

USACE NORFOLK DISTRICT REGULATORY BRANCH

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NATIONWIDE PERMITS

2017 - 40 Remaining NWP's – no change to process

2021 – 12 Re-issued, 4 New Permits

Key Changes to 2021 Permits (for this Presentation):

- **CWA Section 401 Water Quality Certification**
- **CZMA Consistency Concurrence**



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SECTION 401 WATER QUALITY CERTIFICATION 2021 NATIONWIDE PERMITS

Regional Condition 13:

“As a condition of the Virginia Department of Environmental Quality’s (VADEQ) 401 Water Quality Certification for NWP’s 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, and 58, applicants are required to obtain either a Virginia Water Protection (VWP) permit, an individual Section 401 Water Quality Certification or waiver from the Virginia Department of Environmental Quality (VADEQ).”

NWP-Specific Conditions:

NWP 12

NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, 52

- thresholds for qualifying for General 401 Certification



GENERAL WQC FOR 2021 NATIONWIDE PERMITS

2021 NWP's – except NWP 12

- 1) If your project complies with RC 13
(VWP or waiver)

AND,

- 2) Does not exceed any NWP-specific 401 threshold,

Your project complies with the
GENERAL WQC.



GENERAL WQC FOR 2021 NATIONWIDE PERMITS

NWP 12

1) If you are NOT applying for a FERC license for a >36" diameter natural gas transmission pipeline (NWP specific condition 10.a.)

AND

2) you comply with NWP specific condition 10.b. (obtain VWP or waiver)

Your project complies with the
GENERAL WQC.



GENERAL WQC PROCESS

USACE working with DEQ to develop efficiencies

USACE will inform applicants – via a Provisional Notification letter – that it cannot verify the use of a 2021 NWP prior to receiving assurance from the applicant that their project complies with General Certification requirement (VWP or Waiver) or obtains an Individual WQC.



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INDIVIDUAL 401 WQC

Individual WQC Process - when does this apply?

USACE Individual Permits

AND

2021 NWP's exceeding permit-specific 401 thresholds

**Required even if project is a Section 10-only activity

Must adhere to the 2020 Section 401 Regulation



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INDIVIDUAL WQC PROCESS

Step 1 – Pre-Filing Meeting (PFM) Request from Applicant to DEQ

- Required elements to request (see following 2 slides)
- 30 calendar days must elapse before an applicant can request 401 WQC from the DEQ.
- Recommend that applicant cc USACE.
- Can be submitted as part of the JPA; however, the 30 days must elapse before the applicant officially submits to the DEQ for 401 WQC.
- Even if Certifying Authority (DEQ) declines PFM, applicant must wait 30 days before applying for 401 WQC.

SAMPLE

401 WATER QUALITY CERTIFICATION PRE-FILING MEETING REQUEST

DATE OF SUBMITTAL: *(Month, Day, Year)*

TO: Virginia Department of Environmental Quality

(check one)

<input type="checkbox"/>	Central Office
<input type="checkbox"/>	Tidewater Regional Office
<input type="checkbox"/>	Piedmont Regional Office
<input type="checkbox"/>	Northern Regional Office
<input type="checkbox"/>	Valley Regional Office
<input type="checkbox"/>	Blue Ridge Regional Office
<input type="checkbox"/>	Southwest Regional Office

CC: U.S. Army Corps of Engineers, Norfolk District)

(check one)

<input type="checkbox"/>	Eastern Virginia Regulatory Section
<input type="checkbox"/>	Northern Virginia Regulatory Section
<input type="checkbox"/>	Southern Virginia Regulatory Section
<input type="checkbox"/>	Special Projects Section
<input type="checkbox"/>	Western Virginia Regulatory Section

PROJECT PROPONENT:

Name (if Business, include POC)	
Address	
Telephone Number	
E-mail Address	

AGENT/CONSULTANT FOR PROPONENT (if applicable)

Name (if Business, include POC)	
Address	
Telephone Number	
E-mail Address	



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SAMPLE

Pursuant to 40 CFR 121.4, I name of proponent or agent am requesting a Pre-filing Meeting with the VADEQ, the 401 Water Quality Certifying Authority, to discuss the proposed name of project, located in name of county/city, Virginia.

Provided below is a brief summary of the nature of the proposed project and any potential water quality effects:

List of authorizations required (Federal, Tribal, State, etc.)

Anticipated Timeline for construction and operation:



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INDIVIDUAL WQC PROCESS

Step 2 – 401 WQC Request from Applicant to DEQ

- Required elements to request (see following 3 slides)
- Applicant must provide documentation that 30 calendar days has elapsed since the PFM request.
- Can be submitted as part of the JPA.
- USACE must be copied on WQC request.
- Within 15 days of receipt, USACE will establish and notify DEQ of the Reasonable Period of Time (RPOT) with cc to Applicant



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SAMPLE

401 WATER QUALITY CERTIFICATION REQUEST

(THIS MAY BE USED IN CONJUNCTION WITH THE JOINT PERMIT APPLICATION)

DATE OF SUBMITTAL: (Month, Day, Year)

TO: Virginia Department of Environmental Quality

(check one)

<input type="checkbox"/>	Central Office
<input type="checkbox"/>	Tidewater Regional Office
<input type="checkbox"/>	Piedmont Regional Office
<input type="checkbox"/>	Northern Regional Office
<input type="checkbox"/>	Valley Regional Office
<input type="checkbox"/>	Blue Ridge Regional Office
<input type="checkbox"/>	Southwest Regional Office

CC: U.S. Army Corps of Engineers, Norfolk District)

(check one)

<input type="checkbox"/>	Eastern Virginia Regulatory Section
<input type="checkbox"/>	Northern Virginia Regulatory Section
<input type="checkbox"/>	Southern Virginia Regulatory Section
<input type="checkbox"/>	Special Projects Section
<input type="checkbox"/>	Western Virginia Regulatory Section

PROJECT PROPONENT:

Name (if Business, include POC)	
Address	
Telephone Number	
E-mail Address	

AGENT/CONSULTANT FOR PROPONENT (if applicable)

Name (if Business, include POC)	
Address	
Telephone Number	
E-mail Address	



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SAMPLE

APPLICABLE USACE PERMIT(S):

(Check all that apply)

<input type="checkbox"/>	Section 404 Permit
<input type="checkbox"/>	Section 10 Permit

LOCATION OF POTENTIAL DISCHARGE:

NATURE OF POTENTIAL DISCHARGE (e.g. volume, extent, type):

LOCATION OF RECEIVING WATERS:

DESCRIPTION OF ANY PROPOSED METHODS AND MEANS TO MONITOR DISCHARGE AND ANY PLANNED EQUIPMENT OR MEASURES TO TREAT, CONTROL OR MANAGE THE DISCHARGE:

LIST OF ALL OTHER FEDERAL, INTERSTATE, TRIBAL, STATE, TERRITORIAL OR LOCAL AGENCY AUTHORIZATIONS REQUIRED, INCLUDING ANY APPROVALS OR DENIALS ALREADY RECEIVED:



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SAMPLE

PRE-FILING MEETING REQUEST DATE: _____ (DATE) _____

(PLEASE INCLUDE DOCUMENTATION THAT REQUEST WAS SUBMITTED TO VADEQ AT LEAST 30 DAYS PRIOR TO THE DATE OF THIS REQUEST)

“The project proponent hereby certifies that all information contained herein is true, accurate, and complete to the best of my knowledge and belief.”

“The project proponent hereby requests that the certifying authority review and take action on this CWA 401 certification request within the applicable reasonable period of time.”

Signature of Project Proponent



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INDIVIDUAL WQC PROCESS

Step 3 – Certifying Authority (DEQ) Review and Process

- Within RPOT, DEQ can grant, grant with conditions, deny or expressly waive the 401 WQC.
- If Certifying Authority does not act within RPOT, the USACE presumes waiver of the 401.



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INDIVIDUAL WQC PROCESS

Step 4 – USACE Review and Process

- If WQC is GRANTED (with or without conditions), the USACE shall, within 5 calendar days of receipt of the WQC (and an application for DA authorization), notify the EPA.
 - The EPA has 30 calendar days to determine if the activity would affect a neighboring jurisdiction.
- If WQC is WAIVED (either expressly or implicitly) the USACE does not notify EPA and can proceed with its permit decision.
- If WQC is DENIED, USACE does not notify EPA and must deny the DA authorization request.



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CZMA REGIONAL CONDITION

14. Federal Consistency under the Coastal Zone Management Act (CZMA)

“As a condition of the VADEQ’s concurrence with the CZMA consistency determination, applicants are required, for **proposed activities located within Virginia’s designated coastal zone**, to access the Virginia Department of Wildlife Resources’ (DWR) Virginia Fish and Wildlife Information Service (VAFWIS) at <https://vafwis.dgif.virginia.gov/fwis/> to determine if a **state-listed species or designated resource is known within 2 miles of the proposed activity** being permitted. Should a state-listed species and/or designated resource be identified within 2 miles of the proposed activity, **the applicant must coordinate with the DWR’s Environmental Services Section (ESS)** by submitting information on permit applications via email to: ESSProjects@dwr.virginia.gov. Applicant shall allow at least 30 days for review and comment by the DWR ESS.”



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CZMA REGIONAL CONDITION

For those projects where RC is applicable:

- USACE cannot verify the use of the 2021 NWP until such time the DWR coordination is complete.
- Without the DWR coordination, the NWP does not have concurrence on the Corps CZMA consistency determination.
- Upon applicant's assurance to USACE that RC 14 is complete, the USACE shall complete its review of the NWP verification request.

USACE EXTRAS...

A VWP permit issued in compliance with RC 13 does NOT become a condition of the USACE's NWP verification.

A VWP permit issued as an Individual 401 WQC* DOES become a condition of the USACE's authorization.

*only those conditions relevant to water quality

USACE obligations for Section 7, Section 106, Section 408 coordination and/or consultations shall proceed regardless of the type or stage of the 401 WQC.



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Q&A TIME...



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