



South Carolina Department of Health
and Environmental Control

Bureau of Water
2600 Bull St
Columbia SC 29201

Public Notice # DHEC-NWP-2007

Public Notice Date: April 25, 2007

**NOTICE OF DEPARTMENT DECISION
401 WATER QUALITY CERTIFICATION
CONSISTENCY WITH THE S.C. COASTAL ZONE MANAGEMENT PROGRAM**

The Department is taking 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 CFR 930, for reissuance of 43 existing and issuance of six (6) new U.S. Army Corps of Engineers' Nationwide Permits (NWP).

After reviewing the U.S. Army Corps of Engineers' (Corps) proposal to amend the Nationwide Permit program regulations to reissue and modify the NWPs, Department Staff determined that provided the proposed actions listed in the following table are implemented and proposed conditions are adhered to, there is a reasonable assurance that work authorized by the herein will be conducted in a manner consistent with the certification requirements of Section 401 of the Federal Clean Water Act 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 nationwide permits in the critical areas of South Carolina's Coastal Zone. Individuals applying for Nationwide Permits should be so advised. This does not preclude compliance with 15 CFR 930 for direct federal activities.

Accordingly, the Department proposes to act on the Nationwide permits as listed in the attached table. In reference to proposed Coastal Zone Management Program consistency certifications, "Issue" means that the Nationwide Permit can be made consistent with the Coastal Zone Management Program if the proposed regional conditions are adopted by the U.S. Army Corps of Engineers.

The Corps issued the final notice in the Federal Register on March 12, 2007. 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 Department decision is enclosed.

The final 401 Water Quality Certification will be issued unless there is a timely request for review of the Department Decision based on water quality or water use impacts.

The issuance of this Notice of Department Decision represents a final staff decision that may be appealed. The procedures for appeals went into effect July 1, 2006 pursuant to 2006 Act No. 387. Please see the attached page titled "Notice of Appeal Procedure" for details.

Heather S. Preston, Director
Division of Water Quality

Nationwide Permit Number & Topic	401 Cert Action	CZC Cert Action
1. Aids to Navigation	N/A	Issue
2. Structures in Artificial Canals	N/A	Issue
3. Maintenance	Issue	Issue
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and	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. Utility Line 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	Deny
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 Activities	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 w/ Cond	Issue w/ Cond
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 w/ Cond	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 w/ Cond	Deny
43. Stormwater Management Facilities	Issue w/ Cond	Deny
44. Mining Activities	Issue w/ Cond	Issue w/ Cond
45. Repair of Uplands Damaged by Discrete Events	Issue	Issue
46. Discharges in Ditches	Deny	Deny
47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs	Issue	Issue
48 Existing Commercial Shellfish Aquaculture Activities	Issue	Issue
49. Coal Remining Activities	Deny	Deny
50. Underground Coal Mining Activities	Deny	Deny

Notice of Appeal Procedure

The following procedures are in effect beginning July 1, 2006, pursuant to 2006 Act No. 387:

1. This decision of the S.C. Department of Health and Environmental Control (Department) becomes the final agency decision 15 days after notice of the decision has been mailed to the applicant or respondent, unless a written request for final review is filed with the Department by the applicant, permittee, licensee, or affected person.

2. An applicant, permittee, licensee, or affected person who wishes to appeal this decision must file a written request for final review with the Clerk of the Board at the following address or by facsimile at 803-898-3323.

Clerk of the Board
SC DHEC
2600 Bull Street
Columbia, SC 29201

3. The request for final review should include the following:

- a. the grounds on which the Department's decision is challenged and the specific changes sought in the decision
- b. a statement of any significant issues or factors the Board should consider in deciding how to handle the matter
- c. a copy of the Department's decision or action under review

4. In order to be timely, a request for final review must be received by the Clerk of the Board within 15 days after notice of the decision has been mailed to the applicant or respondent. If the 15th day occurs on a weekend or State holiday, the request is due to be received by the Clerk of the Board on the next working day. The request for final review must be received by the Clerk of the Board by 5:00 p.m. on the date it is due.

5. If a timely request for final review is filed with the Clerk of the Board, the Clerk will provide additional information regarding procedures.

6. The Board of Health and Environmental Control has 60 days from the date of receipt of a request for final review to conduct a final review conference. The conference may be conducted by the Board, its designee, or a committee of three members of the Board appointed by the chair.

7. If a final review conference is not conducted within 60 days, the Department decision becomes the final agency decision, and a party may request a contested case hearing before the Administrative Law Court within 30 days after the deadline for the final review conference.

The above information is provided as a courtesy; parties are responsible for complying with all applicable legal requirements.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
AND DIVISION OF WATER QUALITY

**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 change its nationwide permit regulations (33 CFR 330). This action will modify 36 of the 43 existing nationwide permits and issue six (6) new nationwide permits. The Corps published notice of this proposal in the Federal Register on September 26, 2006. This notice explained the requirement for the State to issue Water Quality Certification and Coastal Zone Consistency Certification for certain nationwide permits. The State accepted public comments related to certification but delayed taking action until the Corps incorporated comments they had received in response to the September 26, 2006, notice. The Corps issued the final notice in the Federal Register on March 12, 2007.

Nationwide permits 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 nationwide permits which may result in a discharge into waters of the United States. The Corps has determined that the discharges associated with nationwide permits number 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49 and 50 should be reviewed by the South Carolina Department of Health and Environmental Control (SCDHEC) in accordance with provision of Section 401 of the Clean Water Act. All of the nationwide permits should be reviewed 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

All comments received were considered in reaching the decisions on the nationwide permits.

EXPLANATION, EVALUATION, AND PROPOSED ACTION OF THE NATIONWIDE PERMITS

General Conditions: These conditions apply to all of the nationwide permits (NWP) unless otherwise noted. A project proposed for authorization under a NWP should not be considered unless it meets all of the following general conditions plus any special conditions listed for each NWP.

1. SCDHEC considers a "single and complete project" to mean the overall project proposed or accomplished by a single owner/developer and it includes all land within the project boundary under single ownership. It is not interpreted to mean only the land area directly impacted by each NWP request. Impacts to Geographical Areas of Particular Concern (GAPC) sites or adjacent waterbodies or wetlands resulting from an activity will be considered during the review of these actions.
2. Activities in Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), Trout Waters (as defined in R. 61-68), springheads or aquatic sites located adjacent to those areas, are not certified.
3. Activities in areas identified by SCDHEC as having impaired uses (as defined by 303(d) of the Clean Water Act) are not certified.
4. All NWP applications must be accompanied by a Corps verified wetland delineation identifying **all** wetlands (jurisdictional and nonjurisdictional), depressional areas or other special aquatic sites within the project area.
5. For projects requiring fill in wetlands, the applicant must demonstrate that impacts to wetlands have been avoided; unavoidable impacts to wetland areas have been minimized, and provide suitable compensation for any unavoidable wetland impacts. This sequencing should be presented in all permit applications. Additional sequencing regarding appropriate compensation (onsite, within watershed, outside watershed, etc.) must also be demonstrated. Where compensatory mitigation is required, on-site compensatory mitigation, in accordance with the provisions of the S. C. Coastal Zone Management Program in the Coastal Zone, must be pursued if at all possible. Compensatory mitigation must be determined using the Corps Standard Operating Procedure (SOP), where required by the Corps or in a Specific Condition of the 401 or CZC Certification. Compensatory mitigation plans must be included in the application submitted to the Corps by the applicant and in the package copy furnished to SCDHEC by the Corps. Proof of purchase of compensatory mitigation credits or execution of the deed restriction, restrictive covenant, or conservation easement document, if part of the submitted compensatory mitigation plan, must be submitted to both the Corps and SCDHEC prior to commencement of the activity authorized by the permit issued by the Corps. Although the permit may be issued pending resolution of a compensatory mitigation plan, the work authorized by that permit may not commence until the compensatory mitigation plan is approved and finalized, as described above.
6. 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.
7. SCDHEC's Emergency Response Team must be contacted immediately in the case of a spill.

Nationwide Permit Number 1

Section 10

CZC

Aids to Navigation. The placement of aids to navigation and regulatory markers which 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 Number 2

Section 10

CZC

Structures in Artificial Canals. 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)).

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 Number 3

Section 10 and Section 404

CZC & 401

Maintenance. (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, 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, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP 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 in the vicinity of and within existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.) and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further 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 upland area unless otherwise specifically approved by the district engineer under separate authorization. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer.

(c) This NWP also authorizes temporary structures, fills, and work 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. 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.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation or 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 pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). Where maintenance dredging is proposed, the pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals.

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized 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 normal maintenance activities and restoration of existing facilities as originally permitted. Maintenance, by definition, should not result in substantial change in the configuration or area impacted. If a structure or fill has been authorized and is currently serviceable, there should be minimal adverse impact on water quality or water uses as a result of routine maintenance. While there are provisions of the NWP that allow for minor modification of existing facilities, 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 Number 4

Section 10 & Section 404

CZC & 401

Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities. 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, 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.

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 Number 5

Section 10 & Section 404

CZC & 401

Scientific Measurement Devices. Devices, whose purpose is to measure and record scientific data, such as staff gages, tide gages, water recording 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.

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. Further, unless the purpose of the project is to impound water, which is not the case for this NWP, general condition #4 for the NWPs prohibits disruption of the movement of indigenous aquatic life; therefore, the construction authorized by this NWP would not obstruct aquatic life movement.

Nationwide Permit Number 6

Section 10 & Section 404

CZC & 401

Survey Activities. 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, 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. 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 25 cubic yards. 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.

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 Number 7

Section 10 & Section 404

CZC & 401

Outfall Structures and Associated Intake Structures. 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 that are 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 27.)

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 2002, through 2005, 22 NWPs were issued under this NWP with only 1.9 acres of fill. Therefore, SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program.

Nationwide Permit Number 8

Section 10

CZC

Oil and Gas Structures on the Outer Continental Shelf. 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, Minerals Management Service. 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). 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 27.)

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 Number 9

Section 10

CZC

Structures in Fleeting and Anchorage Areas. Structures, buoys, floats and other devices placed within anchorage or fleeting areas to facilitate moorage of vessels where the U.S. Coast Guard has established such areas for that purpose.

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 Number 10

Section 10

CZC

Mooring Buoys. Non-commercial, single-boat, mooring buoys.

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 Number 11

Section 10

CZC

Temporary Recreational Structures. 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 manager must approve each buoy or marker individually.

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 Number 12

Section 404

CZC & 401

Utility Line Activities. Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than ½ acre of waters of the United States.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. 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 power line or 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 ½ 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 utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility 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 utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than ½-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 also authorizes temporary structures, fills, and work 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. 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 any of the following criteria are met: (1) The activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 27.)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters), copies of the pre-construction notification and 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: 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, accordance with the requirements for temporary fills.

Note 3: 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).

Proposed Action: Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (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 allows utility lines to be constructed linearly through wetland systems for extended distances and to have multiple crossings of the same aquatic site system. Additionally, the widths of rights-of-way cleared during line installation are often excessive and result in considerably more impacts than necessary. Even in these cases, construction impacts could be temporary; however, vegetation is often routinely cleared within the easement, thereby resulting in permanent impacts. Minimization of the cleared area and the area permanently maintained would minimize the permanent impacts to wetland functions. Corps data on NWPs shows us that between 2002, and 2005, 422 of these NWPs were issued with impacts of 56.7 acres. SCDHEC believes that these impacts cannot be categorized as minimal as intended for the nationwide permitting program. 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 401 water quality certification conditions are applied to the NWPs.

Proposed Conditions of the 401 Water Quality Certification:

1. If the project involves more than 10 aquatic site crossings (not including directionally bored crossings), the project will not be certified under this NWP and will require separate approval through SCDHEC's individual certification process.
2. Utility lines must cross perpendicular (to the extent practicable) to the aquatic site area.
3. Access to the project site must be attained from highland when practicable. When this is not practicable, access must be attained by floating barges, low-ground pressure vehicles/equipment, mats, or similar means, instead of barge canals or causeways.
4. All excavated material must be side cast away from streams and other open channels. If the excavated material is temporarily placed in wetlands, it must be placed at intervals to allow for the adequate circulation in the adjacent waters, including wetlands. All excess excavated materials that are hauled off site or placed on high land must be properly contained and permanently stabilized to prevent erosion.
5. 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.

6. For certification under this NWP, the maximum amount of area per project allowed to be permanently filled (not including the area backfilled for pipe placement) is 0.10 acre or 500 linear feet, including pump station and access road, if required.

Regional Conditions of the Coastal Zone Consistency Certification:

Provided all the conditions of the 401 Water Quality Certification, plus the following condition, are included as Regional Conditions, the NWP will be consistent with the S.C. Coastal Zone Management Program.

1. The use of multiple NWPs on one tract or land parcel is not approved in the coastal zone without SCDHEC-OCRM concurrence.

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

Nationwide Permit Number 13

Section 10 & Section 404

CZC & 401

Bank Stabilization. Bank stabilization activities necessary for erosion prevention, 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 this criterion is waived in writing by the district engineer;
- (c) The activity will not exceed an average of one cubic yard per running foot placed along the bank below the plane of the ordinary high water mark or the high tide line, unless this criterion is waived in writing by the district engineer;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless this criterion is waived in writing by the district engineer;
- (e) No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any water of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
- (g) The activity is not a stream channelization activity.

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; (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 along the bank below the plane of the ordinary high water mark or the high tide line. (See general condition 27.)

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 due to Corps criterion d. 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 shows us that between 2002, and 2005, 93 NWPs with a total impact of 3.2 acres were issued. SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program.

Linear Transportation Projects. Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, 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 ½ -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 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 pre-construction 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 27.)

Note: 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).

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

Rationale: The criteria for use of this NWP reduces potential impacts on water quality, water uses, and wetland functions. However, inclusion of several conditions will insure impacts are minimal. All culverts should be placed to allow aquatic life passage. Restoration of affected aquatic sites or stream bed at either side of the crossing would further minimize impacts. The NWP as currently proposed provides no limit on the number of road crossings, nor does it allow for a comprehensive review of all aquatic site impacts on a project when impacts other than wetland crossings occur.

Corps data from 2002, through 2005, indicates that 255 NWPs with a total impact of 25.9 acres have been issued for this NWP. The potential for significant impacts are present with this NWP as proposed and we propose the following conditions. NWP #14 can be made consistent with the S.C. Coastal Zone Management Program and result in no significant adverse impacts from the proposed activities with the addition of the proposed Regional Conditions and if the NWP is compliant with the following proposed 401 water quality certification conditions.

Proposed Conditions of the 401 Water Quality Certification:

1. A compensatory mitigation plan must be submitted and approved by the SCDHEC for projects with impacts exceeding 0.10-acre or 300 linear feet.
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 (as defined in the General Conditions) and must be in non-tidal wetlands only.
3. Impacts certified under this NWP may not exceed 500 linear feet of stream.
4. All crossings must be culverted, bridged or otherwise designed to prevent the restriction of, and to withstand, expected high flows and tidal flows, to maintain flows through the floodplain during flow events exceeding bank

full, and to prevent the restriction of low flows and the movement of aquatic organisms. All culverts must be adequately sized, designed, installed and maintained to prevent erosion and to provide adequate passage for aquatic life and anadromous fishes occurring naturally in the vicinity of the culvert.

5. For all new private roads or widening projects of existing private roads, the top width will be limited to a maximum of 16', except in the case of roadways associated with multiple lot residential developments where the maximum top width may be 24'.

6. Access to the project site must be attained from high ground, from the portion of the bridge already completed ("end on end" construction) or from floating barges or mats (instead of canals or causeways).

7. In order to properly assess cumulative impacts, projects accessing large tracts under single ownership must include a description of all related project impacts that may result from the road construction and provide an overall project plan. The plan must include an identification of all water resource impacts/activities, drainage patterns, conceptual development plans, and a compensation plan, if required in the above conditions.

Proposed Regional Conditions for the Coastal Zone Consistency Certification:

Provided all the conditions of the 401 Water Quality Certification, plus the following conditions, are included as Regional Conditions, the NWP will be consistent with the S.C. Coastal Zone Management Program.

1. The use of multiple NWPs on one tract or land parcel is not approved in the coastal zone without SCDHEC-OCRM concurrence.

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.

3. A one-day newspaper notice in accordance with the provisions of the S.C. Coastal Zone Management Program, Chapter V C. 1. A., Notice of Certification must be included.

Nationwide Permit Number 15

Section 404

CZC & 401

U.S. Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require a separate section 404 permit.

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 Number 16

Section 404

CZC & 401

Return Water From Upland Contained Disposal Areas. 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 on the upland 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 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.

Proposed Action: Deny 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (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. 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 Number 17

Section 404

CZC & 401

Hydropower Projects. Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5000 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 27.)

Proposed Action: Deny 401 Water Quality Certification and find inconsistent with the S.C. Coastal Zone Management Program. (Policy XI and XII.E.1, and others depending on the activity.)

Rationale: Presently, SCDHEC reviews all applications for FERC licenses and must act on the 401 Water Quality Certification. Therefore, we would 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 Number 18

Section 10 & Section 404

CZC & 401

Minor Discharges. 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 27.)

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

Rationale: Corps data on NWP's shows us that between 2002, and 2005, 20 NWP's with an impact of 0.58 acres of fill were issued under this NWP in South Carolina. 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 Number 19

Section 10 & Section 404

CZC & 401

Minor Dredging. Dredging of no more than 25 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)).

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

Rationale: Corps data on NWP's shows us that between 2002, and 2005, only ten NWP's with an impact of 0.02 acres of fill were issued under this NWP in South Carolina. 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 Number 20

Section 10 & Section 404

CZC & 401

Oil Spill Cleanup. Activities required for the containment and cleanup of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300) provided that the work is done in accordance with the Spill Control and Countermeasure Plan required by 40 CFR 112.3 and any existing state contingency plan and provided that the Regional Response Team (if one exists in the area) concurs with the proposed containment and cleanup action. 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.

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 Number 21

Section 10 & Section 404

CZC & 401

Surface Coal Mining Operations. Discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface

Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and reclamation Act of 1977.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.)

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 therefore coal mining is not performed. This permit would serve no purpose in South Carolina.

Nationwide Permit Number 22

Section 10 & Section 404

CZC & 401

Removal of Vessels. Temporary structures or minor discharges of dredged or fill material required for the removal of wrecked, abandoned, or disabled vessels, or the removal of man-made 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 27.) If condition 1 above is triggered, the permittee cannot commence the activity until informed by the district engineer that compliance with the "Historic Properties" general condition is completed.

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 17, Endangered Species, and general condition 18, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the likelihood that submerged vessels 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. Adherence with the Corps regional Condition number 8, which prohibits authorization in these areas, will ensure that there are no adverse impacts to water quality.

Nationwide Permit Number 23

Section 10 & Section 404

CZC & 401

Approved Categorical Exclusions. 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 et seq.), that the activity is categorically excluded from environmental documentation, 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 27). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters.

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, which is available at:

<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rglsindx.htm>. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same Web site.

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 only one NWP #23 was issued during the period from 2002 through 2005, with 0.28 acres of impacts to water resources. 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 proposing to add a condition to prohibit the use of the NWP in special aquatic sites including wetlands.

Proposed Conditions for the 401 Water Quality Certification:

1. This NWP is not applicable for impacts in special aquatic sites, including wetlands.

Nationwide Permit Number 24

Section 10

CZC

Indian Tribe or State Administered Section 404 Programs. 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.

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 Pub. L. 94-587, 90 Stat. 2917 (33 U.S.C. 591) (see 33 CFR 322.3(a)(2)).

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

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

Nationwide Permit Number 25

Section 404

CZC & 401

Structural Discharges. 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 section 10 permit if located in navigable waters of the United States.

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 Number 26

Reserved

Nationwide Permit Number 27

Section 10 & Section 404

CZC & 401

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

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; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; 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., stream to wetland or vice versa) or uplands. 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.

Reversion. For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding wetland enhancement, restoration, or 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), 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 OSM 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, 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 that has not been abandoned 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 result 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 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 wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSM or the applicable state agency. 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 the activity (see general condition 27), 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 wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. FWS, NRCS, FSA, NMFS, NOS, or their designated state cooperating agencies; (2) 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) The reclamation of surface coal mine lands, in accordance with an SMCRA permit issued by the OSM or the applicable state agency.

However, the permittee must submit a copy of the appropriate documentation.

Note: This NWP can be used to authorize compensatory mitigation projects, including mitigation banks and in-lieu fee programs. 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.

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 Number 28

Section 10

CZC

Modifications of Existing Marinas. 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.

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 Number 29

Section 10 & Section 404

CZC & 401

Residential Developments. 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 ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Subdivisions: For residential subdivisions, the aggregate total loss of waters of United States authorized by this NWP cannot exceed ½ 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 27.)

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: The criteria for use of this NWP minimizes the impact on water quality, water uses, and wetland functions, however it still has the potential to result in adverse impacts. If the proposed conditions are approved, they will insure that there are no adverse effects from the proposed activity. 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 401 water quality 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. On-site disposal systems, if necessary, must be permitted by SCDHEC prior to any construction of a residence in a wetland area.
3. The placement of fill in waters of the US for a single residence must be limited to 0.10 acre or 60 linear feet.
4. A compensatory mitigation plan must be submitted and approved by the SCDHEC for projects with impacts exceeding 0.10-acre or 300 linear feet.

5. If the 300 linear feet limitation is waived by District Engineer, impacts to intermittent and ephemeral stream authorized under this NWP may not exceed 500 linear.

Proposed Regional Conditions for the Coastal Zone Consistency Certification:

Provided all the conditions of the 401 Water Quality Certification, plus the following conditions, are included as Regional Conditions, the NWP will be consistent with the S.C. Coastal Zone Management Program.

1. The use of this NWP for individual lots that are not part of a larger common plan is limited to adjacent wetlands lacking a surface connection to other waters of the US (i.e. isolated wetlands less than 1 acre in size).
2. The use of multiple NWPs on one tract or land parcel is not approved in the coastal zone without SCDHEC-OCRM concurrence.
3. 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.
4. A one-day newspaper notice in accordance with the provisions of the S.C. Coastal Zone Management Program, Chapter V C. 1. A., Notice of Certification must be included.

Nationwide Permit Number 30

Section 404

CZC & 401

Moist Soil Management for Wildlife. 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.

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 with conditions and find consistent with the S. C. Coastal Zone Management Program.

Rationale: Data obtained from the Corps indicates that during the period from 2002, through 2005, there were no activities authorized under this NWP in South Carolina. Therefore, there is limited potential for these activities to have more than minimal adverse impacts to the aquatic environment. Further, if the work is performed on the dikes or water control structures, or within a functioning impoundment, impacts will be confined within the impoundment therefore, the water quality of adjacent waters will not be permanently lowered nor will existing uses change. Additionally, if the activity is being undertaken to construct firebreaks for wildfire control and management, impacts will be minimal.

Proposed Conditions for the 401 Water Quality Certification:

1. All alterations must take place on the dikes or water control structures, etc., or within an existing functional impoundment or the activity must be undertaken to construct firebreaks for wildfire control and management.

Maintenance of Existing Flood Control Facilities. 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, by 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. 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 material must be placed in an upland site or an authorized disposal site in waters of the United States, and proper siltation 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 impacts to the aquatic environment are 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.

Mitigation: The district engineer will determine any required mitigation one-time 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 impacts 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. In determining appropriate mitigation, the district engineer will give special consideration to natural watercourses that have been included in the maintenance baseline and require compensatory 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 27). The pre-construction 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 pre-construction notification must include a description of the maintenance baseline and the dredged material disposal site.

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

Rationale: Corps data on NWP shows us that between 2002 and 2005, only one NWP with an impact of 0.28 acres was issued under this NWP in South Carolina. Therefore, SCDHEC believes that these 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 Number 32

Section 10 & Section 404

CZC & 401

Completed Enforcement Actions. 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 unauthorized activity affected no 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. 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).

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. Further, data obtained from the Corps indicates that between

2002, and 2005, only one NWP with a total impact of 0.28 acres was issued in South Carolina for this NWP. Therefore, SCDHEC believes that these impacts can be categorized as minimal as intended from the nationwide permitting program.

Nationwide Permit Number 33

Section 10 & Section 404

CZC & 401

Temporary Construction, Access, and Dewatering. 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 effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to upland areas, 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 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 (see general condition 27). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions.

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, or wetland functions should be temporary. Data obtained from the Corps indicates that between 2002 and 2005, three NWPs with a total impact of 0.34 acres have been issued for this NWP. SCDHEC believes that these 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 the 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 Number 34

Section 404

CZC & 401

Cranberry Production Activities. 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 27.)

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.3.1)

Rationale: There is no cranberry production in South Carolina, and none is anticipated. Therefore, this permit would serve no purpose in South Carolina.

Nationwide Permit Number 35

Section 10

CZC

Maintenance Dredging of Existing Basins. Excavation and 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, provided the dredged material is deposited at an upland site and proper siltation controls are used.

Proposed Action: Find inconsistent with the S.C. Coastal Zone Management Program. (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 Number 36

Section 10 & Section 404

CZC & 401

Boat Ramps. 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 pre-cast concrete planks or slabs, unless the 50 cubic yard limit is waived in writing by the district engineer;
- (b) The boat ramp does not exceed 20 feet in width, unless this criterion is waived in writing by the district engineer;
- (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 the upland; 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 may 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 27.)

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 2002, and 2005, seven NWPs with a total impact of 0.06 acres were issued for this NWP in South Carolina. SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program. Further, if the 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 Number 37

Section 10 & Section 404

CZC & 401

Emergency Watershed Protection and Rehabilitation. 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 509.13);
- (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 prospective permittee should wait until the district engineer issues an NWP verification 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 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: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27).

Proposed Action: Issue 401 Water Quality Certification with conditions 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, there would not be time to await an individual consistency determination. Rapid response is necessary for situation threatening life and property. Submittal of a restoration/mitigation plan and schedule for all impacts to special aquatic sites, including wetlands within 30 days of the initiation of the activity will allow the restoration activity to take place in a timely manner.

Proposed Conditions for the 401 Water Quality Certification:

1. Within 30 days of initiation of the activity, the permittee must submit a restoration/mitigation plan and schedule for all impacts to special aquatic sites, including wetlands.

Nationwide Permit Number 38

Section 10 & Section 404

CZC & 401

Cleanup of Hazardous and Toxic Waste. 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 27.)

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 a Army Corps of Engineers permit and individual water quality certification could unduly delay the process with potential threats to water quality, water uses, and wetland functions. The preamble to the regulation indicates that 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 NWP and therefore this NWP can be found consistent with the S.C. Coastal Zone Management Program. Corps data on NWPs shows us that between 2002, and 2005, 6 NWP #38 with a total impact of 1.4 acres have been issued for this NWP. SCDHEC believes that these impacts can be categorized as minimal as intended for the nationwide permitting program.

Nationwide Permit Number 39

Section 10 & Section 404

CZC & 401

Commercial and Institutional Developments. 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, 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, new ski areas, or oil and gas wells is not authorized by this NWP.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. 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 27.)

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 IV.1 (a), (b) & (c), Policy VII.A.1, Policy VII.C.1, Policy XII.E.1 and others depending upon the activity)

Rationale: The criteria for use of this NWP attempts to minimize impacts on water quality, water uses, and wetland functions, however many of the activities have the potential to result in adverse impacts. These activities should be reviewed on an individual basis to insure that aquatic site impacts are avoided, minimized, and unavoidable impacts are adequately compensated for with appropriate and practicable mitigation. Adherence to the proposed conditions will insure that there are no adverse effects from the proposed activities.

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.

Issuance of the NWP with the proposed conditions will enhance regulatory processing by eliminating areas of duplication and clarifying for all agency personnel and applicants the difference between NWP applications and

Individual Permit applications. This will allow applicants to follow the appropriate mitigation sequence of avoiding, minimizing, and compensating for unavoidable impacts such that they can receive quick approval for their proposed projects when the NWP criteria have been met or exceeded for a project. 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 401 water quality certification conditions are applied to the NWPs.

Proposed Conditions for the 401 Water Quality Certification:

1. A compensatory mitigation plan must be submitted and approved by the SCDHEC for projects with impacts exceeding 0.10-acre or 300 linear feet.
2. In order to properly assess cumulative impacts, projects accessing large tracts under single ownership must include a description of all related project impacts that may result from the road construction and provide an overall project plan. The plan must include an identification of all water resource impacts/activities, drainage patterns, conceptual development plans, and a compensation plan, if required in the above conditions.
3. Stream channelization or use of the permit in perennial streams is not certified under this NWP and will require separate approval through SCDHEC's individual certification process.
4. Sedimentation/sediment ponds in special aquatic sites, including wetlands, are not certified under this NWP.
5. If the 300 linear feet limitation is waived by District Engineer, impacts to intermittent and ephemeral stream authorized under this NWP may not exceed 500 linear.

Proposed Regional Conditions of the Coastal Zone Consistency Certification:

Provided all the conditions of the 401 Water Quality Certification, plus the following conditions, are included as Regional Conditions, the NWP will be consistent with the S.C. Coastal Zone Management Program.

1. The use of multiple NWPs on one tract or land parcel is not approved in the coastal zone without SCDHEC-OCRM concurrence.
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.
3. A one-day newspaper notice in accordance with the provisions of the S.C. Coastal Zone Management Program, Chapter V C. 1. A., Notice of Certification must be included.

Nationwide Permit Number 40

Section 404

CZC & 401

Agricultural Activities. 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 ½-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams, unless for drainage ditches constructed in intermittent and ephemeral streams, this 300 linear foot limit is waived in writing by the district engineer.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.)

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 NWPs were issued during the period from 2002, through 2005, in South Carolina for this NWP. 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 during the past five years and the limited impacts to the aquatic environment, additional conditions are not justified.

Nationwide Permit Number 41

Section 404

CZC & 401

Reshaping Existing Drainage Ditches. 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 ditches constructed in waters of the United States, for the purpose of improving water quality by regrading the drainage 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 ditch cannot increase drainage capacity beyond the original as-built capacity nor can it expand the area drained by the ditch as originally constructed (i.e., the capacity of the 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 ditches constructed in waters of the United States; the location of the centerline of the reshaped drainage ditch must be approximately the same as the location of the centerline of the original drainage ditch. This NWP does not authorize stream channelization or stream relocation projects.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity, if more than 500 linear feet of drainage ditch will be reshaped. (See general condition 27.) (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 Number 42

Section 404

CZC & 401

Recreational Facilities. 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 ½ acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. 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 27.)

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

Rationale: Although the criteria for use of this NWP attempts to reduce potential impacts on water quality, water uses, and wetland functions, it would allow impacts for non-water or wetland dependent activities. Limitations on the size and types of the impacts will insure that water quality and water uses, including wetland functions, are maintained. This permit is not consistent with OCRM Wetland Master Planning Policies or the policies regarding protection of salt, brackish or fresh water wetlands.

Proposed Conditions for the 401 Water Quality Certification:

1. This NWP must be limited to nature trails/horse trails, bike paths, and 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. If the 300 linear feet limitation is waived by District Engineer, impacts to intermittent and ephemeral stream authorized under this NWP may not exceed 500 linear.

Nationwide Permit Number 43

Section 404

CZC & 401

Stormwater Management Facilities. Discharges of dredged or fill material into non-tidal waters of the United States for the construction and maintenance of stormwater management facilities, including the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins.

The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal 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 the construction of new stormwater management facilities, or the expansion of existing stormwater management facilities, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility.

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, Policy XIII.A).

Rationale: The criteria for use of this NWP attempts to minimize impacts on water quality, water uses, and

wetland functions, however the activities have the potential to result in adverse impacts. These activities should be reviewed on an individual basis to insure that aquatic site impacts are avoided, minimized, and unavoidable impacts are adequately compensated with appropriate and practicable mitigation. 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 insure that there are no adverse effects from the proposed activities.

Proposed Conditions for the 401 Water Quality Certification:

1. A compensatory mitigation plan must be submitted and approved by the SCDHEC for projects with impacts exceeding 0.10-acre or 300 linear feet.
2. 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.
3. Impacts for the repair, maintenance, or conversion of existing ponds for use as quantity or volume control can be permitted under this NWP.
4. If the 300 linear feet limitation is waived by District Engineer, impacts to intermittent and ephemeral stream authorized under this NWP may not exceed 500 linear.

Nationwide Permit Number 44

Section 10 & 404

CZC&401

Mining Activities. Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities. The discharge must not cause the loss of greater than ½-acre of non-tidal waters of the United States. 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 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification.

Proposed Action: Issue 401 Water Quality Certification with conditions and find inconsistent with the S.C. Coastal Zone Management Program. (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 NWP, the activity should truly have minimal impacts and the inclusion of several conditions should provide that the impacts are minimal in size and limited to specific activities necessary for small mining operations. 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 401 water quality certification conditions are applied to the NWPs.

Proposed Conditions for the 401 Water Quality Certification:

1. If the project involves fill in greater than 500 linear feet of stream, the project will not be certified under this NWP and will require separate approval through SCDHEC's individual certification process.
2. An applicant may relocate up to 500 linear feet of a stream provided the channel profile and sinuosity of the relocated stream approximates the original profile.
3. A compensatory mitigation plan must be submitted and approved by the SCDHEC for projects with impacts exceeding 0.10-acre or 300 linear feet.

Nationwide Permit Number 45

Section 10 & 404

CZC&401

Repair of Uplands Damaged by Discrete Events. 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.

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 27) within 12-months of the date of the damage. The pre-construction notification should include documentation, such as a recent topographic survey or photographs, to justify the extent of the proposed restoration.

Note: Uplands 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.)

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 Number 46

Section 404

CZC & 401

Discharges in Ditches. 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) are 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 27.)

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

Rationale: To qualify for the NWP program, the proposed activity must have minimal impacts. As proposed,

this NWP would allow fill in non-tidal ditches impacting up to one acre of waters of the United States. Further, the filling of a ditch that connects two waters of the United States could result in the loss of considerably more than the one acre of waters of the United States by removing that connectivity and therefore, federal jurisdiction to one of those waters. This is a new NWP with no history of Corps interpretation and implementation and further, the Corps has not issued guidance or clarification on how it will interpret the Rapanos/Carabell Supreme Court decision on jurisdictional waters of the United States. In consideration of these facts, the Department finds the potential for significant impacts to water quality, water uses, and wetland functions are likely.

Nationwide Permit Number 47

Section 10 & 404

CZC&401

Pipeline Safety Program Designated Time Sensitive Inspections and Repairs. Activities required for the inspection, repair, rehabilitation, or replacement of any currently serviceable structure or fill for pipelines that have been identified by the Pipeline and Hazardous Materials Safety Administration's Pipeline Safety Program (PHP) within the U.S. Department of Transportation as time-sensitive (see 49 CFR parts 192 and 195) and additional maintenance activities done in conjunction with the time-sensitive inspection and repair activities. All activities must meet the following criteria:

(a) 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 or access fills or dewatering of construction sites;

(b) Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided that 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. 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);

(c) Temporary fill must consist of materials, and be placed in a manner, that will not be eroded by expected high lows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate;

(d) In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench so that there is no change in preconstruction contours;

(e) To the maximum extent practicable, the restoration of open waters must be to the pre-construction course, condition, capacity, and location of the waterbody;

(f) Any exposed slopes and stream banks must be stabilized immediately upon completion of the project;

(g) Additional maintenance activities done in conjunction with the time-sensitive inspection or repair must not result in additional losses of waters of the United States; and,

(h) The permittee is a participant in the Pipeline Repair and Environmental Guidance System (PREGS).

Reporting: The permittee must submit a post construction report to the PHP within seven days after completing the work. The report must be submitted electronically to PHP via PREGS. The report must contain the following information: Project sites located in waters of the United States, temporary access routes, stream dewatering sites, temporary fills and temporary structures identified on a map of the pipeline corridor; photographs of the pre- and post-construction work areas located in waters of the United States; and a list of best management practices employed for each pipeline segment shown on the map.

Note: Division engineers may modify this NWP by adding regional conditions to protect the aquatic environment, as long as those regional conditions do not require pre-construction notification or other actions that would delay time sensitive inspections and repairs. Examples of appropriate regional conditions include best management practices.

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

Rationale: The significance of maintaining pipelines in good serviceable condition became evident when these lines failed in recent disasters (i.e., Hurricane Katrina) and resulted in widespread and massive environmental and human health impacts. Further, leaks associated with failing pipelines can also cause significant damage to

the aquatic environment. It is important that these types of activities be processed quickly to ensure that pipeline failures do not occur. As proposed, the NWP would not significantly impact water quality, water uses, or wetland functions and would be temporary. The proposed NWP would enhance regulatory efficiency by eliminating specific areas of duplication and clarify the difference between NWP applications and Individual Permit applications. The NWP still maintains the proper sequence of avoidance, minimization, and compensation for unavoidable impacts while providing applicants expeditious approval for when their proposed projects meet or exceed the criteria established for the NWP.

Nationwide Permit Number 48

Section 10 & 404

CZC&401

Existing Commercial Shellfish Aquaculture Activities. This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures necessary for the continued operation of the existing commercial aquaculture activity. This NWP also authorizes discharges of dredged or fill material 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 new operations or the expansion of the project area for an existing commercial shellfish aquaculture activity. This NWP does not authorize the cultivation of new species (i.e., species not previously cultivated in the waterbody). This NWP does not authorize attendant features such as docks, piers, boat ramps, stockpiles, staging areas, or the deposition of shell material back into waters of the United States as waste.

Reporting: For those activities that do not require pre-construction notification, the permittee must submit a report to the district engineer that includes the following information: (1) The size of the project area for the commercial shellfish aquaculture activity (in acres); (2) the location of the activity; (3) a brief description of the culture method and harvesting method(s); (4) the name(s) of the cultivated species; and (5) whether canopy predator nets are being used. This is a subset of the information that would be required for pre-construction notification. This report may be provided by letter or using an optional reporting form provided by the Corps. Only one report needs to be submitted during the period this NWP is valid, as long as there are no changes to the operation that require pre-construction notification. The report must be submitted to the district engineer within 90 days of the effective date of this NWP.

Notification: The permittee must submit a pre-construction notification to the district engineer if: (1) The project area is greater than 100 acres; or (2) there is any reconfiguration of the aquaculture activity, such as relocating existing operations into portions of the project area not previously used for aquaculture activities; or (3) there is a change in species being cultivated; or (4) there is a change in culture methods (e.g., from bottom culture to off-bottom culture); or (5) dredge harvesting, tilling, or harrowing is conducted in areas inhabited by submerged aquatic vegetation. (See general condition 27.)

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

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 Number 49

Section 10 & 404

CZC&401

Coal Remining Activities. 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, provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI) Office of Surface Mining (OSM), or by states with approved programs under Title IV or Title V of the Surface Mining Control and Reclamation Act of 1977. Areas previously mined include reclaimed mine sites, abandoned mine land areas, or lands under bond forfeiture contracts. The permittee must clearly demonstrate to the district engineer that the reclamation plan will result in a net increase in aquatic resource functions. As part of the project, the permittee may conduct coal mining activities in an adjacent area, provided the newly mined area is less than 40 percent of the area being remined plus any unmined area necessary for the reclamation of the remined area.

Notification: The permittee must submit a pre-construction notification to the district engineer and receive written authorization prior to commencing the activity. (See general condition 27.)

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 therefore coal mining is not performed. This permit would serve no purpose in South Carolina.

Nationwide Permit Number 50

Section 10 & 404

CZC&401

Underground Coal Mining Activities. 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 as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977.

This NWP does not authorize discharges into non-tidal 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 and receive written authorization prior to commencing the activity. (See general condition 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification.

Note: Coal preparation and processing activities outside of the mine site may be authorized by NWP 21.

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 therefore coal mining is not performed. This permit would serve no purpose in South Carolina.

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