

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

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

Section 401 Water Quality Certification for the 2026 Nationwide Permits

Findings

The Vermont Agency of Natural Resources (Agency) has reviewed the U.S Army Corps of Engineers' (Corps) June 18, 2025 proposed Nationwide Permits (NWP) and the October 28, 2025 proposed New England Regional Conditions (Regional Conditions) and has made the following findings:

1. The Corps submitted a pre-filing request for Section 401 Water Quality Certification for the NWP on April 29, 2025.
2. The Corps requested a Section 401 Water Quality Certification for the NWP on June 18, 2025.
3. On June 18, 2025, the proposed rule for reissuing the NWP was published in the Federal Register at <https://www.federalregister.gov/documents/2025/06/18/2025-11190/proposal-to-reissueand-modify-nationwide-permits>.
4. Pursuant to VWQS § 29A-206(e), the Agency provided public notice of the administratively complete application on June 23, 2025 and the draft decision on November 3, 2025 on the Environmental Notice Bulletin (<https://dec.vermont.gov/permits/environmental-notice-bulletin>). A public meeting was held on November 18, 2025 at 5:00 pm at the Dewey Building Conference Room, 1 National Life Drive, Montpelier, Vermont and online via Microsoft Teams. The public comment period closed December 4, 2025.
5. The NWP 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.
6. NWP 15, 16, 17, 18, 29, 34, 39, 40, 41, 42, 43, 46, and 59 would authorize activities that may result in discharges to Waters of the United States (WOTUS) and therefore 401 water quality certification is required for those NWP.
7. NWP 3, 4, 5, 6, 7, 12, 13, 14, 19, 20, 22, 23, 27, 31, 32, 33, 35, 36, 37, 38, 44, 45, 51, 52, 53, 54, 57, 58, and A would authorize various activities, some that may result in a discharge and require 401 water quality certification, and others which may not.

8. The Corps New England District is not requesting certification of NWP 2, 21, 24, 25, 30, 49, and 50, as the New England District proposes not to implement them.
9. NWPs 8, 48, and 55 authorize activities that do not occur in Vermont therefore certification is unnecessary.
10. NWPs 1, 9, 10, 11, and 28 could not reasonably be expected to result in a discharge into waters of the United States therefore certification is unnecessary.

11. Summary Table

NWP	Activity
1	Aids to Navigation
3	Maintenance
4	Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5	Scientific Measurement Devices
6	Survey Activities
7	Outfall Structures and Associated Intake Structures
8	Oil and Gas Structures on the Outer Continental Shelf
9	Structures in Fleeting and Anchorage Areas
10	Mooring Buoys
11	Temporary Recreation Structures
12	Oil or Natural Gas Pipeline Activities
13	Bank Stabilization
14	Linear Transportation Projects
15	U.S. Coast Guard Approved Bridges
16	Return Water From Upland Contained Disposal Areas
17	Hydropower Projects
18	Minor Discharges
19	Minor Dredging
20	Response for Oil or Hazardous Substances
22	Removal of Vessels
23	Approved Categorical Exclusions
27	Aquatic Habitat Restoration, Enhancement, and Establishment Activities
28	Modifications of Existing Marinas
29	Residential Developments
31	Maintenance of Existing Flood Control Facilities
32	Completed Enforcement Actions

NWP	Activity
33	Temporary Construction, Access, and Dewatering
34	Cranberry Production Activities
35	Maintenance Dredging of Existing Basins
36	Boat Ramps
37	Emergency Watershed Protection and Rehabilitation
38	Cleanup of Hazardous and Toxic Waste
39	Commercial and Institutional Developments
40	Agricultural Activities
41	Reshaping Existing Drainage and Irrigation Ditches
42	Recreational Facilities
43	Stormwater Management Facilities
44	Mining Activities
45	Repair of Uplands Damaged by Discrete Events
46	Discharges in Ditches
48	Commercial Shellfish Mariculture Activities
51	Land-Based Renewable Energy Generation Facilities
52	Water-Based Renewable Energy Generation Pilot Projects
53	Removal of Low-head Dams
54	Living Shorelines
55	Seaweed Mariculture Activities
57	Electric Utility Line and Telecommunications Activities
58	Utility Line Activities for Water and Other Substances
59	Water Reclamation and Reuse Facilities
A	Activities to Improve Passage of Fish and Other Aquatic Organisms

12. Pursuant to Section 401 of the federal CWA (33 U.S.C. § 1341), and based on the proposed NWP and Regional Conditions, the Agency is hereby providing a written determination regarding certification of the NWP and Regional Conditions in response to the Corps' June 18, 2025 request for Section 401 Water Quality Certification.

Certification and Conditions

1. The Agency certifies that there is reasonable assurance that activities eligible for authorization under the NWP will not cause a violation of the 2022 Vermont Water Quality Standards (Environmental Protection Rule, Chapter 29A) (VWQS), and will comply with all applicable requirements of State law and with 33 U.S.C. §§ 1311, 1312, 1313, 1316, 1317 and 1341 (CWA §§ 301, 302, 303, 306, 307, and 401), provided that all conditions of this Certification, the NWP, and the Regional Conditions are met.
2. In evaluating the Corps' request for certification, the Agency relied on the proposed NWP dated June 18, 2025 and the proposed New England Regional Conditions dated October 28, 2025. If the final NWP or Regional Conditions materially differ from those proposed such that the Agency cannot provide reasonable assurance of compliance with the VWQS, 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. All activities that are not eligible for coverage under the NWP must obtain an individual water quality certification or waiver of certification from the Agency.
4. This Certification is only valid for those activities that fully comply with the terms and conditions of the NWP, the Regional Conditions, and this Certification. Any activities that do not meet the conditions of the NWP, the Regional Conditions, and the Conditions of this Water Quality Certification require an individual Water Quality Certification and are not authorized under this Certification.
5. The Agency may modify the conditions of this Certification when necessary to ensure compliance with the VWQS and to respond to any changes in the classification or management objectives for the affected waters. Any such modification is limited to those parts of this Certification, such as conditions or other enforceable requirements, that the U.S. Army Corps of Engineers has agreed in writing may be modified. Any modification to this Certification shall comply with the procedural requirements of VWQS § 29A-206 (e).
6. This Certification does not authorize activities in a Class I wetland or Class I wetland buffer, as defined under the Vermont Wetland Rules (Environmental Protection Rule, Chapter 30) and adopted pursuant to 10 V.S.A. § 905b(18).

7. This Certification does not authorize the "taking" of plants or animals listed as Threatened or Endangered in Vermont pursuant to 10 V.S.A. § 5408 and 10 V.S.A. App. § 10.
8. Earth disturbance at any one time is limited to five acres. "Earth disturbance" means construction activities including clearing, grading, tracking, grubbing, boring, and excavating, but does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
9. All areas of earth disturbance shall be temporarily or permanently stabilized as soon as practicable, but no later than 14 days after the initial disturbance. Thereafter, disturbed areas must remain stabilized in advance of any runoff producing event. For the purposes of this condition, a "runoff producing event" means any precipitation event that produces runoff from the construction site. Temporary stabilization is not required when: (a) no precipitation is forecast and work is to continue in the next 24 hours; or (b) the disturbance occurs within a self-contained excavation (i.e., no outlet) with a depth of at least two feet (e.g., utility or infrastructure trenches). This exemption applies only to the excavation area itself and does not apply to areas of a construction site that drain to sediment basins.
10. Areas of earth disturbance that are to be stabilized with rolled erosion control product (RECP) installations shall only include woven and interlinked products for use in temporary RECP applications (e.g., jute netted products). RECP product installations have the potential to ensnare animals, such as snakes and birds, which can lead to injury or fatality. This has been observed to be most problematic in products with welded joints in the supporting mesh, including products with plastic mesh, whether or not these products are bio-degradable or photo-degradable.
11. Site inspections on active construction sites shall be conducted daily during the period from October 15 through April 15. Inspections shall be performed by personnel qualified to assess erosion prevention and sediment control measures, and any deficiencies shall be corrected immediately or as soon as practicable to maintain compliance with this Certification and the VWQS.
12. The use of chemical treatments, such as polymers, flocculants, or coagulants, for the settling or removal of sediment from stormwater runoff associated with construction or construction-related activities requires prior written approval from the Vermont Agency of Natural Resources and an Agency-approved site and project-specific plan. In addition, the use of cationic polymers is prohibited unless approved by the Agency under a site and project-specific plan.
13. For activities authorized under NWP 4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities, this Certification does not authorize permanent and temporary fill > 5,000 square feet (SF) in all waterways and/or wetlands.

14. For activities authorized under NWP 5. Scientific Measurement Devices, this Certification does not authorize:
 - a. Permanent and temporary impacts > 1/2 acre in navigable WOTUS; and
 - b. Permanent and temporary impacts > 1 acre in all other WOTUS.
15. For activities authorized under NWP 7. Outfall Structures and Associated Intake Structures, this Certification does not authorize:
 - a. Permanent and temporary impacts \geq 5,000 SF in Lake Champlain, Lake Memphremagog and adjacent wetlands; and
 - b. > 1 acre in all other WOTUS.
16. For activities authorized under NWP 12. Oil and Natural Gas Pipeline Activities, this Certification does not authorize permanent and temporary impacts \geq 5,000 SF in Lake Champlain, Lake Memphremagog and adjacent wetlands.
17. For activities authorized under NWP 14. Linear Transportation Projects, this Certification does not authorize permanent and temporary impacts \geq 5,000 SF in Lake Champlain, Lake Memphremagog, and adjacent wetlands.
18. For activities authorized under NWP 17. Hydropower Projects, this Certification does not authorize:
 - a. Permanent and temporary impacts that are > 1 acre in non-navigable WOTUS;
 - b. > 5,000 SF in navigable WOTUS; and
 - c. > 5,000 SF in wetlands adjacent to Lake Champlain and Lake Memphremagog.
19. For activities authorized under NWP 33. Temporary Construction, Access, and Dewatering, this Certification does not authorize temporary impacts > 1 acre in WOTUS. Construction mats of any area necessary to conduct activities are not included in determining the area of temporary impacts.
20. For activities authorized under NWP 35. Maintenance Dredging of Existing Basins, this Certification does not authorize maintenance dredging \geq 5,000 CY.
21. This Certification shall be valid until such time as the NWPs are modified, suspended, revoked, or reissued.
22. 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.
23. 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.

24. 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.
25. 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:
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