



Public Notice No. SC NWP General State Cert 2021

Public Notice Date: April 27, 2021

NOTICE OF DEPARTMENT DECISION

401 Water Quality Certification and Consistency with the S.C. Coastal Zone Management Program

The Department proposes to take action for a Water Quality Certification pursuant to Section 401 of the Federal Clean Water Act, and for a certification of consistency with the S.C. Coastal Zone Management Program in accordance with 15 CRF 930, and has reached a proposed decision for the project described below:

Permit Name: General State Certification for the Nationwide Permits

Waterbody: Statewide (with the exception of activities in the critical area where the Office of Ocean and Coastal Resource Management must issue its own permit)

Permit Number: SC-NWP-General State Cert-2021

After reviewing the Nationwide Permits issued by the U.S. Army Corps of Engineers, Department staff determined that, provided the proposed actions listed in the attached State Certification are implemented and the proposed conditions are adhered to, there is a reasonable assurance that the work authorized herein will be conducted in a manner consistent with the certification requirements of Section 401 of the Federal Clean Water Act, SC Regulation 61-68, *Water Classifications and Standards*, and the Coastal Zone Management Program in accordance with 15 CFR 930. The Office of Ocean and Coastal Resource Management must issue its own permit for any activity covered by the NWP in the critical areas of South Carolina's Coastal Zone. Individuals applying for NWPs should be so advised. This does not preclude compliance with 15 CFR 930 for direct federal activities.

The evaluation of the proposed work was conducted by the Bureau of Water and the Office of Ocean and Coastal Resource Management and a copy of the staff assessment supporting the proposed decision is enclosed.

The final 401 Water Quality Certification and Coastal Zone Management Program consistency actions will be taken unless there is a timely request for review of the Department Decision based on water quality, coastal resources or water use impacts.

The issuance of this Notice of Department Decision represents a final staff decision that may be appealed. Please see the attached appeal procedure for details.

A handwritten signature in blue ink, appearing to read "Chuck Hightower for", is written over a horizontal line.

Chuck Hightower, Manager

Water Quality Certification and Wetlands Section

STAFF ASSESSMENT
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL (DHEC)
DIVISION OF WATER QUALITY
WATER QUALITY CERTIFICATION AND WETLANDS SECTION

I. Background Information and Project Description

State Certification Number: SC NWP General State Cert 2021

P/N Open Date: March 10, 2021

P/N Close Date: March 25, 2021

Waterbody: Statewide (with the exception of activities in the critical area where the Office of Ocean and Coastal Resource Management must issue its own permit)

Applicable State Law: S.C. Code Ann. §§ 48-1-10 et seq. and S.C. Code Ann. Regulation 61-101, and S.C. Code Ann. § 48-39-10 et seq. and the S.C. Coastal Zone Management Program

Brief explanation and purpose of activity:

The purpose of this General State Certification is to authorize activities covered by Nationwide Permits issued by the U.S. Army Corps of Engineers (Corps) for which the 401 Water Quality and the Coastal Zone Consistency Certifications were denied. See background details below.

On September 15, 2020, the U.S. Army Corps of Engineers (Corps) issued a proposed rule in the *Federal Register* (85 FR 57298) that announced the reissuance of all the existing NWP and the proposal to issue five new NWP. In response to the September 15th proposed rule, the Department initiated actions to certify the proposed NWP and on December 14, 2020, the Department issued a final certification in accordance with Section 401 of the Federal Clean Water Act (CWA), as amended, and a certification of consistency with the Coastal Zone Management Act (48-39-10 *et seq.*).

On January 13, 2021, the Corps published a final rule in the *Federal Register* (86 FR 2744). In this notice, the Corps announced that it was reissuing only 12 of the existing NWP and four new NWP.

On March 8, 2021, the Corps' Charleston District issued their Final Regional Conditions for the 16 NWP. In that notice, the Charleston District denied the Section 401 Water Quality Certification (401 Certification) for NWP 12, 29, 39, 44, 57 and 58 as well as the Coastal Zone Consistency (CZC) for NWP 12, 29, 39, 42, 44, 51, 57 and 58. The denial requires applicants to get individual 401/CZC certifications from the Department. This would create a great burden to the Department and applicants alike. Thus, to streamline the process the Department is proposing this General State Certification.

II. Environmental Assessment and Proposed Action on the Nationwide Permits

In accordance with the new requirements of 40 CFR Part 121.7, a citation to federal, state or tribal law that authorizes each Section 401 Water Quality Certification condition is required. Where noted below, those citations are as follows:

Citation A – South Carolina Code Section 48-1-10, *et seq.* of the 1976 South Carolina Code of Laws and DHEC Regulation 61-68, *Water Classifications and Standards* (61-68.D. Antidegradation Rules).

Citation B - South Carolina Code Section 48-1-10, *et seq.* of the 1976 South Carolina Code of Laws and DHEC Regulation 61-68, *Water Classifications and Standards* (61-68.D. Antidegradation Rules).

Citation C - South Carolina Code Section 48-1-10, *et seq.* of the 1976 South Carolina Code of Laws and DHEC Regulation 61-68, *Water Classifications and Standards* (61-68.E. General Rules and Standards Applicable to all Waters).

Nationwide Permit 12 - Oil or Natural Gas Pipeline Activities (Section 404, CZC, 401)

Activities required for the construction, maintenance, repair, and removal of oil and natural gas pipelines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Oil or natural gas pipelines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of oil and natural gas pipelines. There must be no change in pre-construction contours of waters of the United States. An “oil or natural gas pipeline” is defined as any pipe or pipeline for the transportation of any form of oil or natural gas, including products derived from oil or natural gas, such as gasoline, jet fuel, diesel fuel, heating oil, petrochemical feedstocks, waxes, lubricating oils, and asphalt. Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (*e.g.*, backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Oil or natural gas pipeline substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities (*e.g.*, oil or natural gas or gaseous fuel custody transfer stations, boosting stations, compression stations, metering stations, pressure regulating stations) associated with an oil or natural gas pipeline in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for above-ground oil or natural gas pipelines: This NWP authorizes the construction or maintenance of foundations for aboveground oil or natural gas pipelines in all waters of the United States, provided the foundations are the minimum size necessary.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of oil or natural gas pipelines, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into nontidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes

any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (*e.g.*, at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize oil or natural gas pipelines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Oil or natural gas pipelines routed in, over, or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the oil or natural gas pipeline activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) A section 10 permit is required; (2) the discharge will result in the loss of greater than 1/10- acre of waters of the United States; or (3) the proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline (*vs.* conduct repair or maintenance activities) along the majority of the distance of the overall project length. If the proposed oil or gas pipeline is greater than 250 miles in length, the pre-construction notification must include the locations and proposed impacts (in acres or other appropriate unit of measure) for all crossings of waters of the United States that require DA authorization, including those crossings authorized by NWP would not otherwise require preconstruction notification. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where the oil or natural gas pipeline is constructed, installed, or maintained in navigable waters of the United States (*i.e.*, section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the oil or natural gas pipeline to protect navigation.

Note 2: For oil or natural gas pipeline activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Oil or natural gas pipeline activities must comply with 33 CFR 330.6(d).

Note 3: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the oil or natural gas pipeline must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such oil or natural gas pipelines will require a section 404 permit (see NWP 15).

Note 5: This NWP authorizes oil or natural gas pipeline maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For NWP 12 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require preconstruction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Rationale: In order to qualify for the nationwide permit, the activity should have minimal impacts. Due to the criteria for use of the nationwide permit, any impact to water quality, water uses, or wetland functions should be temporary provided the applicant adheres to the criteria. However, as currently proposed, this NWP has no limit on the number of crossings of aquatic systems and allows up to ½ acres loss of waters of the United States. SCDHEC believes that these impacts cannot be categorized as minimal as intended for the nationwide permitting program and are not consistent with the anti-degradation policy to protect the designated and existing uses and maintain the associated water quality criteria necessary to protect these water resources (see citation A). Further, due to the requirement to protect existing uses and the level of water quality necessary to protect those uses, this nationwide permit cannot be certified for activities located in or adjacent to Outstanding National Resource Waters, Outstanding Resource Waters or Trout Waters (see Citation B). The NWP could be made consistent with the S.C. Coastal Zone Management Program and no significant adverse effects from the proposed activities will be anticipated if the proposed certification conditions are applied to the NWPs.

Conditions of the 401 Water Quality Certification:

1. This NWP is not certified for pipelines with more than 10 aquatic site crossings (not including directionally bored crossings).
2. This NWP is not certified for activities located in or adjacent to (as determined by SCDHEC) waters defined (as per Regulation 61-68) as Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), or Trout Waters.
3. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Conditions of the Coastal Zone Consistency Certification:

1. Impacts to aquatic sites associated with the construction of temporary, permanent and maintenance easements must be limited to a total width of 50' (including filling, excavation and clearing) except where required for safety reasons.

Nationwide Permit 29 - Residential Developments (Section 10, Section 404, CZC, 401)

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of a single residence, a multiple unit residential development, or a residential subdivision. This NWP authorizes the construction of building foundations and building pads and attendant features that are necessary for the use of the residence or residential development. Attendant features may include but are not limited to roads, parking lots, garages, yards, utility lines, storm water management facilities, septic fields, and recreation facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development).

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into nontidal wetlands adjacent to tidal waters.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed 1/2-acre. This includes any loss of waters of the United States associated with development of individual subdivision lots.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Rationale: In order to qualify for the nationwide permit, the activity should have minimal impacts. Due to the criteria for use of the nationwide permit, any impact to water quality, water uses, or wetland functions should be temporary provided the applicant adheres to the criteria. However, as currently proposed, this NWP allows up to ½ acre loss of waters of the United States. SCDHEC believes that these impacts cannot be categorized as minimal as intended for the nationwide permitting program and are not consistent with the anti-degradation policy to protect the designated and existing uses and maintain the associated water quality criteria necessary to protect these water resources (see citation A). Further, due to the requirement to protect exiting uses and the level of water quality necessary to protect those uses, this nationwide permit cannot be certified for activities located in or adjacent to Outstanding National Resource Waters, Outstanding Resource Waters or Trout Waters (see Citation B). In addition, this NWP does not prohibit the nationwide permit's use to impound waters. SCDHEC believes that impoundments cannot be categorized as minimal because of the potential to degrade water quality downstream of the impoundment. This is not consistent with the anti-degradation policy to protect the designated and existing uses and maintain the associated water quality criteria necessary to protect water resources (see citation A). The NWP could be made consistent with the S.C. Coastal Zone Management Program and no significant adverse effects from the proposed activities will be anticipated if the proposed certification conditions are applied to the NWPs.

Conditions for the 401 Water Quality Certification:

1. The impounding of water and creating of lakes or ponds is not authorized.
2. This NWP is not certified for activities located in or adjacent to (as determined by SCDHEC) waters defined (as per Regulation 61-68) as Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), or Trout Waters.
3. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Conditions for the Coastal Zone Consistency Certification:

1. For all projects, the applicant must provide a Wetland Master Plan (WMP) consistent with the policies and procedures of Chapter III Policy Section XII E. of the S.C. Coastal Zone Management Program. **WMP policies also include the preservation of all wetlands not proposed to be impacted through approved restrictive covenants.** The plan must include an identification of all wetlands, all wetland impacts/activities, drainage patterns, conceptual development, and a mitigation plan.

Nationwide Permit 39 - Commercial and Institutional Developments (Section 10, Section 404, CZC, 401)

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, wastewater treatment facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into nontidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authorities: Sections 10 and 404)

Note: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Rationale: In order to qualify for the nationwide permit, the activity should have minimal impacts. Due to the criteria for use of the nationwide permit, any impact to water quality, water uses, or wetland functions should be temporary provided the applicant adheres to the criteria. However, as currently proposed, this NWP has no limit on the utility line crossings of aquatic systems and allows up to ½ acres loss of waters of the United States. SCDHEC believes that these impacts cannot be categorized as minimal as intended for the nationwide permitting program and are not consistent with the anti-degradation policy to protect the designated and existing uses and maintain the associated water quality criteria necessary to protect these water resources (see Citation A). Further, due to the requirement to protect exiting uses and the level of water quality necessary to protect those uses, this nationwide permit cannot be certified for activities located in or adjacent to Outstanding National Resource Waters, Outstanding Resource Waters or Trout Waters (see Citation B). In addition, this NWP does not prohibit the nationwide permit's use to impound waters. SCDHEC believes that impoundments cannot be categorized as minimal because of the potential to degrade water quality downstream of the impoundment. This is not consistent with the anti-degradation policy to protect the designated and existing uses and maintain the associated water quality criteria necessary to protect water resources (see citation A). Outside the critical area, S. C. Coastal Zone Management Program policies require that wetland impacts be addressed in a manner consistent with the program refinements (Wetland Master Planning Policies). This NWP is inconsistent with the S.C. Coastal Zone Management Program because it would allow alteration of wetlands without regard

to the type of wetland, location or consideration of feasible alternatives. The NWP could be made consistent with the S.C. Coastal Zone Management Program and no significant adverse effects from the proposed activities will be anticipated if the proposed certification conditions are applied to the NWPs.

Conditions for the 401 Water Quality Certification:

1. The impounding of water and creating of lakes or ponds is not authorized by this NWP.
2. This NWP is not certified for activities located in or adjacent to (as determined by SCDHEC) waters defined (as per Regulation 61-68) as Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), or Trout Waters.
3. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Conditions of the Coastal Zone Consistency Certification:

1. For all projects, the applicant must provide a Wetland Master Plan consistent with the policies and procedures of Chapter III Policy Section XII E. of the S.C. Coastal Zone Management program. **WMP policies also include the preservation of all wetlands not proposed to be impacted through approved restrictive covenants.** The plan must include an identification of all wetlands, all wetland impacts/activities, drainage patterns, conceptual development, and a mitigation plan.

Nationwide Permit 42 - Recreational Facilities (Section 404, CZC, 401)

Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of recreational facilities. Examples of recreational facilities that may be authorized by this NWP include playing fields (*e.g.*, football fields, baseball fields), basketball courts, tennis courts, hiking trails, bike paths, golf courses, ski areas, horse paths, nature centers, and campgrounds (excluding recreational vehicle parks). This NWP also authorizes the construction or expansion of small support facilities, such as maintenance and storage buildings and stables that are directly related to the recreational activity, but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities. The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into nontidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 404)

Rationale: This NWP is inconsistent with the S.C. Coastal Zone Management Program because it would allow alteration of wetlands without regard to the type of wetland, location or consideration of feasible alternatives. The NWP could be made consistent with the S.C. Coastal Zone Management Program if the proposed certification conditions are applied to the NWPs.

Regional Conditions of the Coastal Zone Consistency Certification:

1. The use of this NWP must be limited to nature trails/horse trails, bike paths, small bridges or walkways. These activities must be a maximum of 8' wide and involve hand clearing only (Golf courses, ski areas, buildings and campgrounds are not approved).
2. For all projects, the applicant must provide a Wetland Master Plan (WMP) consistent with the policies and procedures of Chapter III Policy Section XII E. of the S.C. Coastal Zone Management Program. **WMP policies also include the preservation of all wetlands not proposed to be impacted through approved restrictive covenants.** The plan must include an identification of all wetlands, all wetland impacts/activities, drainage patterns, conceptual development, and a mitigation plan.

Nationwide Permit 44 - Mining Activities (Section 10, Section 404, CZC, 401)

Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities, provided the activity meets all of the following criteria:

- (a) For mining activities involving discharges of dredged or fill material into non-tidal wetlands, the discharge must not cause the loss of greater than 1/2-acre of non-tidal wetlands;
- (b) For mining activities involving discharges of dredged or fill material in non-tidal open waters (*e.g.*, rivers, streams, lakes, and ponds) or work in non-tidal navigable waters of the United States (*i.e.*, section 10 waters), the mined area, including permanent and temporary impacts due to discharges of dredged or fill material into jurisdictional waters, must not exceed 1/2-acre; and
- (c) The acreage loss under paragraph (a) plus the acreage impact under paragraph (b) does not exceed 1/2-acre.

This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) If reclamation is required by other statutes, then a copy of the final reclamation plan must be submitted with the pre-construction notification. Authorities: Sections 10 and 404)

Rationale: In order to qualify for the nationwide permit, the activity should have minimal impacts. Due to the criteria for use of the nationwide permit, any impact to water quality, water uses, or wetland functions should be temporary provided the applicant adheres to the criteria. However, as currently proposed, this nationwide permit allows up to ½ acre loss of waters of the United States. SCDHEC believes that these impacts cannot be categorized as minimal as intended for the nationwide permitting program and are not consistent with the anti-degradation policy to protect the designated and existing uses and maintain the associated water quality criteria necessary to protect these water resources (see citation A). Further, due to the requirement to protect existing uses and the level of water quality necessary to protect those uses, this nationwide permit cannot be certified for activities located in or adjacent to Outstanding National Resource Waters, Outstanding Resource Waters or Trout Waters (see Citation B).

Conditions for the 401 Water Quality Certification:

1. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.
2. This NWP is not certified for activities located in or adjacent to (as determined by SCDHEC) waters defined (as per Regulation 61-68) as Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), or Trout Waters.

Nationwide Permit 51 - Land-Based Renewable Energy Generation Facilities (Section 10, Section 404, CZC, 401)

Discharges of dredged or fill material into non-tidal waters of the United States for the construction, expansion, or modification of land-based renewable energy production facilities, including attendant features. Such facilities include infrastructure to collect solar (concentrating solar power and photovoltaic), wind, biomass, or geothermal energy. Attendant features may include, but are not limited to roads, parking lots, and stormwater management facilities within the land-based renewable energy generation facility.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into nontidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the discharge results in the loss of greater than 1/10- acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Electric utility lines constructed to transfer the energy from the land-based renewable energy generation facility to a distribution system, regional grid, or other facility are generally considered to be linear projects and each separate and distant crossing of a waterbody is eligible for treatment as a separate single and complete linear project. Those electric utility lines may be authorized by NWP 57 or another Department of the Army authorization.

Note 2: If the only activities associated with the construction, expansion, or modification of a land-based renewable energy generation facility that require Department of the Army authorization are discharges of dredged or fill material into waters of the United States to construct, maintain, repair, and/or remove electric utility lines and/or road crossings, then NWP 57 and/or NWP 14 shall be used if those activities meet the terms and conditions of NWPs 57 and 14, including any applicable regional conditions and any case-specific conditions imposed by the district engineer.

Note 3: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Rationale: This NWP was first issued in 2012 and has not been used yet in South Carolina. As a result, there has been no history of the Corps' interpretation and implementation. This NWP would allow alteration of wetlands without regard to the type of wetland, location, or consideration of feasible alternatives. Further, in order to qualify for the nationwide permit, the activity should have minimal impacts. Due to the criteria for use of the nationwide permit, any impact to water quality, water uses, or wetland functions should be temporary provided the applicant adheres to the criteria. However, as currently proposed, this nationwide permit allows up to ½ acre loss of waters of the United States. The NWP could be made consistent with the S.C. Coastal Zone Management Program and no significant adverse effects from the proposed activities will be anticipated if the proposed certification conditions are applied to the NWPs.

Conditions of the Coastal Zone Consistency Certification:

1. For all projects, the applicant must provide a Wetland Master Plan (WMP) consistent with the policies and procedures of Chapter III Policy Section XII E. of the S.C. Coastal Zone Management Program. **WMP policies also include the preservation of all wetlands not proposed to be impacted through approved restrictive covenants.** The plan must include an identification of all wetlands, all wetland impacts/activities, drainage patterns, conceptual development, and a mitigation plan.
2. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Nationwide Permit 57 - *Electric Utility Line and Telecommunications Activities* (Section 10, Section 404, CZC, 401)

Activities required for the construction, maintenance, repair, and removal of electric utility lines, telecommunication lines, and associated facilities in waters of the United States, provided the activity

does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Electric utility lines and telecommunication lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of electric utility lines and telecommunication lines. There must be no change in preconstruction contours of waters of the United States. An “electric utility line and telecommunication line” is defined as any cable, line, fiber optic line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and internet, radio, and television communication.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (*e.g.*, backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the electric utility line or telecommunication line crossing of each waterbody.

Electric utility line and telecommunications substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with an electric utility line or telecommunication line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead electric utility line or telecommunication line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead electric utility line or telecommunication line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of electric utility lines or telecommunication lines, including overhead lines and substations, in nontidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (*e.g.*, at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize electric utility lines or telecommunication lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Electric utility lines or telecommunication lines constructed over section 10 waters and electric utility lines or telecommunication lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing electric utility lines or telecommunication lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the electric utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) A section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where the electric utility line is constructed, installed, or maintained in navigable waters of the United States (*i.e.*, section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the electric utility line to protect navigation.

Note 2: For electric utility line or telecommunications activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Electric utility line and telecommunications activities must comply with 33 CFR 330.6(d).

Note 3: Electric utility lines or telecommunication lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

Note 4: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the electric utility line or telecommunication line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 5: This NWP authorizes electric utility line and telecommunication line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For overhead electric utility lines and telecommunication lines authorized by this NWP, a copy of the PCN and NWP verification will be provided by the Corps to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

Note 7: For activities that require preconstruction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require preconstruction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Rationale: In order to qualify for the nationwide permit, the activity should have minimal impacts. Due to the criteria for use of the nationwide permit, any impact to water quality, water uses, or wetland functions should be temporary provided the applicant adheres to the criteria. However, as currently proposed, this NWP has no limit on the utility line crossings of aquatic systems and allows up to ½ acre loss of waters of the United States. SCDHEC believes that these impacts cannot be categorized as minimal as intended for the nationwide permitting program and are not consistent with the anti-degradation policy to protect the designated and existing uses and maintain the associated water quality criteria necessary to protect these water resources (see citation A). Further, due to the requirement to protect existing uses and the level of water quality necessary to protect those uses, this nationwide permit cannot be certified for activities located in or adjacent to Outstanding National Resource Waters, Outstanding Resource Waters or Trout Waters (see Citation B). The NWP could be made consistent with the S.C. Coastal Zone Management Program and no significant adverse effects from the proposed activities will be anticipated if the proposed certification conditions are applied to the NWPs.

Conditions of the 401 Water Quality Certification:

1. This NWP is not certified for utility lines with more than 10 aquatic site crossings (not including directionally bored crossings).
2. This NWP is not certified for activities located in or adjacent to (as determined by SCDHEC) waters defined (as per Regulation 61-68) as Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), or Trout Waters.
3. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Conditions of the Coastal Zone Consistency Certification:

1. Impacts to aquatic sites associated with the construction of temporary, permanent and maintenance easements must be limited to a total width of 50' (including filling, excavation and clearing) except where required for safety reasons.

Nationwide Permit 58 - *Utility Line Activities for Water and Other Substances* (Section 10, Section 404, CZC, 401)

Activities required for the construction, maintenance, repair, and removal of utility lines for water and other substances, excluding oil, natural gas, products derived from oil or natural gas, and electricity. Oil or natural gas pipeline activities or electric utility line and telecommunications activities may be authorized by NWPs 12 or 57, respectively. This NWP also authorizes associated utility line facilities in

waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of utility lines for water and other substances, including outfall and intake structures. There must be no change in pre-construction contours of waters of the United States. A “utility line” is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose that is not oil, natural gas, or petrochemicals. Examples of activities authorized by this NWP include utility lines that convey water, sewage, stormwater, wastewater, brine, irrigation water, and industrial products that are not petrochemicals. The term “utility line” does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (*e.g.*, backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for above-ground utility lines: This NWP authorizes the construction or maintenance of foundations for above-ground utility lines in all waters of the United States, provided the foundations are the minimum size necessary.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (*e.g.*, at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged and fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) A section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where the utility line is constructed, installed, or maintained in navigable waters of the United States (*i.e.*, section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Utility line activities must comply with 33 CFR 330.6(d).

Note 3: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

Note 5: This NWP authorizes utility line maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For activities that require preconstruction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require preconstruction notification (see paragraph

(b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

Rationale: In order to qualify for the nationwide permit, the activity should have minimal impacts. Due to the criteria for use of the nationwide permit, any impact to water quality, water uses, or wetland functions should be temporary provided the applicant adheres to the criteria. However, as currently proposed, this NWP has no limit on the utility line crossings of aquatic systems and allows up to ½ acre loss of waters of the United States. SCDHEC believes that these impacts cannot be categorized as minimal as intended for the nationwide permitting program and are not consistent with the anti-degradation policy to protect the designated and existing uses and maintain the associated water quality criteria necessary to protect these water resources (see citation A). Further, due to the requirement to protect existing uses and the level of water quality necessary to protect those uses, this nationwide permit cannot be certified for activities located in or adjacent to Outstanding National Resource Waters, Outstanding Resource Waters or Trout Waters (see Citation B). The NWP could be made consistent with the S.C. Coastal Zone Management Program and no significant adverse effects from the proposed activities will be anticipated if the proposed certification conditions are applied to the NWPs.

Conditions of the 401 Water Quality Certification:

1. This NWP is not certified for utility lines with more than 10 aquatic site crossings (not including directionally bored crossings).
2. This NWP is not certified for activities located in or adjacent to (as determined by SCDHEC) waters defined (as per Regulation 61-68) as Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), or Trout Waters.
3. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Conditions of the Coastal Zone Consistency Certification:

1. Impacts to aquatic sites associated with the construction of temporary, permanent and maintenance easements must be limited to a total width of 50' (including filling, excavation and clearing) except where required for safety reasons.

III. Public Comments Received and Summary of Comments

A. Dominion Energy Service, Inc.

Date: March 25, 2021

Does not object to project provided the applicant adheres to several conditions.

See discussion in Section V, Conclusions.

Hold in abeyance.

Objects to the proposed project, see discussion in Section VI, Conclusions.

No objection.

Has elected to not conduct an investigation nor provide any comments.

In a letter dated March 25, 2021, Dominion Energy expressed strong support for the proposed State Certification which they believe will balance the need for expeditious permitting with environmental protection.

IV. Conclusion on Water Quality Impacts and Classified Uses, and Coastal Resource Effects

When evaluating the proposed State Certification, the DHEC followed procedures for implementing State 401 Water Quality Certification regulations pursuant to Section 401 of the Clean Water Act, 33 U.S.C. Section 1341, and the requirements of Regulation 61-101, Water Quality Certification.

The water quality impacts of the activities will be temporary provided the applicants adhere to the general and special conditions of this State Certification. The DHEC has a reasonable assurance that the water quality standards of Regulation 61-68 will not be contravened as a result of the proposed work. The proposed activity will result in enhancement of classified uses with no significant degradation to the aquatic ecosystem. The proposed activity will not remove existing and classified uses and is in compliance with the above regulations provided the applicant adheres to the general and special conditions of the proposed General State Certification.

The DHEC proposes to act on the Nationwide Permits as referenced above for Coastal Zone Consistency review in that impacts afforded to the State's coastal resources will be minimal in nature. In reference to proposed Coastal Zone Management Program consistency certifications "Issue with Conditions" means that the Nationwide Permit can be made consistent with the Coastal Zone Management Program if the applicant accepts the proposed conditions.

The Office of Ocean and Coastal Resource Management must issue its own permit for any activity covered by the nationwide permits in the critical areas of South Carolina's Coastal Zone. Individuals applying for Nationwide Permits should be so advised. This does not preclude compliance with 15 CFR 930 for direct federal activities.

Information about the technical aspects of this application is available from Chuck Hightower, the Section Manager of the Water Quality Certification and Wetlands Section, by calling (803) 898-0369 or by e-mailing hightocw@dhec.sc.gov and from Christopher Stout, the Section Manager for the Coastal Zone Consistency Section, by calling (843) 953-0691 or by e-mailing stoutcm@dhec.sc.gov.

The DHEC reserves the right to impose additional conditions on this Certification to respond to unforeseen, specific problems that might arise and to take any enforcement action necessary to ensure compliance with State water quality standards.

V. Staff Recommendation

Issue 401 Water Quality Certification and Coastal Zone Consistency Certification with conditions.

VI. Conditions to be placed on Water Quality Certification and Coastal Zone Consistency when issued

See Attached SC NWP General State Cert 2021.

Prepared by:



Chuck Hightower, Manager
Water Quality Certification and Wetlands Section
SCDHEC – Bureau of Water



Christopher M Stout, Manager
Coastal Zone Consistency Section
SCDHEC – Office of Ocean and Coastal Resource Management

General State Certification No.: SC NWP General State Cert 2021
Effective Date: (Fifteen days after issuance of NODD)
Expiration Date: (Five years after effective date)

**STATE OF SOUTH CAROLINA
GENERAL STATE CERTIFICATION**

A General State Certification to authorize activities in accordance with S.C. Code Ann. §§ 48-1-10 et seq. and S.C. Code Ann. Regulation 61-101, and S.C. Code Ann. § 48-39-10 et seq. and the S.C. Coastal Zone Management Program document is hereby issued by the South Carolina Department of Health and Environmental Control (DHEC or the Department) for the Nationwide Permits (NWP) listed below and in accordance with the General and Special conditions listed in Sections II and III below:

Nationwide Permit Finalized by the US Army Corps of Engineers	Applicable State Certification
12. Oil or Natural Gas Pipeline Activities	401 Water Quality and Coastal Zone Consistency Certification
29. Residential Developments	401 Water Quality and Coastal Zone Consistency Certification
39. Commercial and Institutional Developments	401 Water Quality and Coastal Zone Consistency Certification
42. Recreational Facilities	Coastal Zone Consistency Certification only
44. Mining Activities	401 Water Quality Certification only
51. Land-Based Renewable Energy Generation Facilities	Coastal Zone Consistency Certification only
57. Electric Utility Line and Telecommunications Activities	401 Water Quality and Coastal Zone Consistency Certification
58. Utility Line Activities for Water and Other Substances	401 Water Quality and Coastal Zone Consistency Certification

I. Background:

On September 15, 2020, the U.S. Army Corps of Engineers (Corps) issued a proposed rule in the *Federal Register* (85 FR 57298) that announced the reissuance of all the existing NWPs and the proposal to issue five new NWPs. In response to the September 15th proposed rule, the Department initiated actions to certify the proposed NWPs and on December 14, 2020, the Department issued a final certification in accordance with Section 401 of the Federal Clean Water Act (CWA), as amended, and a certification of consistency with the Coastal Zone Management Act (48-39-10 *et seq.*).

On January 13, 2021, the Corps published a final rule in the *Federal Register* (86 FR 2744). In this notice, the Corps announced that it was reissuing only 12 of the existing NWPs and four new NWPs.

On March 8, 2021, the Corps' Charleston District issued their Final Regional Conditions for the 16 NWPs. In that notice, the Charleston District denied the Section 401 Water Quality Certification (401

Certification) for NWP 12, 29, 39, 44, 57 and 58 as well as the Coastal Zone Consistency (CZC) for NWPs 12, 29, 39, 42, 44, 51, 57 and 58.

The purpose of this General State Certification is to authorize, in accordance with the conditions below, the 401 and CZC Certifications that were denied by the Corps' Final Regional Conditions.

II. General Conditions

- a. All applicants requesting coverage under this General State Certification must provide documentation that a Pre-Filing Meeting Request was submitted to DHEC at least 30 days prior to submitting a certification request. (See <https://scdhec.gov/new-401-certification-pre-filing-certification-requests-instructions> for details.)
- b. All applicants requesting coverage under this General State Certification must provide a copy of the provisional notification from the Corps as well as a copy of the Pre-Construction Notification.
- c. Activities in the Critical Areas (as defined in 48-39-10, R 30.1(D) and R 30.10) require a direct permit from SCDHEC OCRM. SCDHEC OCRM's action on direct critical area permits will serve as the consistency determination for the critical area activity.
- d. Impacts for discharges to streams must be provided in linear feet.

III. Special Conditions

In addition to the General Conditions noted above, all activities must comply with the Special Conditions outlined below specific to the NWP for which authorization is requested.

a. Nationwide Permit 12 - Oil or Natural Gas Pipeline

Conditions of the 401 Water Quality Certification:

1. This NWP is not certified for pipelines with more than 10 aquatic site crossings (not including directionally bored crossings).
2. This NWP is not certified for activities located in or adjacent to (as determined by SCDHEC) waters defined (as per Regulation 61-68) as Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), or Trout Waters.
3. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Conditions of the Coastal Zone Consistency Certification:

1. Impacts to aquatic sites associated with the construction of temporary, permanent and maintenance easements must be limited to a total width of 50' (including filling, excavation and clearing) except where required for safety reasons.

b. Nationwide Permit 29 – Residential Developments

Conditions for the 401 Water Quality Certification:

1. The impounding of water and creating of lakes or ponds is not authorized.
2. This NWP is not certified for activities located in or adjacent to (as determined by SCDHEC) waters defined (as per Regulation 61-68) as Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), or Trout Waters.
3. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Conditions for the Coastal Zone Consistency Certification:

1. For all projects, the applicant must provide a Wetland Master Plan (WMP) consistent with the policies and procedures of Chapter III Policy Section XII E. of the S.C. Coastal Zone Management Program. **WMP policies also include the preservation of all wetlands not proposed to be impacted through approved restrictive covenants.** The plan must include an identification of all wetlands, all wetland impacts/activities, drainage patterns, conceptual development, and a mitigation plan.

c. Nationwide Permit 39 – Commercial and Institutional Developments

Conditions for the 401 Water Quality Certification:

1. The impounding of water and creating of lakes or ponds is not authorized by this NWP.
2. This NWP is not certified for activities located in or adjacent to (as determined by SCDHEC) waters defined (as per Regulation 61-68) as Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), or Trout Waters.
3. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Conditions for the Coastal Zone Consistency Certification:

1. For all projects, the applicant must provide a Wetland Master Plan (WMP) consistent with the policies and procedures of Chapter III Policy Section XII E. of the S.C. Coastal Zone Management Program. **WMP policies also include the preservation of all wetlands not proposed to be impacted through approved restrictive covenants.** The plan must include an identification of all wetlands, all wetland impacts/activities, drainage patterns, conceptual development, and a mitigation plan.

d. Nationwide Permit 42 – Recreational Facilities

Conditions of the Coastal Zone Consistency Certification:

1. The use of this NWP must be limited to nature trails/horse trails, bike paths, small bridges or walkways. These activities must be a maximum of 8' wide and involve hand clearing only (Golf courses, ski areas, buildings and campgrounds are not approved).
2. For all projects, the applicant must provide a Wetland Master Plan (WMP) consistent with the policies and procedures of Chapter III Policy Section XII E. of the S.C. Coastal Zone Management Program. **WMP policies also include the preservation of all wetlands not proposed to be impacted through approved restrictive covenants.** The plan must include an identification of all wetlands, all wetland impacts/activities, drainage patterns, conceptual development, and a mitigation plan.

e. Nationwide Permit 44 – Mining Activities

Conditions for the 401 Water Quality Certification:

1. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.
2. This NWP is not certified for activities located in or adjacent to (as determined by SCDHEC) waters defined (as per Regulation 61-68) as Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), or Trout Waters.

f. Nationwide Permit 51 – Land-Based Renewable Energy Generation Facilities

Conditions of the Coastal Zone Consistency Certification:

1. For all projects, the applicant must provide a Wetland Master Plan (WMP) consistent with the policies and procedures of Chapter III Policy Section XII E. of the S.C. Coastal Zone Management Program. **WMP policies also include the preservation of all wetlands not proposed to be impacted through approved restrictive covenants.** The plan must include an identification of all wetlands, all wetland impacts/activities, drainage patterns, conceptual development, and a mitigation plan.
2. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

g. Nationwide Permit 57 – Electric Utility Line and Telecommunications Activities

Conditions of the 401 Water Quality Certification:

1. This NWP is not certified for utility lines with more than 10 aquatic site crossings (not including directionally bored crossings).
2. This NWP is not certified for activities located in or adjacent to (as determined by SCDHEC) waters defined (as per Regulation 61-68) as Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), or Trout Waters.
3. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Conditions of the Coastal Zone Consistency Certification:

1. Impacts to aquatic sites associated with the construction of temporary, permanent and maintenance easements must be limited to a total width of 50' (including filling, excavation and clearing) except where required for safety reasons.

h. Nationwide Permit 58 – Utility Line Activities for Water and Other Substances

Conditions of the 401 Water Quality Certification:

1. This NWP is not certified for utility lines with more than 10 aquatic site crossings (not including directionally bored crossings).
2. This NWP is not certified for activities located in or adjacent to (as determined by SCDHEC) waters defined (as per Regulation 61-68) as Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), or Trout Waters.
3. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Conditions of the Coastal Zone Consistency Certification:

1. Impacts to aquatic sites associated with the construction of temporary, permanent and maintenance easements must be limited to a total width of 50' (including filling, excavation and clearing) except where required for safety reasons.

IV. Authority

This General State Certification shall become effective on the date signed by DHEC.

By Authority of the South Carolina Department of Health and Environmental Control

Signature

Date

Title