

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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December 15, 2004

Mr. J. Robert Hume Chief, Regulatory Division U. S. Army Corps of Engineers Norfolk District, Fort Norfolk 803 Front Street Norfolk, Virginia 23510-1096

RE: Change in Section 401 Consistency Determination for Nationwide Permit 21

Dear Mr. Hume:

On March 29, 2002 the State Water Control Board (SWCB) provided §401 Water Quality Certification for all the Nationwide permits, including the NWP 21, as meeting the requirements of the Virginia Water Protection Permit (VWPP) Regulation, which serves as the Commonwealth's §401 Water Quality Certification. The NWP 21 certification was conditioned to apply except for:

- 1. When compensatory mitigation is in the form of the purchase of mitigation bank credits and the bank is not located within the same hydrologic unit or an adjacent hydrologic unit within the same river watershed as the impacted site, as defined by the Hydrologic Unit Map of the United States, 1980.
- 2. When compensatory mitigation involves only the preservation of wetlands and/or wetland or upland vegetated buffers without accompanying creation or restoration of wetlands or the purchase of mitigation bank credits, or does not meet the goal of no net loss of wetland acreage and function.
- 3. For the location of a stormwater management facility in perennial streams or in oxygen- or temperature-impaired waters.
- 4. For impacts to perennial streams in excess of 500 linear feet and for impacts to intermittent streams in excess of 1500 linear feet.

5. For any water withdrawal project.

Based upon the SWCB's experience in implementing these conditions with respect to the NWP 21, we have found that the conditions imposed on this certification have resulted in the need for issuance of individual Virginia Water Protection Permits with little added environmental benefit, as the NWP 21 as well as the Department of Mines, Minerals and Energy (DMME) permit issued under the Virginia Surface Mining Regulations already require avoidance and minimization of impacts and restoration of wetlands and streams after the mining activity is completed.

The SWCB is therefore providing unconditional certification of the NWP 21 as meeting the requirements of the VWPP regulation and the Commonwealth's Section 401 certification. This will eliminate duplicative permitting requirements and still result in the same environmental protections and no net loss of wetland acreage and function for surface coal mining activities covered under the NWP 21 and DMME permits. Pursuant to Virginia Water Protection Permit Regulation 9VAC 25-210-130H, the State Water Control Board is issuing this final §401 Water Quality Certification as meeting the requirements of the VWP regulation after advertising and accepting public comment for 30 days on our intent to provide this certification.

Please ensure that all appropriate staff are notified of this change. We thank you for your continued cooperation in the administration of the Nationwide Permit Program.

Sincerely,

Ellen Gilinsky

Ellen Gilinsky, Ph.D. Director Division of Water Quality