



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

October 3, 2023

VIA [POSTAL AND/OR ELECTRONIC] MAIL

Brian P. Hallberg, PMP
Colonel, United States Army Commanding
U.S. Army Corps of Engineers
Norfolk District
Fort Norfolk
803 Front Street
Norfolk, Virginia 23510-1011
brian.p.hallberg@usace.army.mil

Subject: Section 401 Water Quality Certification of Regional Permit 24-RP-11 for Certain Virginia Department of Transportation Roadway and Railway Projects

Dear Colonel Hallberg,

Attached herein is the Virginia Department of Environmental Quality's (DEQ) conditional Section 401 Water Quality Certification (§ 401 WQC) decision with regard to the United States Army Corps of Engineers' (USACE) proposed 2024 Regional Permit 11 (24-RP-11) for Certain Virginia Department of Transportation Roadway and Railway Projects, as public noticed by the USACE on August 21, 2023.


The DEQ supports reducing duplication of effort by government regulatory agencies to the maximum extent possible while safeguarding Virginia's environment. DEQ offers the attached § 401 WQC pursuant to 40 C.F.R. § 121 *et seq.*, after having (i) examined the proposed 24-RP-11 and other documents provided by the USACE 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 the certification decision. No public comments were received.

Please be aware that the final review for consistency with Virginia's Coastal Resources Management Program (VCP) pursuant to the federal Coastal Zone Management Act of 1972, as amended, is pending. A map depicting those localities within the coastal zone can be found at <http://www.deq.virginia.gov/coastal/coastmap.html>. Questions regarding federal consistency with VCP should be directed to Bettina Rayfield at (804) 659-1915 or bettina.rayfield@deq.virginia.gov.

Colonel Brian Hallberg
October 3, 2023
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Please do not hesitate to contact me at (804) 698-4105 or dave.davis@deq.virginia.gov if you have any questions regarding this decision.

Sincerely,



David L. Davis, CPWD, SPWS, VSWD
Manager, Office of Wetlands & Stream
Protection

Attachment: § 401 Water Quality Certification of 24-RP-11

CC: *(via email)*

[Andrew Beaudet](#), Chief, USACE-Norfolk District Regulatory Branch
[Jamie Green](#), Commissioner, Virginia Marine Resources Commission
[Bettina Rayfield](#), DEQ-OEIR
DEQ VWP Regional Managers



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**Section 401 Water Quality Certification of
24-RP-11 for Certain Virginia Department of Transportation Roadway and Railway
Projects**

The Virginia Department of Environmental Quality (DEQ) grants this **conditional** water quality certification (WQC) for the United States Army Corps of Engineers (USACE) 2024 Regional Permit 11 (24-RP-11) authorizing certain Virginia Department of Transportation roadway and railway projects involving work, structures, and filling in waters of the United States (WOTUS), effective by April 2024, pursuant to § 401 of the Clean Water Act of 1977 (33 U.S.C. § 1341); Title 62.1 of the Code of Virginia, including Chapter 3.1 (State Water Control Law); Virginia Administrative Code 9VAC25-210 *et seq.* (Virginia Water Protection Permit Program); and Virginia Administrative Code 9VAC25-260 *et seq.* (Virginia Water Quality Standards).

This WQC applies to any activity or activities (hereafter “activities”) in those waters of the United States and in all state surface waters in Virginia regulated pursuant to the laws and regulations of the Commonwealth.

DEQ finds that there is a reasonable assurance that the discharge from activities authorized by this permit will comply with water quality requirements and will be conducted in a manner which will not violate applicable water quality standards, provided the permittee abides by all conditions and requirements contained in the 24-RP-11 and this WCQ as detailed below:

WQC Condition 1: Application to DEQ shall be required for any proposed project that involves surface water withdrawals (9VAC25-210-300) or activities related to the withdrawal of surface water, including but not limited to all activities related to intakes, reservoirs, diversions, and water supply impoundments or dams, in accordance with Virginia Administrative Code 9VAC25-210 *et seq.* and State Water Control Law. A DEQ VWP decision shall need to have been finalized prior to the project proponent conducting surface water withdrawal activities. If a DEQ VWP general permit coverage or individual permit is issued, it shall be based on all impacts of the proposed activities in or on surface waters, 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.

WQC Condition 2: VDOT shall copy DEQ-Office of Wetland and Stream Protection, Central Office, on all documentation meeting the requirements of Part IV Notification Requirements of the 24-RP-11, including comprehensive and up-to-date documentation on the potential presence of federally-listed and state-listed, threatened or endangered species.

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 *et seq.*; 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.* and 9VAC25-690 *et seq.*, as applicable; 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

Non-compliance with Title 62.1 of the Code of Virginia, including the State Water Control Law, or applicable Virginia Water Protection Permit Program regulations, or otherwise violating Virginia state water quality standards, may result in civil penalties.

DEQ reserves its right to revise this WQC based on any future amendments to state or federal permits, laws, or regulations. DEQ’s WQC neither replaces or supersedes requirements set forth by other local, state, federal, and Tribal laws, nor eliminates the need to obtain additional permits, approvals, consultations, or authorizations as required by law before proposed activities may commence.