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Public Notice No. DHEC-NWP-2020 **Public Notice Date: November 25, 2020**

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 Water Quality Certification pursuant to Section 401 of the Federal Clean Water Act, and for certification of consistency with the S.C. Coastal Zone Management Program in accordance with 15 CRF 930, for reissuance of the existing Nationwide Permits (NWPs) with some modifications and the issuance of five new U.S. Army Corps of Engineers (USACE) NWPs.

After reviewing the USACE's proposal, Department staff determined that, provided the proposed actions listed in the following table 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.

Accordingly, the Department proposes to act on the NWP as listed in the attached table. In reference to proposed 401 Water Quality and Coastal Zone Management Program consistency certifications, "Issue with Conditions" means that the NWP can be made consistent with certification requirements of Section 401 and the Coastal Zone Management Program if the proposed certification conditions are adopted by the USACE.

The USACE issued the proposed notice in the Federal Register on September 15, 2020. 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.

Chuck Hightower, Manager
Water Quality Certification and Wetlands Section

Nationwide Permit Number & Topic	401 Cert Action	CZC Cert Action (Outside of the Direct Critical Area)
1. Aids to Navigation	N/A	Issue
2. Structures in Artificial Canals	N/A	Issue
3. Maintenance	Issue	Issue
4. Fish & Wildlife Harvesting, Enhancement, & Attraction Devices	Issue	Issue
5. Scientific Measurement Devices	Issue	Issue
6. Survey Activities	Issue	Issue
7. Outfall Structures and Associated Intake Structures	Issue	Issue
8. Oil and Gas Structures on the Outer Continental Shelf	N/A	Issue
9. Structures in Fleeting and Anchorage Areas	N/A	Issue
10. Mooring Buoys	N/A	Issue
11. Temporary Recreational Structures	N/A	Issue
12. Oil and Natural Gas Pipeline Activities	Issue w/ Cond	Issue w/ Cond
13. Bank Stabilization	Issue	Issue
14. Linear Transportation Projects	Issue w/ Cond	Issue w/ Cond
15. U.S. Coast Guard Approved Bridges	Issue	Issue
16. Return Water From Upland Contained Disposal Areas	Deny	Deny
17. Hydropower Projects	Deny	Deny
18. Minor Discharges	Issue	Issue
19. Minor Dredging	Issue	Issue
20. Oil Spill Cleanup	Issue	Issue
21. Surface Coal Mining Operations	Deny	Deny
22. Removal of Vessels	Issue	Issue
23. Approved Categorical Exclusions	Issue w/ Cond	Issue w/Cond
24. Indian Tribe or State Administered Section 404 Programs	N/A	Deny
25. Structural Discharges	Issue	Issue
26. [Reserved]	N/A	N/A
27. Aquatic Habitat Restoration, Establishment & Enhancement	Issue	Issue
28. Modifications of Existing Marinas	N/A	Issue
29. Residential Developments	Issue w/ Cond	Issue w/ Cond
30. Moist Soil Management for Wildlife	Issue	Issue
31. Maintenance of Existing Flood Control Facilities	Issue	Issue
32. Completed Enforcement Actions	Issue	Issue
33. Temporary Construction, Access and Dewatering	Issue	Issue
34. Cranberry Production Activities	Deny	Deny
35. Maintenance Dredging of Existing Basins	N/A	Deny
36. Boat Ramps	Issue	Issue
37. Emergency Watershed Protection and Rehabilitation	Issue	Issue
38. Cleanup of Hazardous and Toxic Waste	Issue	Issue
39. Commercial and Institutional Developments	Issue w/ Cond	Issue w/ Cond
40. Agricultural Activities	Issue	Issue
41. Reshaping Existing Drainage Ditches	Issue	Issue

42. Recreational Facilities	Issue	Issue w/Cond
43. Stormwater Management Facilities	Issue w/ Cond	Issue w/ Cond
44. Mining Activities	Issue w/ Cond	Issue w/ Cond
45. Repair of Uplands Damaged by Discrete Events	Issue	Issue
46. Discharges in Ditches	Issue w/ Cond	Issue w/ Cond
47. Reserved	N/A	N/A
48. Existing Commercial Shellfish Aquaculture Activities	Issue	Issue
49. Coal Remining Activities	Deny	Deny
50. Underground Coal Mining Activities	Deny	Deny
51. Land-Based Renewable Energy Generation Facilities	Issue w/Cond	Issue w/Cond
52. Water-Based Renewable Energy Generation Pilot Projects	Issue w/Cond	Issue w/Cond
53. Removal of Low-Head Dams	Issue	Issue
54. Living Shorelines	Deny	Deny
A. Seaweed Mariculture Activities	N/A	Deny
B. Finfish Mariculture Activities	N/A	Deny
C. Electric Utility Line and Telecommunications Activities	Issue w/Cond	Issue w/Cond
D. Utility Line Activities for Water and Other Substances	Issue w/Cond	Issue w/Cond
E. Water reclamation and reuse facilities	Deny	Deny

SOUTH CAROLINA DEPARTMENT OF HEALTH & ENVIRONMENTAL CONTROL
OFFICE OF OCEAN & COASTAL RESOURCE MANAGEMENT (OCRM) AND BUREAU OF WATER
Staff Assessment of application for 401 Water Quality Certification and Consistency with the S.C. Coastal Zone Management Program

BACKGROUND INFORMATION

The U.S. Army Corps of Engineers (Corps) is proposing to reissue its existing nationwide permits (NWPs) and associated general conditions and definitions, with some modifications. The Corps is also proposing five new NWPs. The Corps published notice of this proposal in the Federal Register on September 15, 2020. This notice explained the requirement for the State to issue Water Quality Certification and Coastal Zone Consistency Certification for certain nationwide permits. The South Carolina Department of Health and Environmental Control (SCDHEC) issued a public notice on **October 6, 2020,** announcing that it would be accepting public comments related to the certifications.

NWPs are general permits issued on a nationwide basis to authorize minor activities with little delay or paperwork. General permits are issued for a category of activities when those activities are similar in nature and cause only minimal individual and cumulative environmental impacts or the general permit would result in avoiding unnecessary duplication of regulatory control exercised by another regulatory agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal. The Corps believes that the nationwide permits generally comply with State water quality standards and the S.C. Coastal Zone Management Program.

State Water Quality Certification pursuant to Section 401 of the Clean Water Act, or waiver thereof, is required prior to issuance or reissuance of the NWPs which may result in a discharge into waters of the United States. The Corps has determined that the discharges associated with NWPs should be reviewed by the SCDHEC in accordance with provision of Section 401 of the Clean Water Act and for consistency with the S.C. Coastal Zone Management Program.

SUMMARY OF PUBLIC COMMENTS

The following submitted written comments:

South Carolina Department of Natural Resources

John Collum

All comments received were considered in reaching the decisions on the NWPs.

EXPLANATION, EVALUATION AND PROPOSED ACTION ON THE NATIONWIDE PERMITS

Where noted below, Section 10 refers to Section 10 of the Rivers and Harbors Act of 1899, Section 404 refers to Section 404 of the Clean Water Act, 401 refers to Section 401 of the Clean Water Act and CZC refers to the Coastal Zone Consistency Certification in accordance with S.C. Coastal Zone Management Program.

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).

I. General Conditions: This condition applies to all Nationwide Permits (NWP).

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.

II. Specific Conditions as applied to each individual NWP.

Nationwide Permit 1 - *Aids to Navigation* (Section 10, CZC)
The placement of aids to navigation and regulatory markers that are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66).

Proposed Action: Find consistent with the S.C. Coastal Zone Management Program.

Rationale: Direct SCDHEC OCRM permits are required within the critical area (as defined in 48-39-10, R. 30.1(D) and R. 30.10). Outside of the critical area, S.C. Construction in Navigable Waters Permits are required.

Nationwide Permit 2 - *Structures in Artificial Canals* (Section 10, CZC)
Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.5(g)). (Authority: Section 10)

Proposed Action: Find consistent with the S.C. Coastal Zone Management Program.

Rationale: Direct SCDHEC OCRM permits are required within the critical area (as defined in 48-39-10, R. 30.1(D) and R. 30.10). Outside of the critical area, S.C. Construction in Navigable Waters Permits are required.

Nationwide Permit 3 - *Maintenance* (Section 10, Section 404, CZC, 401)
(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, or of any currently serviceable structure or fill that did not require a permit at the time it was constructed, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This includes the placement of new or additional riprap to protect the structure or fill, provided the placement of riprap is the minimum necessary to protect the structure or fill or to ensure the safety of the structure or fill. This NWP authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation,

or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.

(b) This NWP also authorizes the removal of accumulated sediments and debris outside the immediate vicinity of existing structures (*e.g.,* bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 200 feet in any direction from the structure. This 200 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance 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, 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 conducting the maintenance activity, 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.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a preconstruction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act (Sections 10 and 404))

Note: This NWP authorizes the repair, rehabilitation, or replacement of any currently serviceable structure or fill that does not qualify for the Clean Water Act section 404(f) exemption for maintenance.

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: This NWP provides for repair, rehabilitation, or replacement currently serviceable structure or fill, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for at the time it was constructed. There should be minimal adverse impact on water quality or water uses and these activities will not have an overall adverse impact on water quality or existing or classified uses. Certification of this NWP maintains the proper sequence of avoidance, minimization, and compensation for unavoidable impacts while providing applicants expeditious approval when proposed projects meet or exceed the criteria for the NWP.

Nationwide Permit 4 - *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities* (Section 10, Section 404, CZC, 401)

Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and clam and oyster digging, fish aggregating devices, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Authorities: Sections 10 and 404)

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: These devices and/or activities should have no adverse impacts on water quality or water uses, including wetlands functions, because of the nature of the devices. They would not obstruct flow or circulation patterns. Any impact from clam or oyster digging would be temporary with no changes in existing water quality or water uses.

Nationwide Permit 5 - *Scientific Measurement Devices* (Section 10, Section 404, CZC, 401)
Devices, whose purpose is to measure and record scientific data, such as staff gages, tide and current gages, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. Upon completion of the use of the device to measure and record scientific data, the measuring device and any other structures or fills associated with that device (*e.g.,* foundations, anchors, buoys, lines, etc.) must be removed to the maximum extent practicable and the site restored to pre-construction elevations. (Authorities: Sections 10 and 404)

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: Due to the nature of these devices and/or activities, this NWP should have no adverse impacts on water quality or uses, including wetland functions. The size of the weirs and flumes covered by this NWP are such as not to obstruct flow or circulation patterns.

Nationwide Permit 6 - *Survey Activities* (Section 10, Section 404, CZC, 401)
Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, sample plots or transects for wetland delineations, and historic resources surveys. For the purposes of this NWP, the term "exploratory trenching" means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work and must not drain a water of the United States. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 1/10-acre in waters of the U.S. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under section 402 of the Clean Water Act. (Authorities: Sections 10 and 404)

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: These devices and/or activities should have no adverse impacts on water quality or water uses, including wetlands functions, because of the nature of the devices. They would not obstruct flow or circulation patterns

Nationwide Permit 7 - *Outfall Structures and Associated Intake Structures* (Section 10, Section 404, CZC, 401)

Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or otherwise in compliance with regulations issued under the National Pollutant Discharge Elimination System Program (section 402 of the Clean Water Act). The construction of intake structures is not authorized by this NWP, unless they are directly associated with an authorized outfall structure.
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)

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: Even though the placement or construction of these structures has the potential to adversely affect some water uses, including aquatic life passage or secondary recreational uses, the Department will have the opportunity to review these impacts through review of applications for Construction in Navigable Waters Permitting Program. Further, data obtained from the Corps indicates that for the period from March of 2017 to September of 2020, 26 authorizations were issued under this NWP with no associated fill or linear feet of stream impacts. Therefore, SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program.

Nationwide Permit 8 - *Oil and Gas Structures on the Outer Continental Shelf* (Section 10, CZC)

Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Bureau of Ocean Energy Management. Such structures shall not be placed within the limits of any designated shipping safety fairway or traffic separation scheme, except temporary anchors that comply with the fairway regulations in 33 CFR 322.5(l). The district engineer will review such proposals to ensure compliance with the provisions of the fairway regulations in 33 CFR 322.5(l). Any Corps review under this NWP will be limited to the effects on navigation and national security in accordance with 33 CFR 322.5(f), as well as 33 CFR 322.5(l) and 33 CFR part 334. Such structures will not be placed in established danger zones or restricted areas as designated in 33 CFR part 334, nor will such structures be permitted in EPA or Corps-designated dredged material disposal areas.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 32.) (Authority: Section 10)

Proposed Action: Find consistent with the S.C. Coastal Zone Management Program.

Rationale: SCDHEC OCRM will review these applications under a separate Federal Consistency process with the Department of the Interior and consequently has a review process in place.

Nationwide Permit 9 - *Structures in Fleeting and Anchorage Areas* (Section 10, CZC)

Structures, buoys, floats, and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established for that purpose. (Authority: Section 10)

Proposed Action: Find consistent with the S.C. Coastal Zone Management Program.

Rationale: Direct SCDHEC OCRM permits are required within the critical area (as defined in 48-39-10, R. 30.1(D) and R. 30.10). Outside of the critical area, S.C. Construction in Navigable Waters Permits are required.

Nationwide Permit 10 - *Mooring Buoys* (Section 10, CZC)
Non-commercial, single-boat, mooring buoys. (Authority: Section 10)

Proposed Action: Find consistent with the S.C. Coastal Zone Management Program.

Rationale: Direct SCDHEC OCRM permits are required within the critical area (as defined in 48-39-10, R. 30.1(D) and R. 30.10). Outside of the critical area, S.C. Construction in Navigable Waters Permits are required.

Nationwide Permit 11 - *Temporary Recreational Structures* (Section 10, CZC)
Temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as water skiing competitions and boat races or seasonal use, provided that such structures are removed within 30 days after use has been discontinued. At Corps of Engineers reservoirs, the reservoir managers must approve each buoy or marker individually. (Authority: Section 10)

Proposed Action: Find consistent with the S.C. Coastal Zone Management Program.

Rationale: Direct SCDHEC OCRM permits are required within the critical area (as defined in 48-39-10, R. 30.1(D) and R. 30.10). Outside of the critical area, S.C. Construction in Navigable Waters Permits are required. In the critical area, there is a General Permit for these structures that allows them to be in place for 45 days.

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, including outfall and intake structures. 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 petrochemical products, for any purpose. 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 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, 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 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 section 9 of the Rivers and Harbors Act of 1899. 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).

Proposed Action: Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for the Evaluation of All Projects C.3.I, Policy VII.A.1, Policy XI., Ch IV B. Policies and others depending upon the activity).

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 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). 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.

Proposed 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.

Proposed 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.
2. This NWP is not certified for pipelines with more than 10 aquatic site crossings (not including directionally bored crossings).
3. 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.
4. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Nationwide Permit 13 - *Bank Stabilization* (Section 10, Section 404, CZC, 401)

Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

(a) No material is placed in excess of the minimum needed for erosion protection;

(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects (an exception is for bulkheads—the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);

(c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;

(d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;

(e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;

(f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);

(g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;

(h) The activity is not a stream channelization activity; and

(i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization. This

NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization 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, 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 the bank stabilization activity: (1) Involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (Authorities: Sections 10 and 404)
Note: In coastal waters and the Great Lakes, living shorelines may be an appropriate option for bank stabilization, and may be authorized by NWP 54.

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: Although these activities may cause temporary increases in turbidity, there should be no permanent impacts to water quality or water uses and in fact, these activities should improve water quality over time by improving eroding areas. In most instances there will be no loss of wetland functions. Direct SCDHEC OCRM permits are required within the critical area. Outside of the critical area, S.C. Construction in Navigable Waters Permits are required. Corps data on NWPs indicates that between March of 2017 and September of 2020, NWP 13 was issued 191 times with 6.39 acres of permanent and temporary impacts. SCDHEC believes, in light of the amount of times this NWP has been used, that these impacts can be categorized as minimal as intended for the nationwide permitting program.

Nationwide Permit 14 - *Linear Transportation Projects* (Section 10, Section 404, CZC, 401)
Activities required for crossings of waters of the United States associated with the construction, expansion, modification, or improvement of linear ransportation projects (*e.g.,* roads, highways, railways, trails, driveways, airport runways, and taxiways) in waters of the United States. For linear transportation projects in non-tidal waters, the discharge cannot cause the loss of greater than 1/2-acre of waters of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project. This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, 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. Temporary fills must be removed in their entirety and the affected areas returned to reconstruction elevations. The areas affected by temporary fills must be revegetated, as appropriate. This NWP cannot be used to authorize non-linear features commonly

associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The loss of waters of the United States exceeds 1/10-acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: For linear transportation projects 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. Linear transportation projects must comply with 33 CFR 330.6(d).

Note 2: Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Note 3: For NWP 14 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).

Proposed Action: Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I, Policy II. B.1 (a), (b) and (f), Policy VII.A.1, and others depending on the activity.)

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 acres loss of waters of the United States and up to 1/3-acre in tidal waters. 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). 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.

Proposed Conditions of the 401 Water Quality Certification:

1. 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.
2. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Proposed Conditions for 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.
2. Linear transportation projects must cross perpendicular (to the extent practicable) to the aquatic site area. Impacts certified under this NWP must be limited to three crossings per single and complete project and must be in non-tidal wetlands only.
3. 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.
4. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Nationwide Permit 15 - *U.S. Coast Guard Approved Bridges* (Section 404, CZC, 401)
Discharges of dredged or fill material incidental to the construction of a bridge across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided the construction of the bridge structure has been authorized by the U.S. Coast Guard under section 9 of the Rivers and Harbors Act of 1899 or other applicable laws. Causeways and approach fills are not included in this NWP and will require a separate section 404 permit. (Authority: Section 404 of the Clean Water Act (Section 404))

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: Because the issuance of a U. S. Coast Guard bridge permit also requires a Water Quality Certification from the SCDHEC, SCDHEC will have the opportunity to review proposed bridge construction projects and address any adverse impacts to water quality, water uses, or wetland functions through review for that Federal permit. Review of activities proposed under this NWP by the Corps will be conducted concurrently with the 401 Water Quality Certification review for the U.S. Coast Guard permit. The NWP is consistent with the S.C. Coastal Zone Management Program because separate federal consistency review would be required for all U. S. Coast Guard approved bridges and in the critical areas direct SCDHEC OCRM permits are required.

Nationwide Permit 16 - *Return Water From Upland Contained Disposal Areas* (Section 404, CZC, 401)
Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs in an area that has no waters of the United States and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the Clean Water Act section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Authority: Section 404)

Proposed Action: Deny 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I, Policies VIII. A.1., and B. 1., and others depending on the activity).

Rationale: This NWP requires each applicant to obtain an individual certification from the Department and states, "the quality of the return water is controlled by the state through the Clean Water Act section 401 certification procedures." Therefore, the return water must be reviewed under an individual 401 review to ensure the discharge is 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) The NWP can be found consistent with the S.C. Coastal Zone Management Program if individual 401 Water Quality Certifications are issued for proposed projects.

Nationwide Permit 17 - *Hydropower Projects* (Section 404, CZC, 401)
Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 10,000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and section 30 of the Federal Power Act, as amended.
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)

Proposed Action: Deny 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I, Policy XI and XII.E.1, Ch IV B. Policies and others depending on the activity.)

Rationale: SCDHEC reviews all applications for FERC licenses and pursuant to the Clean Water Act must review an application for a FERC license for individual 401 Water Quality Certification. Therefore, SCDHEC will have the opportunity during project review for the FERC licensing or relicensing process to evaluate any fill associated with the licensing or relicensing. Any fills at existing projects or sediment releases from licensed projects would not be reviewed by the Department. Fills have the potential to affect wetlands as well as open waters so SCDHEC must retain its right to review the effect of fills in wetlands. Currently, there are no hydropower projects in the coastal zone of South Carolina. The NWP is inconsistent with the S.C. Coastal Zone Management Program because separate federal consistency review would be required for all FERC projects.

Nationwide Permit 18 - *Minor Discharges* (Section 10, Section 404, CZC, 401)
Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:
(a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
(b) The discharge will not cause the loss of more than 1/10-acre of waters of the United States; and
(c) The discharge is not placed for the purpose of a stream diversion.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: Corps data for South Carolina indicates that between March of 2017 and September of 2020, this NWP was issued 153 times with total permanent and temporary impacts of 6.498 acres. Therefore, SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program. If SCDHEC were to impose additional conditions to the certification of this NWP, the result would be additional delays and costs for permit applicants. Given the limited impacts to the aquatic environment, additional conditions are not justified.

Nationwide Permit 19 - *Minor Dredging* (Section 10, Section 404, CZC, 401)

Dredging of no more than 50 cubic yards below the plane of the ordinary high water mark or the mean high water mark from navigable waters of the United States (*i.e.,* section 10 waters). This NWP does not authorize the dredging or degradation through siltation of coral reefs, sites that support submerged aquatic vegetation (including sites where submerged aquatic vegetation is documented to exist but may not be present in a given year), anadromous fish spawning areas, or wetlands, or the connection of canals or other artificial waterways to navigable waters of the United States (see 33 CFR 322.5(g)). All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. (Authorities: Sections 10 and 404)

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: Corps data for South Carolina reveals that between March of 2017 and September of 2020, this NWP was issued only four times with total permanent and temporary impacts of 0.0101 acres. Therefore, SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program. If SCDHEC were to impose additional conditions to the certification of this NWP, the result would be additional delays and costs for permit applicants. Given the limited use of this NWP and the limited impacts to the aquatic environment, additional conditions are not justified.

Nationwide Permit 20 - *Response Operations for Oil or Hazardous Substances* (Section 10, Section 404, CZC, 401)

Activities conducted in response to a discharge or release of oil or hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) including containment, cleanup, and mitigation efforts, provided that the activities are done under either:
(1) The Spill Control and Countermeasure Plan required by 40 CFR 112.3;
(2) the direction or oversight of the federal on scene coordinator designated by 40 CFR part 300; or
(3) any approved existing state, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts. This NWP also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761. This NWP also authorizes the use of temporary structures and fills in waters of the U.S. for spill response training exercises. (Authorities: Sections 10 and 404)

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: The Department will have oversight of these activities through membership on the Regional Response Team. These cleanup activities should be allowed to proceed in a timely manner

and requirement of a Corps permit and individual water quality certification could unduly delay the process with potential threats to water quality, water uses, and wetland functions.

Nationwide Permit 21 - *Surface Coal Mining Activities* (Section 10, Section 404, CZC, 401)
Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations, provided the following criteria are met:
(a) The activities are already authorized, or are currently being processed by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement;
(b) 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 tidal waters or non-tidal wetlands adjacent to tidal waters; and
(c) The discharge is not associated with the construction of valley fills. A "valley fill" is a fill structure that is typically constructed within valleys associated with steep, mountainous terrain, associated with surface coal mining activities.
Notification: The permittee must submit a pre-construction notification to the district engineer. (See general condition 32.) (Authorities: Sections 10 and 404)

Proposed Action: Deny 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.l)

Rationale: No known coal reserves are found in South Carolina and SCDHEC has no history to indicate how the Corps with interpret and implement this NWP. 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, this NWP has the potential for significant adverse water quality impacts and 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).

Nationwide Permit 22 - *Removal of Vessels* (Section 10, Section 404, CZC, 401)
Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of manmade obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if:
(1) The vessel is listed or eligible for listing in the National Register of Historic Places; or
(2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 32.) If the vessel is listed or eligible for listing in the National Register of Historic Places, the permittee cannot commence the activity until informed by the district engineer that compliance with the "Historic Properties" general condition is completed. (Authorities: Sections 10 and 404)
Note 1: If a removed vessel is disposed of in waters of the United States, a permit from the U.S. EPA may be required (see 40 CFR 229.3). If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.
Note 2: Compliance with general condition 8, Endangered Species, and general condition 20, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the possibility that shipwrecks may be historic properties.

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: Any expected water quality impacts from use of this NWP would be temporary and isolated to the immediate area of the work. Any major movement of sediments, such as maintenance dredging or shoal removal, for vessel removal would require an individual permit and individual certifications. If a vessel is located in an area of known or suspected sediment contamination, there is the potential that removal of this vessel will result in the release of these contaminants.

Nationwide Permit 23 - *Approved Categorical Exclusions* (Section 10, Section 404, CZC, 401)
Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:
(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500), that the activity is categorically excluded from the requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and
(b) The Office of the Chief of Engineers (Attn: CECW–CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23. The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.
Notification: Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 32). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letter(s). (Authorities: Sections 10 and 404)
Note: The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW–CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are: The Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05–07. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same website.

Proposed Action: Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for the Evaluation of All Projects C.3.I, Policy XII. E.1, and others depending on the activity)

Rationale: This NWP would allow federal agencies to make a determination of minimal impacts to state resources for their own projects without review and concurrence by the state. Data obtained from the Corps indicates that NWP #23 has not been issued during the period from March 2017 to September 2020. However, since there is no limitation on the scope of these activities, SCDHEC believes that there is the potential for this NWP to have more than the minimal impacts intended for the nationwide permitting program and is, therefore, 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). 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.

Proposed Conditions for the 401 Water Quality Certification:
1. This NWP is not certified for activities if the discharge will cause the loss of greater than 0.25 acres of Waters of the United States or more than 300 linear feet of stream impacts.
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.

Proposed Conditions of the Coastal Zone Consistency Certification:
1. This NWP is not certified for activities if the discharge will cause the loss of greater than 0.25 acres of Waters of the United States or more than 300 linear feet of stream impacts.
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 24 - *Indian Tribe or State Administered Section 404 Programs* (Section 10, CZC)
Any activity permitted by a state or Indian Tribe administering its own section 404 permit program pursuant to 33 U.S.C. 1344(g)–(l) is permitted pursuant to section 10 of the Rivers and Harbors Act of 1899. (Authority: Section 10)
Note 1: As of the date of the promulgation of this NWP, only New Jersey and Michigan administer their own section 404 permit programs.
Note 2: Those activities that do not involve an Indian Tribe or State section 404 permit are not included in this NWP, but certain structures will be exempted by Section 154 of Public Law 94–587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.4(b)).

Proposed Action: Find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.l)

Rationale: South Carolina does not have a state administered 404 Program.

Nationwide Permit 25 - *Structural Discharges* (Section 10, Section 404, CZC, 401)
Discharges of material such as concrete, sand, rock, etc., into tightly sealed forms or cells where the material will be used as a structural member for standard pile supported structures, such as bridges, transmission line footings, and walkways, or for general navigation, such as mooring cells, including the excavation of bottom material from within the form prior to the discharge of concrete, sand, rock, etc. This NWP does not authorize filled structural members that would support buildings, building pads, homes, house pads, parking areas, storage areas and other such structures. The structure itself may require a separate section 10 permit if located in navigable waters of the United States. (Authority: Section 404)

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: Due to the nature of the discharges, changes in water quality because of the discharges will be minimal. Acreage impacts to aquatic sites will be minimal because of the limitations.

Nationwide Permit 26 - [Reserved]

Nationwide Permit 27 - *Aquatic Habitat Restoration Enhancement, and Establishment Activities* (Section 10, Section 404, CZC, 401)

Activities in waters of the United States associated with the restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of nontidal streams and other non-tidal open waters, and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters, provided those activities result in net increases in aquatic resource functions and services.

To be authorized by this NWP, the aquatic habitat restoration, enhancement, or establishment activity must be planned, designed, and implemented so that it results in aquatic habitat that resembles an ecological reference. An ecological reference may be based on the characteristics of one or more intact aquatic habitats or riparian areas of the same type that exist in the region. An ecological reference may be based on a conceptual model developed from regional ecological knowledge of the target aquatic habitat type or riparian area.

To the extent that a Corps permit is required, activities authorized by this NWP include, but are not limited to: The removal of accumulated sediments; releasing sediment from reservoirs to restore downstream habitat, the installation, removal, and maintenance of small water control structures, dikes, and berms, as well as discharges of dredged or fill material to restore appropriate stream channel configurations after small water control structures, dikes, and berms are removed; the installation of current deflectors; the enhancement, rehabilitation, or re-establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to enhance, rehabilitate, or re-establish stream meanders; the removal of stream barriers, such as undersized culverts, fords, and grade control structures; the backfilling of artificial channels; the removal of existing drainage structures, such as drain tiles, and the filling, blocking, or reshaping of drainage ditches to restore wetland hydrology; the installation of structures or fills necessary to restore or enhance wetland or stream hydrology; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; coral restoration or relocation; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; reestablishment of submerged aquatic vegetation in areas where those plant communities previously existed; reestablishment of tidal wetlands in tidal waters where those wetlands previously existed; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species should be planted at the site.

This NWP authorizes the relocation of non-tidal waters, including non-tidal wetlands and streams, on the project site provided there are net increases in aquatic resource functions and services. Except for the relocation of non-tidal waters on the project site, this NWP does not authorize the conversion of a stream or natural wetlands to another aquatic habitat type (*e.g.,* the conversion of a stream to wetland or vice versa) or uplands. Changes in wetland plant communities that occur when wetland hydrology is more fully restored during wetland rehabilitation activities are not considered a conversion to another aquatic habitat type. This NWP does not authorize stream channelization. This NWP does not authorize the relocation of tidal waters or the conversion of tidal waters, including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

Compensatory mitigation is not required for activities authorized by this NWP since these activities must result in net increases in aquatic resource functions and services.

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland establishment agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS),

the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), U.S. Forest Service (USFS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (*i.e.,* prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity, the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity results in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

Reporting. For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of:

(1) The binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map;

(2) the NRCS or USDA Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or establishment action; or

(3) the SMCRA permit issued by OSMRE or the applicable state agency. The report must also include information on baseline ecological conditions on the project site, such as a delineation of wetlands, streams, and/or other aquatic habitats. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing any activity (see general condition 32), except for the following activities:

(1) Activities conducted on non- Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or establishment agreement between the landowner and the FWS, NRCS, FSA, NMFS, NOS, USFS or their designated state cooperating agencies;

(2) Activities conducted in accordance with the terms and conditions of a binding coral restoration or relocation agreement between the project proponent and the NMFS or any of its designated state cooperating agencies;

(3) Voluntary stream or wetland restoration or enhancement action, or wetland establishment action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or
(4) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSMRE or the applicable state agency. However, the permittee must submit a copy of the appropriate documentation to the district engineer to fulfill the reporting requirement. (Authorities: Sections 10 and 404)
Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee projects. However, this NWP does not authorize the reversion of an area used for a compensatory mitigation project to its prior condition, since compensatory mitigation is generally intended to be permanent.

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program (Guidelines for Evaluation of All Projects C.3.I, Policy XIV B.).

Rationale: This NWP authorizes aquatic habitat restoration, establishment, and enhancement activities, provided those activities result in net increases in aquatic resource functions and services. Pre-construction notification is required for activities authorized by the NWP, except for those activities conducted in accordance with binding agreements between certain Federal agencies or their designated state cooperating agencies, voluntary wetland activities documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards or the reclamation of surface coal mining lands, in accordance with permits issued by the Office of Surface Mining or the applicable state agency. For those activities that do not require pre-construction notification, reporting to the district engineer is required. These reporting requirements provide the district engineers with the opportunity to review aquatic habitat restoration, establishment, and enhancement activities to ensure that those activities result in net increases in aquatic resource functions and services. Activities conducted under the authority of this NWP have the potential to improve water quality, water uses, and wetland functions.

Nationwide Permit 28 - *Modifications of Existing Marinas* (Section 10, CZC,)
Reconfiguration of existing docking facilities within an authorized marina area. No dredging, additional slips, dock spaces, or expansion of any kind within waters of the United States is authorized by this NWP. (Authority: Section 10)

Proposed Action: Find consistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I)

Rationale: The reconfiguration of existing docking facilities with no increase in slips or other expansions should have minimal impact on water quality or other natural resources in the area. Direct permits are required from the state for reconstructing marinas in critical areas and other waters of the State.

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)

Proposed Action: Issue 401 Water Quality Certification with conditions and find inconsistent with S.C. Coastal Zone Management Program. (Guidelines for the Evaluation of All Projects C.3.I, Policy I.(1)(b) and Policy XII. E. (1), and others depending on the activity.)

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 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).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.

Proposed 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.

Proposed Conditions for 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.
2. The impounding of water and creating of lakes or ponds is not authorized by this NWP.

3. 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.
4. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Nationwide Permit 30 - *Moist Soil Management for Wildlife* (Section 404, CZC, 401)
Discharges of dredged or fill material into non-tidal waters of the United States and maintenance activities that are associated with moist soil management for wildlife for the purpose of continuing ongoing, site specific, wildlife management activities where soil manipulation is used to manage habitat and feeding areas for wildlife. Such activities include, but are not limited to, plowing or discing to impede succession, preparing seed beds, or establishing fire breaks. Sufficient riparian areas must be maintained adjacent to all open water bodies, including streams, to preclude water quality degradation due to erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies. (Authority: Section 404)
Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3. Some such activities may qualify for an exemption under section 404(f) of the Clean Water Act (see 33 CFR 323.4).

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S. C. Coastal Zone Management Program.

Rationale: Data obtained from the Corps for South Carolina indicates that during the period from March 2017 through September 2020, this NWP was issued only one time with no permanent impacts. Therefore, SCDHEC believes there is limited potential for these activities to have more than minimal adverse impacts to the aquatic environment.

Nationwide Permit 31 - *Maintenance of Existing Flood Control Facilities* (Section 10, Section 404, CZC, 401)
Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) Were previously authorized by the Corps by individual permit, general permit, or 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the "maintenance baseline," as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. To the extent that a Corps permit is required, this NWP authorizes the removal of vegetation from levees associated with the flood control project. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged and excavated material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (*e.g.,* depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the adverse environmental impacts caused by the maintenance activities are no more than minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner. A flood control facility will not be considered abandoned if the prospective permittee is in the process of obtaining other authorizations or approvals required for maintenance activities and is experiencing delays in obtaining those authorizations or approvals.

Mitigation: The district engineer will determine any required mitigation onetime only for impacts associated with maintenance work at the same time that the maintenance baseline is approved. Such one-time mitigation will be required when necessary to ensure that adverse environmental effects are no more than minimal, both individually and cumulatively. Such mitigation will only be required once for any specific reach of a flood control project. However, if one-time mitigation is required for impacts associated with maintenance activities, the district engineer will not delay needed maintenance, provided the district engineer and the permittee establish a schedule for identification, approval, development, construction and completion of any such required mitigation. Once the one-time mitigation described above has been completed, or a determination made that mitigation is not required, no further mitigation will be required for maintenance activities within the maintenance baseline (see Note, below). In determining appropriate mitigation, the district engineer will give special consideration to natural water courses that have been included in the maintenance baseline and require mitigation and/or best management practices as appropriate.

Emergency Situations: In emergency situations, this NWP may be used to authorize maintenance activities in flood control facilities for which no maintenance baseline has been approved. Emergency situations are those which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if action is not taken before a maintenance baseline can be approved. In such situations, the determination of mitigation requirements, if any, may be deferred until the emergency has been resolved. Once the emergency has ended, a maintenance baseline must be established expeditiously, and mitigation, including mitigation for maintenance conducted during the emergency, must be required as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer before any maintenance work is conducted (see general condition 32). The preconstruction notification may be for activity-specific maintenance or for maintenance of the entire flood control facility by submitting a five-year (or less) maintenance plan. The preconstruction notification must include a description of the

maintenance baseline and the disposal site for dredged or excavated material. (Authorities: Sections 10 and 404)

Note: If the maintenance baseline was approved by the district engineer under a prior version of NWP 31, and the district engineer imposed the one-time compensatory mitigation requirement on maintenance for a specific reach of a flood control project authorized by that prior version of NWP 31, during the period this version of NWP 31 is in effect (*insert applicable dates based on final NWPs*) the district engineer will not require additional compensatory mitigation for maintenance activities authorized by this NWP in that specific reach of the flood control project.

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: Corps data for South Carolina reveals that no projects were authorized under this NWP between March of 2017 and September of 2020. Therefore, SCDHEC believes that potential impacts can be categorized as minimal as intended for the nationwide permitting program. Further, this NWP requires pre-construction notification for all activities. The review by the district engineers will ensure that this NWP does not result in more than minimal impacts to the aquatic environment. If SCDHEC were to impose additional conditions to the certification of this NWP, the result would be additional delays and costs for permit applicants. Given the limited use of the NWP and the limited impacts to the aquatic environment, additional conditions are not justified.

Nationwide Permit 32 - *Completed Enforcement Actions* (Section 10, Section 404, CZC, 401)

Any structure, work, or discharge of dredged or fill material remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(i) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899; or the terms of an EPA 309(a) order on consent resolving a violation of section 404 of the Clean Water Act, provided that:

(a) The activities authorized by this NWP cannot adversely affect more than 5 acres of non-tidal waters or 1 acre of tidal waters;

(b) The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that is authorized by this NWP; and

(c) The district engineer issues a verification letter authorizing the activity subject to the terms and conditions of this NWP and the settlement agreement, including a specified completion date; or

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required. Compliance is a condition of the NWP itself; non-compliance of the terms and conditions of an NWP 32 authorization may result in an additional enforcement action (*e.g.,* a Class I civil administrative penalty). Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before

reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Authorities: Sections 10 and 404)

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: This NWP is applicable to enforcement actions by EPA and the Corps only. EPA and Corps must ensure that State Water Quality Standards are maintained through appropriate coordination with SCDHEC and are required do so on enforcement actions that may have an adverse effect on water quality within State waters. The district engineer can require an individual permit if the impacts are more than minimal and the applicant has not proposed compensatory mitigation to minimize the impacts. Restoration or compensatory mitigation is addressed in the General Conditions applicable to all NWPs and therefore this NWP can be found consistent with the S.C. Coastal Zone Management Program. Therefore, SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program.

Nationwide Permit 33 – *Temporary Construction, Access, and Dewatering* (Section 10, Section 404, CZC, 401)

Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse environmental effects. Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the activity is conducted in navigable waters of the United States (*i.e.,* section 10 waters) (see general condition 32). The preconstruction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to preproject conditions. (Authorities: Sections 10 and 404)

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: Best Management Practices are included in the Corps and SCDHEC General Conditions applicable to all NWPs. Due to the restoration requirements of this permit, the impacts to water quality, water uses, coastal resources and/or wetland functions should be temporary. Data obtained from the Corps indicates that between March of 2017 and September of 2020, this NWP was issued ten times with only temporary impacts. Given the temporary nature of the activities authorized by this NWP, SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program If SCDHEC were to impose additional conditions to the certification of the NWP, the result would be additional delays and costs for permit applicants. Given the limited

use of the NWP and the limited impacts, additional conditions are not justified.

Nationwide Permit 34 - *Cranberry Production Activities* (Section 404, CZC, 401)
Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry production activities such as warehouses, processing facilities, or parking areas. For the purposes of this NWP, the cumulative total of 10 acres will be measured over the period that this NWP is valid.
Notification: The permittee must submit a pre-construction notification to the district engineer once during the period that this NWP is valid, and the NWP will then authorize discharges of dredge or fill material at an existing operation for the permit term, provided the 10-acre limit is not exceeded. (See general condition 32.) (Authority: Section 404)

Proposed Action: Deny 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I)

Rationale: There is no cranberry production in South Carolina and SCDHEC has no history of how the Corps will interpret or implement this NWP. As currently proposed, this NWP allows significant impacts to waters of the United States (up to 10 acres) and 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).

Nationwide Permit 35 - *Maintenance Dredging of Existing Basins* (Section 10, CZC)
The removal of accumulated sediment for maintenance of existing marina basins, access channels to marinas or boat slips, and boat slips to previously authorized depths or controlling depths for ingress/egress, whichever is less. All dredged material must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization. Proper sediment controls must be used for the disposal site. (Authority: Section 10)

Proposed Action: Find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I, Policies VIII.A.1 (a), (b) & (c), and others depending on the activity).

Rationale: This permit has the potential to be abused. Many existing marinas are known to have problems with excessive siltation, suspected contaminant problems and do not have available upland spoil disposal sites. While direct permits are required within the critical areas, State Navigable Waters Permits are required outside the critical areas.

Nationwide Permit 36 - *Boat Ramps* (Section 10, Section 404, CZC, 401)
Activities required for the construction of boat ramps, provided the activity meets all of the following criteria:
(a) The discharge into waters of the United States does not exceed 50 cubic yards of concrete, rock, crushed stone or gravel into forms, or in the form of precast concrete planks or slabs, unless the district engineer waives the 50 cubic yard limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;

(b) The boat ramp does not exceed 20 feet in width, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
(c) The base material is crushed stone, gravel or other suitable material;
(d) The excavation is limited to the area necessary for site preparation and all excavated material is removed to an area that has no waters of the United States; and,
(e) No material is placed in special aquatic sites, including wetlands. The use of unsuitable material that is structurally unstable is not authorized. If dredging in navigable waters of the United States is necessary to provide access to the boat ramp, the dredging must be authorized by another NWP, a regional general permit, or an individual permit.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The discharge into waters of the United States exceeds 50 cubic yards, or (2) the boat ramp exceeds 20 feet in width. (See general condition 32.) (Authorities: Sections 10 and 404)

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: In general, construction impacts of boat ramp installation to water quality and water uses are minimal and temporary. Data obtained from the Corps indicates that between March of 2017 and September of 2020, this NWP was issued 21 times with total permanent and temporary impacts of 0.3439 acres. SCDHEC believes these impacts can be categorized as minimal as intended for the nationwide permitting program.

Nationwide Permit 37 - *Emergency Watershed Protection and Rehabilitation* (Section 10, Section 404, CZC, 401)
Work done by or funded by:
(a) The Natural Resources Conservation Service for a situation requiring immediate action under its emergency Watershed Protection Program (7 CFR part 624);
(b) The U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook (FSH 2509.13);
(c) The Department of the Interior for wildland fire management burned area emergency stabilization and rehabilitation (DOI Manual part 620, Ch. 3);
(d) The Office of Surface Mining, or states with approved programs, for abandoned mine land reclamation activities under Title IV of the Surface Mining Control and Reclamation Act (30 CFR subchapter R), where the activity does not involve coal extraction; or
(e) The Farm Service Agency under its Emergency Conservation Program (7 CFR part 701).
In general, the permittee should wait until the district engineer issues an NWP verification or 45 calendar days have passed before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification and any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.
Notification: Except in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the permittee must submit a preconstruction notification to the district engineer prior to commencing the activity (see general condition 32). (Authorities: Sections 10 and 404)

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S. C. Coastal Zone Management Program.

Rationale: If an action is truly an emergency situation and the result of a natural disaster, waiting on an individual certification would result in unnecessary delay. Rapid response is necessary for situations threatening life and property.

Nationwide Permit 38 - *Cleanup of Hazardous and Toxic Waste* (Section 10, Section 404, CZC, 401)
Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.
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: Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S. C. Coastal Zone Management Program.

Rationale: These cleanup activities should be allowed to proceed in a timely manner and requirement of an Army Corps of Engineers permit and individual water quality certification could unduly delay the process with potential threats to water quality, water uses, coastal resources and wetland functions. The District Engineer can require an individual permit if the impacts are more than minimal and the applicant has not proposed compensatory mitigation to minimize the impacts.

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.

Proposed Action: Issue 401 Water Quality Certification with conditions (Citation A and B) and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for the Evaluation of All Projects C.3.I, Policy IV.1 (a), (b) & (c), Policy VII.A.1, Policy VII.C.1, Policy XII.E.1 and others depending upon the activity)

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.

Proposed 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.

Proposed Regional 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.
2. The impounding of water and creating of lakes or ponds is not authorized by this NWP.
3. 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.
4. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Nationwide Permit 40 - *Agricultural Activities* (Section 404, CZC, 401)
Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches constructed in waters of the United States; and similar activities.
This NWP also authorizes the construction of farm ponds in non-tidal waters of the United States, excluding perennial streams, provided the farm pond is used solely for agricultural purposes. This NWP does not authorize the construction of aquaculture ponds. This NWP also authorizes discharges of dredged or fill material into non-tidal waters of the United States to relocate existing serviceable drainage ditches constructed in non-tidal streams.
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)
Note: Some discharges for agricultural activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4). This NWP authorizes the construction of farm ponds that do not qualify for the Clean Water Act section 404(f)(1)(C) exemption because of the recapture provision at section 404(f)(2).

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: Authorization of this permit in South Carolina should have minimal impact. According to the Natural Resources Conservation Service (NRCS), there are very few farmed wetlands in the state. In fact, data obtained from the Corps indicate that no NWP 40 were issued during the period from March of 2017 through September of 2020, in South Carolina. Consequently, issuance of the 401 Water Quality Certification and consistency with the S.C. Coastal Zone Management Program for this NWP should not result in adverse impacts to water quality or contravene State water quality standards. Further, this NWP requires pre-construction notification for all activities. The review by the district engineers will ensure that this NWP does not result in more than minimal impacts to the aquatic environment. If the SCDHEC were to impose additional conditions to the certification of this NWP, the result would be additional delays and costs for permit applicants. Given the limited use of this NWP and the limited impacts to the aquatic environment, additional conditions are not justified.

Nationwide Permit 41- *Reshaping Existing Drainage and Irrigation Ditches* (Section 404, CZC, 401)
Discharges of dredged or fill material into non-tidal waters of the United States, excluding non-tidal wetlands adjacent to tidal waters, to modify the cross-sectional configuration of currently serviceable drainage and irrigation ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage or irrigation ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. The reshaping of the drainage ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the drainage ditch as originally constructed (*i.e.,* the capacity of the drainage ditch must be the same as originally constructed and it cannot drain additional wetlands or other waters of the United States). Compensatory mitigation is not required because the work is designed to improve water quality.

This NWP does not authorize the relocation of drainage or irrigation ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage or irrigation ditch must be approximately the same as the location of the centerline of the original drainage or irrigation ditch. This NWP does not authorize stream channelization or stream relocation projects. (Authority: Section 404)

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: Based on the criteria for use of this NWP, any impact to water quality, water uses, and/or wetland functions should be temporary provided the applicant adheres to the stated criteria.

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)

Proposed Action: Issue 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for the Evaluation of All Projects C.3.I, Policy V.A.1 (d), Policy V.B.1 (a) & (b), Policy VII.A.1, and others depending on the activity)

Rationale: Data obtained from the Corps indicates that between March of 2017 and September of 2020, this NWP was used five times in South Carolina with total permanent and temporary impacts of 0.1977 acres. Given the limited use of the NWP and the limited impacts to the aquatic environment, SCDHEC does not believe additional 401 Water Quality Certification conditions are justified. 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.

Proposed 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 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 43 - *Stormwater Management Facilities* (Section 404, CZC, 401)
Discharges of dredged or fill material into non-tidal waters of the United States for the construction of stormwater management facilities, including stormwater detention basins and retention basins and other stormwater management facilities; the construction of water control structures, outfall structures and emergency spillways; the construction of low impact development integrated management features such as bioretention facilities (*e.g.,* rain gardens), vegetated filter strips, grassed swales, and infiltration trenches; and the construction of pollutant reduction green infrastructure features designed to reduce inputs of sediments, nutrients, and other pollutants into waters, such as features needed to meet reduction targets established under Total Daily Maximum Loads set under the Clean Water Act.
This NWP authorizes, to the extent that a section 404 permit is required, discharges of dredged or fill material into non-tidal waters of the United States for the maintenance of stormwater management facilities, low impact development integrated management features, and pollutant reduction green infrastructure features. The maintenance of stormwater management facilities, low impact development integrated management features, and pollutant reduction green infrastructure features that are not waters of the United States does not require a section 404 permit.
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. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.
Notification: For discharges into nontidal waters of the United States for the construction of new stormwater management facilities or pollutant reduction green infrastructure features, or the expansion of existing stormwater management facilities or pollutant reduction green infrastructure features, the permittee must submit a preconstruction notification to the district engineer prior to commencing the activity. (See general condition 32.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility or pollutant reduction green infrastructure feature. (Authority: Section 404)

Proposed Action: Issue 401 Water Quality Certification with conditions (Citation C) and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for the Evaluation of All Projects C.3.I, Policy XII.E.1, Policy XIII.A).

Rationale: The Clean Water Act and DHEC Regulation 61-68, *Water Classifications and Standards* (61-68.E.3) prohibit the use of waters of the State for the sole or principal purpose of transporting or treating wastes (see Citation C). This NWP is not consistent with the Coastal Zone Management policies regarding Wetland Master Planning, Stormwater Management and the protection of salt, brackish, and freshwater wetlands. Adherence to the proposed conditions will ensure that there are no adverse effects from the proposed activities.

Proposed Conditions for the 401 Water Quality Certification:
1. Activities authorized by this certification are limited to maintenance of existing facilities, such as stormwater ponds, detention and retention basins, water control structures, outfall structures, emergency spillways, and existing ponds that are proposed for use as water quantity or volume control. This NWP cannot be used for existing ponds that are proposed to be converted into water quality treatment facilities such as sediment basins, sediment traps, or other similar structures.
Proposed Conditions for the Coastal Zone Consistency Certification:
1. Activities authorized by this certification are limited to maintenance of existing facilities, such as stormwater ponds, detention and retention basins, water control structures, outfall structures, emergency spillways, and existing ponds that are proposed for use as water quantity or volume

control. This NWP cannot be used for existing ponds that are proposed to be converted into water quality treatment facilities such as sediment basins, sediment traps, or other similar structures.

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)

Proposed Action: Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for the Evaluation of All Projects C.3.I, Policy III.C.1, Policy VII.A.1, Policy XII.E.1, Policy XIII.E, and others depending on the activity)

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 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). This permit is not consistent with the S. C. Coastal Zone Management Program policies regarding the protection of salt, brackish, and fresh water wetlands, Stormwater Management and Dredging. 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.

Proposed 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.
Proposed Conditions for the Coastal Zone Consistency 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 45 - *Repair of Uplands Damaged by Discrete Events* (Section 10, Section 404, CZC, 401)

This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to commence, within two years of the date of damage, unless this condition is waived in writing by the district engineer. This NWP cannot be used to reclaim lands lost to normal erosion processes over an extended period.

This NWP does not authorize beach restoration or nourishment.

Minor dredging is limited to the amount necessary to restore the damaged upland area and should not significantly alter the pre-existing bottom contours of the waterbody.

Notification: The permittee must submit a pre-construction notification to the district engineer (see general condition 32) within 12 months of the date of the damage; for major storms, floods, or other discrete events, the district engineer may waive the 12- month limit for submitting a preconstruction notification if the permittee can demonstrate funding, contract, or other similar delays. The pre-construction notification must include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration. (Authorities: Sections 10 and 404)

Note: The uplands themselves that are lost as a result of a storm, flood, or other discrete event can be replaced without a section 404 permit, if the uplands are restored to the ordinary high water mark (in non-tidal waters) or high tide line (in tidal waters). (See also 33 CFR 328.5.) This NWP authorizes discharges of dredged or fill material into waters of the United States associated with the restoration of uplands.

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: This NWP authorizes the restoration of damaged uplands to the extent that existed before the damage occurred. It also authorizes any bank stabilization necessary to protect the restored uplands. Since this NWP only authorizes activities to restore damaged areas to previously existing conditions, SCDHEC does not believe that it will result in adverse impacts. Further, this NWP requires pre-construction notification for all activities. The review by the district engineers will ensure that this NWP does not result in more than minimal impacts to the aquatic environment.

Nationwide Permit 46 - *Discharges in Ditches* (Section 404, CZC, 401)

Discharges of dredged or fill material into non-tidal ditches that are: (1) Constructed in uplands, (2) receive water from an area determined to be a water of the United States prior to the construction of the ditch, (3) divert water to an area determined to be a water of the United States prior to the construction of the ditch, and (4) determined to be waters of the United States. The discharge must not cause the loss of greater than one acre of waters of the United States. This NWP does not authorize discharges of

dredged or fill material into ditches constructed in streams or other waters of the United States, or in streams that have been relocated in uplands. This NWP does not authorize discharges of dredged or fill material that increase the capacity of the ditch and drain those areas determined to be waters of the United States prior to construction of the ditch.
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)

Proposed Action: Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for the Evaluation of All Projects C.3.I, Policy VII.A.1, Policy XI. and others depending upon the activity)

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 one 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). The 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 with the addition of the proposed Regional Conditions and if the proposed certification condition are applied to the NWPs

Proposed Conditions for the 401 Water Quality Certification:
1. This NWP is not certified for discharges causing the loss of greater than a half-acre of waters of the United States.
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.

Proposed Conditions for the Coastal Zone Consistency Certification:
1. This NWP is not certified for discharges causing the loss of greater than a half-acre of waters of the United States.
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 47 [Reserved]

Nationwide Permit 48 - *Commercial Shellfish Mariculture Activities* (Section 10, Section 404, CZC, 401)
Discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States necessary for new and continuing commercial shellfish mariculture operations in authorized project areas. For the purposes of this NWP, the project area is the area in which the operator is authorized to conduct commercial shellfish mariculture activities, as identified through a lease

or permit issued by an appropriate state or local government agency, a treaty, or any easement, lease, deed, contract, or other legally binding agreement that establishes an enforceable property interest for the operator.

This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures into navigable waters of the United States. This NWP also authorizes discharges of dredged or fill material into waters of the United States necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize:

(a) The cultivation of a nonindigenous species unless that species has been previously cultivated in the waterbody;

(b) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990; or

(c) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas, or the deposition of shell material back into waters of the United States as waste. (Authorities: Sections 10 and 404)

Note 1: The permittee should notify the applicable U.S. Coast Guard office regarding the project.

Note 2: To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.

Note 3: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines "aquatic nuisance species" as "a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters."

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program.

Rationale: Authorization of this permit in South Carolina should have minimal impact. With the exception of harvesting activities, the activities authorized by this NWP usually enhance habitat characteristic to support the growth of shellfish. As for harvesting activities, pre-construction notification is required for dredge harvesting in areas inhabited by submerged aquatic vegetation, so case-by-case review will be conducted to ensure that the activity does not result in more than minimal adverse effects to the aquatic environment.

Nationwide Permit 49 - *Coal Remining Activities* (Section 10, Section 404, CZC, 401)

Discharges of dredged or fill material into non-tidal waters of the United States associated with the remining and reclamation of lands that were previously mined for coal. The activities must already be authorized, or they must currently be in process by the Department of the Interior Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts.

As part of the project, the permittee may conduct new coal mining activities in conjunction with the remining activities when he or she clearly demonstrates to the district engineer that the overall mining plan will result in a net increase in aquatic resource functions. The Corps will consider the SMCRA agency's decision regarding the amount of currently undisturbed adjacent lands needed to facilitate the remining and reclamation of the previously mined area. The total area disturbed by new mining must not exceed 40 percent of the total acreage covered by both the remined area and the additional area necessary to carry out the reclamation of the previously mined area.

Notification: The permittee must submit a pre-construction notification and a document describing how the overall mining plan will result in a net increase in aquatic resource functions to the district engineer. (See general condition 32.) (Authorities: Sections 10 and 404)

Proposed Action: Deny 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I)

Rationale: No known coal reserves are found in South Carolina and SCDHEC has no history to indicate how the Corps with interpret and implement this NWP. 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, this NWP has the potential for significant adverse water quality impacts and 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).

Nationwide Permit 50 - *Underground Coal Mining Activities* (Section 10, Section 404, CZC, 401)
Discharges of dredged or fill material into non-tidal waters of the United States associated with underground coal mining and reclamation operations provided the activities are authorized, or are currently being processed by the Department of the Interior, Office of Surface Mining Reclamation and Enforcement, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.
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. This NWP does not authorize coal preparation and processing activities outside of the mine site.
Notification: The permittee must submit a pre-construction notification to the district engineer. (See general condition 32.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Authorities: Sections 10 and 404)

Proposed Action: Deny 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I)

Rationale: No known coal reserves are found in South Carolina and SCDHEC has no history to indicate how the Corps with interpret and implement this NWP. 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, this NWP has the potential for significant adverse water quality impacts and 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).

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: 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 utility lines may be authorized by NWP C 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 utility lines and/or road crossings, then NWP C and/or NWP 14 shall be used if those activities meet the terms and conditions of NWPs C 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.

Proposed Action: Issue 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for the Evaluation of All Projects C.3.I, Policy VII.A.1, Policy XI., Ch IV B. Policies and others depending upon the activity)

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 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). 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.

Proposed Conditions of 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.
Proposed 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.

2. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Nationwide Permit 52 - *Water-Based Renewable Energy Generation Pilot Projects* (Section 10, Section 404, CZC, 401)

Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction, expansion, modification, or removal of water-based wind, water-based solar, wave energy, or hydrokinetic renewable energy generation pilot projects and their attendant features. Attendant features may include, but are not limited to, land-based collection and distribution facilities, control facilities, roads, parking lots, and stormwater management facilities.

For the purposes of this NWP, the term "pilot project" means an experimental project where the waterbased renewable energy generation units will be monitored to collect information on their performance and environmental effects at the project site.

The placement of a transmission line on the bed of a navigable water of the United States from the renewable energy generation unit(s) to a land-based collection and distribution facility is considered a structure under Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR 322.2(b)), and the placement of the transmission line on the bed of a navigable water of the United States is not a loss of waters of the United States for the purposes of applying the 1/2-acre limit.

For each single and complete project, no more than 10 generation units (*e.g.,* wind turbines, wave energy devices, or hydrokinetic devices) are authorized. For floating solar panels in navigable waters of the United States, each single and complete project cannot exceed 1/2- acre in water surface area covered by the floating solar panels.

This NWP does not authorize activities in coral reefs. Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.

Upon completion of the pilot project, the generation units, transmission lines, and other structures or fills associated with the pilot project must be removed to the maximum extent practicable unless they are authorized by a separate Department of the Army authorization, such as another NWP, an individual permit, or a regional general permit. Completion of the pilot project will be identified as the date of expiration of the Federal Energy Regulatory Commission (FERC) license, or the expiration date of the NWP authorization if no FERC license is required.

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 1: Utility lines constructed to transfer the energy from the land-based collection 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 utility lines may be authorized by NWP 12 or another Department of the Army authorization.

Note 2: An activity that is located on an existing locally or federally maintained U.S. Army Corps of Engineers project requires separate review and/or approval from the Corps under 33 U.S.C. 408.

Note 3: If the pilot project generation units, including any transmission lines, are placed in navigable waters of the United States (*i.e.,* section 10 waters) within the coastal United States, the Great Lakes, and United States territories, copies of the NWP verification will be sent by the Corps to the National Oceanic

and Atmospheric Administration, National Ocean Service, for charting the generation units and associated transmission line(s) to protect navigation.

Note 4: Hydrokinetic renewable energy generation projects that require authorization by the Federal Energy Regulatory Commission under the Federal Power Act of 1920 do not require separate authorization from the Corps under section 10 of the Rivers and Harbors Act of 1899.

Note 5: 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.

Proposed Action: Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for the Evaluation of All Projects C.3.I, Policy VII.A.1, Policy XI., Ch IV B. Policies and others depending upon the activity)

Rationale: As with NWP 51, this NWP was first issued in 2012 and has not been used in South Carolina. Thus, there is 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 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). 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.

Proposed Conditions of 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.

Proposed Conditions of the Coastal Zone Consistency Certification:

1. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Nationwide Permit 53 - *Removal of Low-Head Dams* (Section 10, Section 404, CZC, 401)

Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States associated with the removal of low-head dams.

For the purposes of this NWP, the term "low-head dam" is defined as a dam built across a stream to pass flows from upstream over all, or nearly all, of the width of the dam crest on a continual and uncontrolled basis. (During a drought, there might not be water flowing over the dam crest.) In general, a low-head dam does not have a separate spillway or spillway gates but it may have an uncontrolled spillway. The dam crest is the top of the dam from left abutment to right abutment, and if present, an uncontrolled spillway. A low-head dam provides little storage function.

The removed low-head dam structure must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

Because the removal of the low-head dam will result in a net increase in ecological functions and services provided by the stream, as a general rule compensatory mitigation is not required for activities authorized by this NWP. However, the district engineer may determine for a particular low-head dam removal activity that compensatory mitigation is necessary to ensure that the authorized activity results in no more than minimal adverse environmental effects.
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: This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to restore the stream in the vicinity of the low-head dam, including the former impoundment area. Nationwide permit 27 or other Department of the Army permits may authorize such activities. This NWP does not authorize discharges of dredged or fill material into waters of the United States or structures or work in navigable waters to stabilize stream banks. Bank stabilization activities may be authorized by NWP 13 or other Department of the Army permits.

Proposed Action: Issue 401 Water Quality Certification and find consistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I)

Rationale: The Department is supportive of these activities and has received comments in support of this NWP from the environmental community.

Nationwide Permit 54 - *Living Shorelines* (Section 10, Section 404, CZC, 401)
Structures and work in navigable waters of the United States and discharges of dredged or fill material into waters of the United States for the construction and maintenance of living shorelines to stabilize banks and shores in coastal waters, which includes the Great Lakes, along shores with small fetch and gentle slopes that are subject to low- to mid-energy waves. A living shoreline has a footprint that is made up mostly of native material. It incorporates vegetation or other living, natural "soft" elements alone or in combination with some type of harder shoreline structure (*e.g.,* oyster or mussel reefs or rock sills) for added protection and stability. Living shorelines should maintain the natural continuity of the land-water interface, and retain or enhance shoreline ecological processes. Living shorelines must have a substantial biological component, either tidal or lacustrine fringe wetlands or oyster or mussel reef structures. The following conditions must be met:
(a) The structures and fill area, including sand fills, sills, breakwaters, or reefs, cannot extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;
(b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the activity will result in no more than minimal adverse environmental effects;
(c) Coir logs, coir mats, stone, native oyster shell, native wood debris, and other structural materials must be adequately anchored, of sufficient weight, or installed in a manner that prevents relocation in most wave action or water flow conditions, except for extremely severe storms;
(d) For living shorelines consisting of tidal or lacustrine fringe wetlands, native plants appropriate for current site conditions, including salinity, must be used if the site is planted by the permittee;
(e) Discharges of dredged or fill material into waters of the United States, and oyster or mussel reef structures in navigable waters, must be the minimum necessary for the establishment and maintenance of the living shoreline;
(f) If sills, breakwaters, or other structures must be constructed to protect fringe wetlands for the living

shoreline, those structures must be the minimum size necessary to protect those fringe wetlands;
(g) The activity must be designed, constructed, and maintained so that it has no more than minimal adverse effects on water movement between the waterbody and the shore and the movement of aquatic organisms between the waterbody and the shore; and
(h) The living shoreline must be properly maintained, which may require periodic repair of sills, breakwaters, or reefs, or replacing sand fills after severe storms or erosion events. Vegetation may be replanted to maintain the living shoreline. This NWP authorizes those maintenance and repair activities, including any minor deviations necessary to address changing environmental conditions. This NWP does not authorize beach nourishment or land reclamation activities.
Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the construction of the living shoreline. (See general condition 32.) The pre-construction notification must include a delineation of special aquatic sites (see paragraph (b)(4) of general condition 32). Pre-construction notification is not required for maintenance and repair activities for living shorelines unless required by applicable NWP general conditions or regional conditions. (Authorities:
Sections 10 and 404)
Note: In waters outside of coastal waters, nature-based bank stabilization techniques, such as bioengineering and vegetative stabilization, may be authorized by NWP 13.

Proposed Action: Deny 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.l)

Rationale: While the SCDHEC is not opposed to these activities, there are concerns over potential significant impacts to water quality, water uses, coastal resources and wetland function. Due to this, SCDHEC believes that these impacts 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). Additionally, the SCDHEC is partnering with the resource agencies under a NOAA 309 Grant to study these types of activities in the coastal zone of South Carolina to determine the most appropriate application and types of construction for these activities. This effort is ongoing and until completed, impacts and/or benefits associated with these type activities are not clear.

Nationwide Permit A - *Seaweed Mariculture Activities* (Section 10, CZC)
Structures or work in marine waters, including structures anchored to the seabed in waters overlying the outer continental shelf, for seaweed mariculture activities. This NWP also authorizes shellfish mariculture if shellfish production is a component of an integrated multi-trophic mariculture system (*e.g.,* the production of seaweed and shellfish on the same structure or a nearby mariculture structure that is part of the single and complete project).
This NWP authorizes the installation of buoys, long-lines, floats, anchors, rafts, racks, and other similar structures into navigable waters of the United States. Rafts, racks and other floating structures must be securely anchored and clearly marked.
Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR 322.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.
This NWP does not authorize:
(a) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990; or

(b) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas.
Notification: The permittee must submit a pre-construction notification to the district engineer. (See general condition 32.)
In addition to the information required by paragraph (b) of general condition 32, the preconstruction notification must also include the following information: (1) A map showing the locations and dimensions of the structure(s); (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; and (3) general water depths in the project area(s) (a detailed survey is not required). No more than one preconstruction notification per structure or group of structures should be submitted for the seaweed mariculture operation during the effective period of this NWP. The pre-construction notification should describe all species and culture activities the operator expects to undertake during the effective period of this NWP. (Authority: Section 10)
Note 1: The permittee should notify the applicable U.S. Coast Guard office regarding the project.
Note 2: To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.
Note 3: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines "aquatic nuisance species" as "a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters."

Proposed Action: Find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I, Policy III.F.1 (a), (b), (c) & (d), Policy VII.A.1, Policy VII.C.1 and others depending upon the activity)

Rationale: As with NWP B, this NWP is being authorized for the first time and as such there is no history of the Corps' interpretation and implementation for these activities. While the SCDHEC is not opposed to these activities, there are concerns over potential significant impacts to water quality, water uses, coastal resources and wetland function.

Nationwide Permit B - *Finfish Mariculture Activities* (Section 10, CZC)
Structures or work in marine and estuarine waters, including structures anchored to the seabed in waters overlying the outer continental shelf, for finfish mariculture activities. This NWP also authorizes shellfish mariculture and/or seaweed mariculture if the shellfish and/or seaweed production are a component of an integrated multitrophic mariculture system (*e.g.,* the production of seaweed or shellfish on the structure used for finfish mariculture, or a nearby mariculture structure that is part of the single and complete project).
This NWP authorizes the installation of cages, net pens, anchors, floats, buoys, and other similar structures into navigable waters of the United States. Net pens, cages, and other floating structures must be securely anchored and clearly marked.
This NWP does not authorize the construction of land-based fish hatcheries or other attendant features. Structures in an anchorage area established by the U.S. Coast Guard must comply with the requirements in 33 CFR 322.5(l)(2). Structures may not be placed in established danger zones or restricted areas designated in 33 CFR part 334, Federal navigation channels, shipping safety fairways or traffic separation schemes established by the U.S. Coast Guard (see 33 CFR 22.5(l)(1)), or EPA or Corps designated open water dredged material disposal areas.
This NWP does not authorize:
(a) The cultivation of an aquatic nuisance species as defined in the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990; or

(b) Attendant features such as docks, piers, boat ramps, stockpiles, or staging areas.
Notification: The permittee must submit a pre-construction notification to the district engineer. (See general condition 32.) In addition to the information required by paragraph (b) of general condition 32, the pre-construction notification must also include the following information: (1) A map showing the locations and dimensions of the structure(s); (2) the name(s) of the species that will be cultivated during the period this NWP is in effect; and (3) general water depths in the project area(s) (a detailed survey is not required). No more than one preconstruction notification per structure or group of structures should be submitted for the finfish mariculture operation during the effective period of this NWP. The pre-construction notification should describe all species and culture activities the operator expects to undertake during the effective period of this NWP. (Authority: Section 10)

Note 1: The permittee should notify the applicable U.S. Coast Guard office regarding the finfish mariculture activity.
Note 2: To prevent introduction of aquatic nuisance species, no material that has been taken from a different waterbody may be reused in the current project area, unless it has been treated in accordance with the applicable regional aquatic nuisance species management plan.
Note 3: The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 defines "aquatic nuisance species" as "a nonindigenous species that threatens the diversity or abundance of native species or the ecological stability of infested waters, or commercial, agricultural, aquacultural, or recreational activities dependent on such waters."

Proposed Action: Find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I, Policy III.F.1 (a), (b), (c) & (d), Policy VII.A.1, Policy VII.C.1, Policy XII.E.1 and others depending upon the activity)

Rationale: As with NWP A, this NWP is being authorized for the first time and as such there is no history of the Corps' interpretation and implementation for these activities. While the SCDHEC is not opposed to these activities, there are concerns over potential significant impacts to water quality, water uses, coastal resources and wetland function.

Nationwide Permit C - *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, 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, 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).

Proposed Action: Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I, Policy VII.A.1, Ch IV B. Policies and others depending upon the activity).

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). 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.

Proposed 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.

Proposed 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.
2. This NWP is not certified for pipelines with more than 10 aquatic site crossings (not including directionally bored crossings).
3. 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.
4. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Nationwide Permit D - *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, and electricity. Oil or natural gas pipeline activities or electric utility line and telecommunications activities may be authorized by NWPs 12 or C, 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 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 form 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, 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 section 9 of the Rivers and Harbors Act of 1899. 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).

Proposed Action: Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I, Policy IX. A. 1(a), (c), (d) & (e), Policy IX.E.1(c) & (d), Policy VII.A.1 and others depending upon the activity).

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). 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.

Proposed 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.

Proposed 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.
2. This NWP is not certified for pipelines with more than 10 aquatic site crossings (not including directionally bored crossings).
3. 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.
4. This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed.

Nationwide Permit E - *Water reclamation and reuse 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, and maintenance of water reclamation and reuse facilities, including vegetated areas enhanced to improve water infiltration and constructed wetlands to improve water quality.

The discharge must not cause 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.

This NWP also authorizes temporary fills, including the use of temporary mats, necessary to construct the water reuse project and attendant features. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, 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. (See general condition 31.) (Authority: Sections 10 and 404)

Proposed Action: Deny 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (Guidelines for Evaluation of All Projects C.3.I)

Rationale: This NWP is being authorized for the first time and as such there is no history of the Corps' interpretation and implementation for these activities. 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 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).

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