

**Vermont Agency of Natural Resources
Department of Environmental Conservation**

**Water Quality Certification
(P.L. 92-500, Section 401)**

In the Matter of:

**U. S. Army Corps of Engineers
New England District
696 Virginia Road
Concord, MA 01742-2751**

Findings

The Vermont Agency of Natural Resources (Agency) has reviewed the U.S Army Corps of Engineers' August 23, 2022 proposed General Permits for the State of Vermont, contained within NAE-2022-00024, and has made the following findings:

1. On June 28, 2022, the New England District of the U.S. Army Corps of Engineers (USACE) issued public notice of its intent to issue General Permits for the State of Vermont (General Permits).
2. The General Permits are a modification of NAE-2017-02232 issued in 2017. The General Permits are proposed for issuance pursuant to Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act of 1899.
3. Project eligibility under the General Permits falls into two categories: Self-Verification (SV) and Pre-Construction Notification (PCN). Self-Verification includes activities whose water quality impacts (individual and cumulative) will be insignificant when conducted in full compliance with the General Permits and this Water Quality Certification (Certification). For Pre-Construction Notification projects, permittees must submit a PCN to obtain written verification under the General Permits in order to ensure protection of water quality.
4. Pursuant to Section 401 of the federal CWA (33 U.S.C. 1341), and based on the proposed General Permits for the State of Vermont, the Agency is hereby providing a written determination regarding certification of the General Permits (NAE-2022-00024) in response to the USACE's July 7, 2022 pre-filing meeting request and August 8, 2022 certification request.
5. The conditions of the General Permits, the capacity of the USACE to enforce the conditions in the General Permits, and the State's reservation of the authority to enforce the Vermont Water Quality Standards on a case-by-case basis will further assure compliance with the Vermont Water Quality Standards.

Certification

1. The Agency certifies there is a reasonable assurance that activities eligible for coverage under the General Permits will be conducted in a manner which will not cause a violation of the Vermont Water Quality Standards and will be in compliance with 33 U.S.C. §§ 1311, 1312, 1313, 1316, 1317 and 1341 (CWA §§ 301, 302, 303, 306, 307, and 401), and other appropriate requirements of State law, provided the conditions set forth in the General Permits and this Certification are met.
2. In evaluating the USACE's request for certification, the Agency has relied on the August 23, 2022 proposed General Permits. If the final General Permits differ from the proposed General Permits in such a manner to make the Agency unable to certify the final General Permits, the Agency reserves the right to modify and reissue, or deny, this Certification as necessary to assure compliance with the applicable provisions of the CWA (§§ 301, 302, 303, 306, 307 and 401) and with appropriate requirements of State law.
3. Water Quality Certification is granted for SV and PCN activities eligible for the General Permits subject to the following conditions:
 - a. The Agency will notify the USACE when an SV activity may not comply with Vermont Water Quality Standards and the USACE will exercise its discretionary authority to review any project covered under SV when.
 - b. USACE shall notify the Agency of all projects seeking authorization through PCN.
 - c. If the Agency believes that activities eligible for the General Permits warrant additional conditions than provided by the General Permits to assure Vermont Water Quality Standards are met, the Agency may request the USACE include additional conditions in the applicable GP authorizations.
 - d. If the Agency believes that an individual water quality certification is necessary, the Agency may request the USACE use its discretionary authority pursuant to 33 CFR § 325.2(e)(2) which would require the applicant obtain an individual permit and individual water quality certification.
4. Individual Permit Activities: Activities that are not eligible for coverage under the General Permits through Self-Verification (SV) or Pre-Construction Notification (PCN) must obtain an individual water quality certification or waiver of certification from the Agency.
5. This Certification shall be valid until such time as the General Permits are modified, suspended, revoked, or reissued.
6. This Certification is only valid for those activities that fully comply with the terms and conditions of the General Permits and this Certification.
7. The Agency reserves the authority to enforce any violation of the Vermont Water Quality Standards that results from any activity or discharge and to enforce all other State laws applicable to such activities and discharges.

8. An applicant's compliance with the General Permits shall be presumed to be in compliance with this Certification unless the Secretary determines that an individual review of the applicant's activity is necessary to assure compliance with the Vermont Water Quality Standards and other appropriate State laws.
9. The issuance of this Certification does not authorize violation or waive enforcement of any federal, state, or local laws or regulations, nor does it obviate the necessity of obtaining such permits, including any Agency permits or approvals, or permits or approvals from other governmental entities.
10. Authorized Agency representatives, at reasonable times and upon presentation of credentials, may enter upon the site where the activity is taking place for purposes of inspecting and determining compliance with any certification conditions.
11. This Certification shall be considered final action by the Agency. Any appeal of this certification must be filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The notice of appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or the appellant's attorney. In addition, the appeal must give the address or location and description of the property, project, or facility with which the appeal is concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the notice of appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings available at www.vermontjudiciary.org. The address for the Environmental Division is: 32 Cherry Street; 2nd Floor, Suite 303; Burlington, VT 05401 Telephone #: 802-951-1740.

State of Vermont
Agency of Natural Resources

Julia S. Moore, Secretary
Agency of Natural Resources

BY:

Peter LaFlamme, Director
Watershed Management Division