

**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 Department of Environmental Conservation (Department) has reviewed the U.S Army Corps of Engineers' May 31, 2017 proposed General Permit for the State of Vermont and has made the following findings:

1. On May 31, 2017, the New England District of the U.S. Army Corps of Engineers (USACE) issued public notice of its intent to issue Vermont General Permit (General Permit).
2. The General Permit is a modification of General Permit Number NAE-2012-1167 issued in 2012. The General Permit is proposed for issuance pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.
3. Project eligibility under the General Permit falls into two general categories: Self Verification (SV) and Preconstruction Notification (PCN). Self Verification includes activities whose water quality impacts (individual and cumulative) will be insignificant when conducted in full compliance with the General Permit and this water quality certification. For Preconstruction Notification projects permittees must submit a PCN to obtain written verification under the General Permit in order to ensure protection of water quality.
4. Pursuant to Section 401 of the Federal Clean Water Act (33 USC 1341)(CWA), and based on the proposed Vermont General Permit, the Department is hereby providing a written determination regarding certification of the General Permit in response to the USACE's May 31, 2017 request for certification.
5. The conditions of the General Permit, the capacity of the USACE to enforce the conditions in the General Permit 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 Department certifies there is a reasonable assurance that activities eligible for coverage under the General Permit 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 (Clean Water Act §§ 301, 302, 303, 306, 307 and 401), and other appropriate requirements of State law, provided the conditions set forth in the General Permit and this Certification are met.
2. In evaluating the USACE's request for certification, the Department has relied on the May 31, 2017 proposed General Permit. If the final General Permit differs from the proposed General Permit in such a manner to make the Department unable to certify the final General Permit, the Department reserves the right to modify, suspend or revoke 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. Self Verification (SV): certification is granted for Self Verification (SV) activities subject to the following condition:
 - a. The USACE will exercise its discretionary authority to review any project covered under Self Verification when notified by the Department that such project represents a threat to water quality.
 - b. The Department, upon issuing notice to the USACE, may exercise its discretion to require an individual water quality certification.
4. Preconstruction Notification (PCN): provided the Department is notified by the USACE of a project application for a Preconstruction Notification activity, Preconstruction Notification activities are granted certification unless the Department, upon issuing notice to the USACE, exercises its discretion to require an individual water quality certification.
5. Individual Permit Activities: activities that do not qualify for Self Verification (SV) or Preconstruction Notification (PCN) coverage must obtain an individual water quality certification or waiver of certification from the Department.
6. This certification shall be valid until such time as the General Permit is modified, suspended, revoked or reissued. In addition, the Department reserves the right to revoke or modify this certification if the Department finds that the process and conditions of the General Permit do not achieve compliance with the Vermont Water Quality Standards and other applicable provisions of state law.
7. This certification is only valid for those activities that fully comply with the terms and conditions of the General Permit and this certification. The Department 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. 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 Department permits or approvals, or permits or approvals from other governmental entities.

9. The Department reserves the authority to reopen and alter or amend this certification if such action is necessary to assure compliance with the Vermont Water Quality Standards and to respond to any changes in water classification or management objectives for affected waters.
10. Authorized Department 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 Department appealable to the Vermont Environmental Court in accordance with 10 V.S.A. Chapter 220.

State of Vermont
Agency of Natural Resources

Emily Boedecker, Commissioner
Department of Environmental
Conservation

BY:

Mary L. Borg, Deputy Director for

Peter LaFlamme, Director
Watershed Management Division

Dated at Montpelier, Vermont
this fourth day of October 2017