



DEQ Certification – 2022 Nationwide Permits

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41 NWPs (2022) – Some require VDEQ Action per 2020 Water Quality Certification

1. WQC waived	NWPs 1, 2, 9, 10, 24, 32	No VDEQ Action or Individual § 401 Decision Needed
2. WQC denied	NWP 17	VDEQ Action and Individual § 401 Decision Needed
3. WQC Condition #13 (Appendix A 1-12 in NWP Regional Conditions)	NWPs 4, 5, 6, 7, 8, 11, 15, 19, 20, 23, 25, 28, 30, 31, 34, 35, 37, 38, 41, 45, 46, 49, 53, 54	No VDEQ Action or Individual § 401 Decision Needed (when applicant can self-certify)
4. WQC Condition #13 (App A 1-12 in NWP Reg Conds) <u>and</u> NWP-specific WQC conditions	NWPs 3, 13, 14, 16, 18, 22, 27, 33, 36, 59	<p>No VDEQ Action or Individual § 401 Decision Needed (when applicant self-certifies are meeting/will meet <i>all</i> conditions)</p> <p>VDEQ Action and Individual § 401 Decision Needed (when applicant cannot self-certify <i>any</i> of these conditions)</p>

WQC Conditions

- For groups 3 and 4, Regional Condition #13 applies:

Summarized:

... As a condition of the General Certifications, applicants are required to satisfy one of the following:

a. Comply with VADEQ's WQC Conditions 1-12 (Appendix A), PLUS if applicable, any NWP-specific WQC conditions

OR

b. Obtain one of the following from the VADEQ: a Virginia Water Protection (VWP) permit, an Individual Section 401 Water Quality Certification, or a waiver from the DEQ-VWP Permit Program

General certification: a. Self-certification Process – No DEQ Action



- Review Appendix A (1-12) in Corps-Norfolk District Regional Conditions

<https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll7/id/19963>

- Review NWP-specific conditions in Regional Conditions
- Complete the 401 Compliance Worksheet, or provide written attestation statement

<https://www.deq.virginia.gov/permits-regulations/laws-regulations/water>

CWA 401 Compliance Worksheet – 2022 NWP



Nationwide Permits (NWP) Effective February 25, 2022
Clean Water Act (CWA) Section 401 Certification Compliance
(INITIAL ALL THAT APPLY)

_____ I am applying for written verification from the USACE of one or more of the following Nationwide Permits (NWP): 1, 2, 9, 10, 24, and 32. As the VDEQ waived §401 Water Quality Certification for these NWPs, no further action needed.

_____ I am applying for written verification from the USACE of NWP 17. As the DEQ denied General §401 Certification for this NWP, I understand that I must apply to the VDEQ for an Individual §401 Water Quality Certification decision.

_____ I am applying for written verification of one or more of the following NWPs: 4, 5, 6, 7, 8, 11, 15, 19, 20, 23, 25, 28, 30, 31, 34, 35, 37, 38, 41, 45, 46, 49, 53, and 54. PLEASE SELECT ONE OF THE FOLLOWING.

_____ I attest that my project complies/will comply with all of the VDEQ's General §401 Water Quality Certification Conditions (A.1-A.12) listed in Appendix A.

OR

_____ I am applying to the VDEQ for a VWP Permit or Coverage decision and/or an Individual §401 Water Quality Certification decision.

_____ I am applying for written verification of one or more of the following NWPs: 3, 13, 14, 16, 18, 22, 27, 33, 36, 59. PLEASE SELECT ONE OF THE FOLLOWING.

_____ I attest that my project complies/will comply with all of the NWP-specific, General §401 Water Quality Certification Conditions (A.1-A.12 listed in Appendix A.), and impact thresholds.

OR

_____ I am applying to the VDEQ for a VWP Permit or Coverage decision and/or an Individual §401 Water Quality Certification decision.

Applicant/Agent Signature and Date

Project Name

_____ I am applying for written verification of one or more of the following NWPs: 4, 5, 6, 7, 8, 11, 15, 19, 20, 23, 25, 28, 30, 31, 34, 35, 37, 38, 41, 45, 46, 49, 53, and 54. PLEASE SELECT ONE OF THE FOLLOWING.

_____ I attest that my project complies/will comply with all of the VDEQ's General §401 Water Quality Certification Conditions (A.1-A.12) listed in Appendix A.

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_____ I am applying to the VDEQ for a VWP Permit or Coverage decision and/or an Individual §401 Water Quality Certification decision.

_____ I am applying for written verification of one or more of the following NWPs: 3, 13, 14, 16, 18, 22, 27, 33, 36, 59. PLEASE SELECT ONE OF THE FOLLOWING.

_____ I attest that my project complies/will comply with all of the NWP-specific, General §401 Water Quality Certification Conditions (A.1-A.12 listed in Appendix A.), and impact thresholds.

OR

_____ I am applying to the VDEQ for a VWP Permit or Coverage decision and/or an Individual §401 Water Quality Certification decision.

General certification: b. DEQ Action

1. No Permit Required Decision – serves as waiver of individual 401 WQC

When activities are not regulated by DEQ

- Example: Overhead Utility Line Crossing of a Section 10 Water

When permitting exclusions apply (9VAC25-210-60)

Examples:

- Projects Permitted By Other DEQ Discharge Permits (9VAC25-210-60 2 and 7)
- Certain Virginia Marine Resources (9VAC25-210-60 3 and VA Code § 62.1-44.15:21 G)
- Normal Residential Gardening and Landscaping (9VAC25-210-60 4)
- Maintenance of Currently Serviceable Structures (9VAC25-210-60 5)
- Activities in Open Water with No Detrimental Effect (9VAC25-210-60 6)
- Agriculture and Silviculture Activities (9VAC25-210-60 8, 10, and 11 / 9VAC25-310)
- Impacts to Certain Stormwater Management Facilities on Dry Land (9VAC25-210-60 12)

For Compliance: b. DEQ Action

When a DEQ waiver of a VWP permit applies (9VAC25-210-220)

- Isolated Wetlands of Minimal Ecological Value (IWOMEV) (9VAC25-210-220)
- Activities regulated by VMRC and USACE (9VAC25-210-220 B)

2. DEQ VWP Permit – serves as a grant of individual WQC with conditions

- Coverage under General Permits (9VAC25-660/-670/-680/-690)
 - WP1 ~ Impacts Less Than One-Half of an Acre
 - WP2 ~ Utility Line Activities
 - WP3 ~ Linear Transportation Projects
 - WP4 ~ Development and Certain Mining Activities
- Individual Permit

General Application/Notification Process

Submit following to VA Marine Resources Commission (VMRC):

1. PCN (when required) – *preferred* submittal process by USACE
2. JPA (required by DEQ regulation *when a VWP individual permit or general permit coverage is required*; when in doubt, submit)
<https://www.nao.usace.army.mil/Missions/Regulatory/JPA.aspx>
3. While not technically required for non-PCN projects, good practice to provide/retain:
 - 401 Compliance Worksheet – preferred – whether or not self-certifying
 - OR
 - a written and signed statement that project complies/will comply with all 2022 NWP Regional Conditions – when self-certifying

References

- VA Administrative Code (9VAC25 Chs 210, 660, 670, 680, 690)
- State Water Control Law (§ 62.1-44.2 *et seq.*)
- DEQ website
<https://www.deq.virginia.gov/permits-regulations/laws-regulations/water>
<https://www.deq.virginia.gov/water/wetlands-streams>
- Corps-Norfolk District website
<https://www.nao.usace.army.mil/Missions/Regulatory/>
- Regional Conditions for 2022 NWP's
<https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll7/id/19963>