proponent need?** | **What does a Project Proponent send and to where?** | **What can a Project Proponent expect?** |
| 3 Maintenance | Project meets ***all*** of these limits:   * VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions) * Activities 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. * Activities that involve emergency reconstruction shall occur as soon as practicable after damage occurs or is discovered. * Discharges shall not increase the capacity of an impoundment or reduce instream flows. | Corps: NWP Verification when required, or other federal authorization | Submit through VMRC (preferred), or to the Corps AND applicable DEQ regional office (optional):   1. PCN and delineation, when required. If PCN is not required, maintain record of certification-related documentation. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN   Submit to applicable DEQ regional office:   1. Copy of Corps’ NWP verification in any instance where one is issued to the applicant by the Corps 2. Delineation *if one was generated* for the project, regardless of PCN requirements | An action from the Corps when required.  No action by DEQ\*.  \**When no NWP decision applies, DEQ reviews application and makes a decision – see note at beginning of table.* |
| 3 | If ***any*** of the above limits do not apply. | Corps: NWP Verification when required, or other federal authorization  DEQ: An individual 401 WQC action[[4]](#footnote-4) | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5] 3. Copy of Corps’ NWP verification in any instance where one is issued to the applicant   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 13 Bank Stabilization | Project meets ***all*** of these limits:   * VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). * Stabilization activities shall not channelize the stream bed or stream channel as defined in 9VAC25-210-10 * Stabilization activities shall not 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. | Corps: NWP Verification when required, or other federal authorization | Submit through VMRC (preferred), or to the Corps AND applicable DEQ regional office (optional):   1. PCN and delineation, when required. If PCN is not required, maintain record of certification-related documentation. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN   Submit to applicable DEQ regional office:   1. Copy of Corps’ NWP verification in any instance where one is issued to the applicant by the Corps 2. Delineation *if one was generated* for the project, regardless of PCN requirements | An action from the Corps when required.  No action by DEQ\*.  \**When no NWP decision applies, DEQ reviews application and makes a decision – see note at beginning of table.* |
| 13 | If ***any*** of the above limits do not apply. | Corps: NWP Verification when required, or other federal authorization  DEQ: An individual 401 WQC action | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5] 3. Copy of Corps’ NWP verification in any instance where one is issued to the applicant   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 14 Linear Transportation Projects *NWP 14 may not be used in NON-TIDAL waters for linear transportation projects unless the Norfolk District determines that the 22-SPGP cannot be used. Otherwise, NWP 14 may be used in VA.* | These WQC Limits are only used***if a 22-SPGP does not apply***to the activities.  Project meets ***all*** of these limits when NWP 14 applies:   * VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). * Activities shall not cumulatively[[5]](#footnote-5) 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. | A VWP individual permit or general permit coverage is required in order to use a 22-SPGP.  In cases where ***a 22-SPGP does not apply*** to the activities, NWP Verification when required, or other federal authorization may be required from the Corps | If a 22-SPGP applies, see current application procedures for the effective 22-SPGPs.  ***If a 22-SPGP does not apply****,*  submit through VMRC (preferred), or to the Corps AND applicable DEQ regional office (optional):   1. PCN and delineation, when required. If PCN is not required, maintain record of certification-related documentation. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN   ***If a 22-SPGP does not apply****,* submit to applicable DEQ regional office:   1. Copy of Corps’ NWP verification in any instance where one is issued to the applicant by the Corps 2. Delineation *if one was generated* for the project, regardless of PCN requirements | If the proposed activities qualify for a 22-SPGP, DEQ provides the SPGP verification. A VWP individual permit or general permit coverage must be issued in order for a 22-SPGP verification to be issued.  ***If a 22-SPGP does not apply***, another action from the Corps may be required.  *When no SPGP or NWP decision applies, DEQ reviews application and makes a decision – see note at beginning of table.* |
| 14 | These WQC Limits are only used***if a 22-SPGP does not apply***to the activities.  If ***any*** of the above limits do not apply to NWP14. | A VWP individual permit or general permit coverage is required in order to use a 22-SPGP.  An individual 401 WQC action from DEQ in cases **where a 22-SPGP does not apply** to the activities. | If a 22-SPGP applies, see current application procedures for the effective 22-SPGPs.  ***If a 22-SPGP does not apply****,*  submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5] 3. Copy of Corps’ NWP verification in any instance where one is issued to the applicant   ***If a 22-SPGP does not apply****,* submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN | DEQ review of the submittals.  If the proposed activities qualify for a 22-SPGP, DEQ provides the SPGP verification. A VWP individual permit or general permit coverage must be issued in order for a 22-SPGP verification to be issued.  *When no SPGP or NWP decision applies, DEQ reviews application and makes a decision – see note at beginning of table.* |
| 16 Return Water From Upland Contained Disposal Areas | Project meets ***all*** of these limits:   * VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). * Return flow discharges from dredge disposal sites shall not occur where prohibited by state law or without applicable authorization from the Department of Environmental Quality. | Corps: NWP Verification when required, or other federal authorization | Submit through VMRC (preferred), or to the Corps AND applicable DEQ regional office (optional):   1. PCN and delineation, when required. If PCN is not required, maintain record of certification-related documentation. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN   Submit to applicable DEQ regional office:   1. Copy of Corps’ NWP verification in any instance where one is issued to the applicant by the Corps 2. Delineation *if one was generated* for the project, regardless of PCN requirements | An action from the Corps when required.  No action by DEQ\*.  *\*When no SPGP or NWP decision applies, DEQ reviews application and makes a decision – see note at beginning of table.* |
| 16 | If ***any*** of the above limits do not apply. | Corps: NWP Verification when required, or other federal authorization  DEQ: An individual 401 WQC action | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5] 3. Copy of Corps’ NWP verification in any instance where one is issued to the applicant   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 18 Minor Discharges | Project meets ***all*** of these limits:   * VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). * Discharges shall comply with Virginia Department of Environmental Quality law and regulations for discharge of sewage and other wastes from boats, if applicable. | Corps: NWP Verification when required, or other federal authorization | Submit through VMRC (preferred), or to the Corps AND applicable DEQ regional office (optional):   1. PCN and delineation, when required. If PCN is not required, maintain record of certification-related documentation. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN   Submit to applicable DEQ regional office:   1. Copy of Corps’ NWP verification in any instance where one is issued to the applicant by the Corps 2. Delineation *if one was generated* for the project, regardless of PCN requirements | An action from the Corps when required.  No action by DEQ\*.  *\*When no SPGP or NWP decision applies, DEQ reviews application and makes a decision – see note at beginning of table.* |
| 18 | If ***any*** of the above limits do not apply. | Corps: NWP Verification when required, or other federal authorization  DEQ: An individual 401 WQC action | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5] 3. Copy of Corps’ NWP verification in any instance where one is issued to the applicant   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 22 Removal of Vessels | Project meets ***all*** of these limits:   * VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). * Discharges shall comply with Virginia Department of Environmental Quality law and regulations for discharge of sewage and other wastes from boats, if applicable. | Corps: NWP Verification when required, or other federal authorization | Submit through VMRC (preferred), or to the Corps AND applicable DEQ regional office (optional):   1. PCN and delineation, when required. If PCN is not required, maintain record of certification-related documentation. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN   Submit to applicable DEQ regional office:   1. Copy of Corps’ NWP verification in any instance where one is issued to the applicant by the Corps 2. Delineation *if one was generated* for the project, regardless of PCN requirements | An action from the Corps when required.  No action by DEQ\*.  *\*When no SPGP or NWP decision applies, DEQ reviews application and makes a decision – see note at beginning of table.* |
| 22 | If ***any*** of the above limits do not apply. | Corps: NWP Verification when required, or other federal authorization  DEQ: An individual 401 WQC action | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5] 3. Copy of Corps’ NWP verification in any instance where one is issued to the applicant   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities | Project meets ***all*** of these limits:   * VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). * When authorizing 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. * Natural stream channel design methods shall be used for stream restoration projects. * Performance monitoring conditions a through c shall be conducted for projects. | Corps: NWP Verification when required, or other federal authorization | Submit through VMRC (preferred), or to the Corps AND applicable DEQ regional office (optional):   1. PCN and delineation, when required. If PCN is not required, maintain record of certification-related documentation. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN   Submit to applicable DEQ regional office:   1. Copy of Corps’ NWP verification in any instance where one is issued to the applicant by the Corps 2. Delineation *if one was generated* for the project, regardless of PCN requirements | An action from the Corps when required.  No action by DEQ\*.  *\*When no SPGP or NWP decision applies, DEQ reviews application and makes a decision – see note at beginning of table.* |
| 27 | If ***any*** of the above limits do not apply. | Corps: NWP Verification when required, or other federal authorization  DEQ: An individual 401 WQC action | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5] 3. Copy of Corps’ NWP verification in any instance where one is issued to the applicant   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 33 Temporary Construction, Access, and Dewatering | Project meets ***all*** of these limits:   * VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). * Activities that involve emergency reconstruction shall occur as soon as practicable after damage occurs or is discovered. * Discharges shall not increase the capacity of an impoundment or reduce instream flows. | Corps: NWP Verification when required, or other federal authorization | Submit through VMRC (preferred), or to the Corps AND applicable DEQ regional office (optional):   1. PCN and delineation, when required. If PCN is not required, maintain record of certification-related documentation. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN   Submit to applicable DEQ regional office:   1. Copy of Corps’ NWP verification in any instance where one is issued to the applicant by the Corps 2. Delineation *if one was generated* for the project, regardless of PCN requirements | An action from the Corps when required.  No action by DEQ\*.  *\*When no SPGP or NWP decision applies, DEQ reviews application and makes a decision – see note at beginning of table.* |
| 33 | If ***any*** of the above limits do not apply. | Corps: NWP Verification when required, or other federal authorization  DEQ: An individual 401 WQC action | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5] 3. Copy of Corps’ NWP verification in any instance where one is issued to the applicant   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 36 Boat Ramps | Project meets ***all*** of these limits:   * VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). * 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. * 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. | Corps: NWP Verification when required, or other federal authorization | Submit through VMRC (preferred), or to the Corps AND applicable DEQ regional office (optional):   1. PCN and delineation, when required. If PCN is not required, maintain record of certification-related documentation. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN   Submit to applicable DEQ regional office:   1. Copy of Corps’ NWP verification in any instance where one is issued to the applicant by the Corps 2. Delineation *if one was generated* for the project, regardless of PCN requirements | An action from Corps when required.  No action by DEQ\*.  \**When no SPGP or NWP decision applies, DEQ reviews application and makes a decision – see note at beginning of table.* |
| 36 | If ***any*** of the above limits do not apply. | Corps: NWP Verification when required, or other federal authorization  DEQ: An individual 401 WQC action | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5] 3. Copy of Corps’ NWP verification in any instance where one is issued to the applicant   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 59 Water Reclamation and Reuse Facilities | Project meets ***all*** of these limits:   * VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). * Construction or expansion activities 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 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**.** * Activities that involve emergency reconstruction shall occur as soon as practicable after damage occurs or is discovered. * Discharges shall not increase the capacity of an impoundment or reduce instream flows. | Corps: NWP Verification when required, or other federal authorization | Submit through VMRC (preferred), or to the Corps AND applicable DEQ regional office (optional):   1. PCN and delineation, when required. If PCN is not required, maintain record of certification-related documentation. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN   Submit to applicable DEQ regional office:   1. Copy of Corps’ NWP verification in any instance where one is issued to the applicant by the Corps 2. Delineation *if one was generated* for the project, regardless of PCN requirements | An action from the Corps when required.  No action by DEQ\*.  *\*When no SPGP or NWP decision applies, DEQ reviews application and makes a decision – see note at beginning of table.* |
| 59 | If ***any*** of the above limits do not apply. | Corps: NWP Verification when required, or other federal authorization  DEQ: An individual 401 WQC action | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5] 3. Copy of Corps’ NWP verification in any instance where one is issued to the applicant   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 4 Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities5 Scientific Measurement Devices6 Survey Activities7 Outfall Structures and Associated Intake Structures8 Oil and Gas Structures on the Outer Continental Shelf11 Temporary Recreational Structures | Project meets ***all*** of these limits:   * VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). | Corps: NWP Verification when required, or other federal authorization | Submit through VMRC (preferred), or to the Corps AND applicable DEQ regional office (optional):   1. PCN and delineation, when required. If PCN is not required, maintain record of certification-related documentation. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN   Submit to applicable DEQ regional office:   1. Copy of Corps’ NWP verification in any instance where one is issued to the applicant by the Corps 2. Delineation *if one was generated* for the project, regardless of PCN requirements | An action from the Corps when required.  No action by DEQ\*.  *\*When no SPGP or NWP decision applies, DEQ reviews application and makes a decision – see note at beginning of table.* |
| 4, 5, 6, 7, 8, 11 | If the project does not meet ***any*** of VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). | Corps: NWP Verification when required, or other federal authorization  DEQ: An individual 401 WQC action | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5] 3. Copy of Corps’ NWP verification in any instance where one is issued to the applicant   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 15 U.S. Coast Guard Approved Bridges19 Minor Dredging20 Response Operations for Oil or Hazardous Substances23 Approved Categorical Exclusions25 Structural Discharges28 Modifications of Existing Marinas30 Moist Soil Management for Wildlife31 Maintenance of Existing Flood Control Facilities 34 Cranberry Production Activities 35 Maintenance Dredging of Existing Basins | Project meets ***all*** of these limits:   * VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). | Corps: NWP Verification when required, or other federal authorization | Submit through VMRC (preferred), or to the Corps AND applicable DEQ regional office (optional):   1. PCN and delineation, when required. If PCN is not required, maintain record of certification-related documentation. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN   Submit to applicable DEQ regional office:   1. Copy of Corps’ NWP verification in any instance where one is issued to the applicant by the Corps 2. Delineation *if one was generated* for the project, regardless of PCN requirements | An action from the Corps when required.  No action by DEQ\*.  *\*When no SPGP or NWP decision applies, DEQ reviews application and makes a decision – see note at beginning of table.* |
| 15, 19, 20, 23, 25, 28, 30, 31, 34, 35 | If the project does not meet ***any*** of VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). | Corps: NWP Verification when required, or other federal authorization  DEQ: An individual 401 WQC action | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5] 3. Copy of Corps’ NWP verification in any instance where one is issued to the applicant   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 37 Emergency Watershed Protection and Rehabilitation38 Cleanup of Hazardous and Toxic Waste41 Reshaping Existing Drainage Ditches45 Repair of Uplands Damaged by Discrete Events46 Discharges in Ditches49 Coal Remining Activities53 Removal of Low-Head Dams54 Living Shorelines | Project meets ***all*** of these limits:   * VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). | Corps: NWP Verification when required, or other federal authorization | Submit through VMRC (preferred), or to the Corps AND applicable DEQ regional office (optional):   1. PCN and delineation, when required. If PCN is not required, maintain record of certification-related documentation. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN   Submit to applicable DEQ regional office:   1. Copy of Corps’ NWP verification in any instance where one is issued to the applicant by the Corps 2. Delineation *if one was generated* for the project, regardless of PCN requirements | An action from the Corps when required.  No action by DEQ\*.  *\*When no SPGP or NWP decision applies, DEQ reviews application and makes a decision – see note at beginning of table.* |
| 37, 38, 41, 45, 46, 49, 53, 54 | If the project does not meet **any** of VADEQ’s WQC Conditions 1-12 (attached as Appendix A to Corps-Norfolk Regional Conditions). | Corps: NWP Verification when required, or other federal authorization  DEQ: An individual 401 WQC action | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5] 3. Copy of Corps’ NWP verification in any instance where one is issued to the applicant   Submit through VMRC:   1. PCN and delineation, when required. If not sure about need for a VWP individual permit or general permit coverage, submit a JPA which can also serve as the PCN when required. 2. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN | DEQ review of the submittals.  DEQ may take any of the following actions:   * Process as general permit coverage * Process as individual permit * Waive the requirement for a VWP permit action [9VAC25-210-220] * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP individual permit or general permit coverage [9VAC25-210-60] * Provide a No Permit Required Letter for activities that do not impact surface waters |
| 1 Aids to Navigation2 Structures in Artificial Canals9 Structures in Fleeting and Anchorage Areas10 Mooring Buoys24 Indian Tribe or State Administered Section 404 Programs32 Completed Enforcement Actions | None - Waived | Corps: NWP Verification when required, or other federal authorization | Submit through VMRC (preferred) or to the Corps directly for Corps use only:   1. PCN and delineation, when required 2. (optional but preferred) 401 compliance worksheet for *2022 NWPs* that require a PCN | An action from the Corps when required.  *Regardless of NWP decision,* no action by DEQ unless a compliance and/or enforcement action is necessary. |
| 17 Hydropower Projects | None - Denied | Corps: NWP Verification when required, or other federal authorization  DEQ: VWP Individual Permit | Submit to applicable DEQ regional office:   1. Individual § 401 WQC Pre-filing Meeting Request (Copy Corps) [40 CFR § 121.4] 2. (No sooner than 30 days from requesting the pre-filing meeting) Individual § 401 WQC Request (Copy Corps) [40 CFR § 121.5]   Submit through VMRC:   1. PCN and delineation, when required (preferred by Corps, for Corps use) 2. JPA, including all informational requirements for a complete application, unless certain the project does not require a VWP individual permit [9VAC25-210-60; 9VAC25-210-80; 9VAC25-210-310; 9VAC25-210-320; 9VAC25-210-330; 9VAC25-210-340; 9VAC25-210-360] 3. 401 compliance worksheet or written attestation statement for *2022 NWPs* that require a PCN | An action from the Corps when required.  DEQ review of the submittals.  DEQ may take any of the following actions:   * Process an individual permit * Waive the requirement for a VWP permit action * Provide a No Permit Required Letter for activities that are excluded from the need for a VWP Permit in accordance with 9VAC-210-60 and/or 9VAC25-210-310 |

*This is an abbreviated version / excerpt of Appendix A from the February 11, 2022 Corps’ Federal Register Notice – it is intended for ease of reference only.*

# **APPENDIX A - Norfolk District Final Regional Conditions**

**2021 Nationwide Permits (NWPs) Applicable in Virginia (Including Northern Virginia Military Installations within Baltimore District’s Area of Responsibility)**

**Section 401 Water Quality Certification Conditions (1-12)**

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.
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.
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.
4. 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.
5. 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.
6. 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.

1. 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.
2. 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.
3. 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.
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/invsppdflist. 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.
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).
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.

* 1. Stream bed or stream channel impacts shall be determined by utilizing a stream impact assessment methodology acceptable to the Department of Environmental Quality.
  2. 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.
  3. 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.

1. 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.
2. When required, any pre-construction notification (PCN) materials or information shall be concurrently submitted to DEQ and the Corps.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. Temporary disturbances to surface waters during construction shall be avoided and minimized to the maximum extent practicable.
9. 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.
10. 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.
11. 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.
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.
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.

1. DEQ requires submittal of the JPA (or DEQ-approved application form) when a VWP individual permit or general permit coverage is required – in some cases this cannot be determined until a review of the project is made. [↑](#footnote-ref-1)
2. Starting April 6, 2022 (order by the U.S. Supreme Court), the CWA section 401 certification process is once again governed by the CWA section 401 certification regulations EPA promulgated in 2020, codified at 40 CFR 121 (Federal Register Vol.85, No. 134, July 13, 2020). Note: a [new Section 401 rule](https://www.epa.gov/cwa-401) will become effective November 27, 2023. [↑](#footnote-ref-2)
3. For “cumulatively”: As in permanent, per single and complete project. [↑](#footnote-ref-3)
4. Starting April 6, 2022 (order by the U.S. Supreme Court), the CWA section 401 certification process is once again governed by the CWA section 401 certification regulations EPA promulgated in 2020, codified at 40 CFR 121 (Federal Register Vol.85, No. 134, July 13, 2020). [↑](#footnote-ref-4)
5. For “cumulatively”: As in permanent, per single and complete project. [↑](#footnote-ref-5)