



March 17, 2017

By Electronic Mail: steven.hardwick@deq.virginia.gov

Mr. Steven Hardwick
Virginia Department of Environmental Quality
629 East Main Street
P.O. Box 1105
Richmond, VA 23218

**Re: Comments on Section 401 Water Quality Certifications
for Corps' Reissued Nationwide Permits**

Dear Mr. Hardwick:

Thank you for the opportunity to provide comments on the Virginia Department of Environmental Quality's ("DEQ") proposed Clean Water Act § 401 Water Quality Certifications for the Norfolk District of the U.S. Army Corps of Engineers' 2017 Nationwide Permits. These comments are timely filed as provided in the Public Notice issued on February 15, 2017.

Mission H₂O is an informal stakeholder group focused on the management of Virginia's water resources and, in particular, developments affecting water supply and water availability. Water is a critical component of the businesses of our members. We have a broad membership that ranges from municipal water providers to manufacturers to agricultural operations. Our comments are focused on the Section 401 certifications as they may impact intake structures and water withdrawals.

The Nationwide Permits ("NWP") provide general permit coverage for actions impacting wetlands that have been determined to have minimal individual and cumulative adverse environmental effects. Virginia's certification further streamlines the permitting process for such minor activities. Mission H₂O supports such efforts, and endorses the blanket certification concept. Streamlining the permitting process for minor, routine actions with minimal environmental impacts allows the agency to focus its resources on more significant actions and enables such projects to proceed most efficiently.

The reasoning and consequences of the proposed DEQ revisions are not clear to us, particularly the new conditions imposed on NWP 3, as discussed in more detail below. Such unfounded changes can result in far-reaching operational and financial effects for our members. Additionally, nothing in the Virginia Code relating to this topic has changed since DEQ last adopted § 401 Water Quality Certification for activities authorized by the U.S Army Corps of Engineers (USACE) Norfolk District regional Permits in 2011. Additionally, many of the conditions proposed go beyond the scope of the Clean Water Act § 401 and 404 programs, and

are unrelated to potential impacts of the work authorized by the NWP. Therefore, we request that DEQ not make any changes to the conditions associated with the 401 certification for the NWPs, and, with respect to NWP 3, that DEQ **unconditionally** certify the maintenance activities authorized by the USACE.

Mission H₂O members are highly concerned that there are several permits relating to intake structures that DEQ proposes to revise to conditional certification, unnecessarily complicating the current permitting process. NWP 3, relating to maintenance activities, was previously granted unconditional certification by Virginia. For the 2017 reissuance, DEQ's proposal includes several conditions. The first condition requires that any of the "deviations from the original configuration or filled area do not change the character, scope, or size of the original design or DEQ-approved alternative design." NWP 3 is focused on maintenance work defined as the "repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification." Thus, the terms of NWP 3 obviate the need for DEQ's proposed conditions.

The second condition DEQ proposes prohibits use of NWP 3 if the discharge includes changes to water withdrawal structures, such as the maintenance of an intake, weir, or water diversion structure, that could a) increase the withdrawal; b) increase the capacity of an impoundment; or c) alter instream flows. Entities with water withdrawals often have intake structures that periodically require repairs. The conditions proposed by DEQ would inhibit the ability to use NWP 3 because it is unclear the types of changes DEQ believes "could increase the withdrawal." It would be more precise to state that the maintenance work cannot increase the capacity of the intake structure. Even with this revision, the condition is unnecessary given the description of the maintenance work authorized by NWP 3.

The conditions proposed by DEQ appear to relate to the withdrawal itself rather than to the wetland impacts associated with the maintenance work. DEQ has a surface water withdrawal permitting program that should address any changes in the surface water withdrawal. Although DEQ's regulatory program combines wetland permitting, surface water withdrawal permitting and 401 certification under the Virginia Water Protection ("VWP") permitting program, a separate VWP permit would be required for changes to the surface water withdrawal. As noted above, Mission H₂O believes that no conditions are needed for NWP 3. Should DEQ include a condition, it should be limited to a condition that it does not apply where the actions authorized by the NWP would alter instream flows.

The NWP 12: Utility Line Maintenance permit is used routinely by municipal and industrial water users for items such as electric line maintenance that serve their raw water supply pump stations and other water conveyance facilities. The proposed condition to eliminate

activities that are associated with fully authorized surface water withdrawals could unnecessarily limit the use of such critical infrastructure in which Virginia residences and businesses have invested billions of dollars.

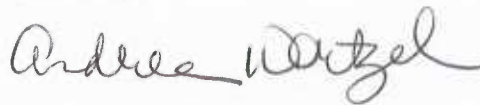
Similar conditions on intake structures and water withdrawals are included on other NWP's. These conditions are largely unnecessary. NWP 23 applies to projects that are categorically excluded, and specifically identifies the projects that are governed by the permit. NWP 23 states that public notice and comment will take place prior to any other project being classified as categorically exempt. Thus, the DEQ conditions imposed on NWP 23 are not needed.

Likewise, DEQ has proposed a condition for NWP 43 that the permit cannot be used for a water withdrawal. NWP 43 relates to work done to construct or repair stormwater management facilities. The Corps notice of the permit explains that one benefit of the permit is that it promotes using green infrastructure in the management of stormwater. Thus, the condition proposed by DEQ is not relevant to this permit.

Including conditions relating to water withdrawals on the NWP's creates confusion, unnecessarily adds risk for community investments, and is counter to the purpose of NWP's. Again, Mission H₂O requests that DEQ remove the conditions relating to maintenance of intake structures and water withdrawals.

Thank you again for the opportunity to provide these comments.

Sincerely,



Andrea W. Wortzel

cc: Mission H₂O Members

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