

Standard Conditions of State 401 Water Quality Certification Applicable to Nationwide Permits

1. Any permitted activity for which U.S. Army Corps of Engineers (USACE) requires pre-construction notification (PCN) in accordance with Nationwide Permit General Condition 32 requires the same information to be sent by the applicant, prior to construction, to West Virginia Department of Environmental Protection (WVDEP), to ensure the activity complies with the state water quality requirements. This condition is required through authority provided in State Certification of Activities Requiring a Federal License or Permit, 40 C.F.R §121.3 (2020) and WV Water Pollution Control Act, W.Va. Code §22-11-1, et seq. (2014).
2. To compensate for unavoidable impacts to aquatic resources, the applicant must provide proof of compensatory mitigation (as outlined in Standard Condition 17 below) to WVDEP prior to construction for a project with cumulative permanent impacts to perennial and/or intermittent streams greater than 300 linear feet or causing the loss of greater than 1/10 acre of wetlands. This condition is required in accordance with the following; Rules for Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-6 (2014) Antidegradation Implementation Procedures, W.Va. C.S.R §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016).
3. To protect the biological integrity of the aquatic ecosystem, culverted crossings should be sized and installed in a manner to allow the passage of aquatic life and freely pass bankfull flows. Exceptions to this requirement would be when culvert placement is on bedrock, or when stream gradient is equal to or greater than 4%, or when bankfull elevation is greater than final surface elevation. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016).
4. To protect the designated uses of waters of the state, the permittee shall investigate for the presence of water supply intakes or other activities within 1/2 mile downstream, which may be affected by increased suspended solids and turbidity, caused by work in the watercourse. The permittee shall give notice to operators of any such water supply intakes and such other water quality dependent activities as necessary before beginning work in the watercourse in sufficient time to allow preparation for any change in water quality. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-7.2.a.2 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R §60-5-1, et seq (2008).
5. To ensure that temporary stream and wetland crossings have no significant adverse impact to aquatic resources, the following procedures and requirements shall be followed and met in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008). At each stream crossing, substrate in the channel is to be removed and stockpiled separately from other excavated material. This native material must be reused in restoration of the stream channel, which is to be completed within 72 hours or as soon as practicable after completion of the crossing. Upon final stream bed restoration, the stream must have similar physical characteristics to include substrate, pattern, profile,

dimension and embeddedness of the original stream channel. At each wetland crossing, the top 12 inches of soil are to be removed and stockpiled separately from other excavated material. This native material must be reused in restoration of the wetlands temporarily impacted by the open cut crossing and restoration must be completed within 72 hours or as soon as practicable after completion of the crossing.

6. Spoil materials from the watercourse or onshore operations, including sludge deposits, shall not be dumped in the watercourse, or deposited in wetlands or other areas where the deposit may adversely affect the surface or ground waters of the State consistent with the requirements set forth in WV Water Pollution Control Act, W.Va. Code §22-11-4.a.16 (2014) and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016).
7. To protect aquatic resources from unauthorized discharge of pollutants, the permittee shall employ measures to prevent or control spills from fuels, lubricants or any other materials used in connection with construction and restrict them from entering the watercourse. Storage areas for chemicals, explosives, lubricants, equipment fuels, etc., as well as equipment refueling areas, must include containment measures (e.g., liner systems, dikes, etc.) to ensure that spillage of any material shall not contact surface or ground waters. Storage areas and refueling areas shall be a minimum distance of 100 feet from any surface water body. All spills shall be promptly reported to the State Center for Pollution, Toxic Chemical and Oil Spills, 1-800-642-3074. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016) and WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014).
8. To reduce sedimentation of aquatic resources and increased turbidity, it is required that proper stabilization of all disturbances below the ordinary high-water mark shall be installed within 24 hours or as soon as practicable to prevent soil erosion. Where possible, stabilization shall incorporate revegetation using bioengineering as an alternative to riprap. If riprap is utilized, it is to be of such weight and size that bank stress or slump conditions shall not be created due to its placement. Fill is to be clean, nonhazardous and of such composition that it shall not adversely affect the biological, chemical or physical properties of the receiving waters. Unsuitable materials include but are not limited to: copper chromium arsenate (CCA) and creosote treated lumber, car bodies, tires, large household appliances, construction debris, and asphalt. To reduce potential slope failure and/or erosion behind the material, fill containing concrete must be of such weight and size that promotes stability during expected high flows. Loose large slab placement of concrete sections from demolition projects greater than thirty-six inches in its longest dimension and tires are prohibited. Rebar or wire in concrete should not extend further than one (1) inch. All activities require the use of clean and coarse non-erodible materials with 15% or less of like fines that is properly sized to withstand expected high flows. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016) and WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014).
9. To protect the water quality of aquatic resources, runoff from any storage areas or spills shall not be allowed to enter storm sewers without acceptable removal of solids, oils and toxic compounds. Discharges from retention/detention ponds must comply with permit requirements of the National Pollutant Discharge Elimination System permit program of

the WVDEP. This condition is required in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-4.a.16 (2014) and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016).

10. To protect aquatic resources from discharge associated with land disturbance activities, which are one (1) acre or greater in total area, the project proponent must comply with the National Pollutant Discharge Elimination System or other state stormwater permit requirements as established by the WVDEP, if applicable. Any land disturbances are required to use Best Management Practices for Sediment and Erosion Control, as described in the latest West Virginia Department of Environmental Protection's Erosion and Sediment Control Best Management Practice Manual, or similar documents prepared by the West Virginia Division of Highways. These handbooks are available from the respective agency offices. This condition is required in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-4.a.16 (2014) and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).
11. To protect aquatic resources from unpermitted discharges consistent with the requirements of WV Water Pollution Control Act, W.Va. Code §22-11-4.a.16 (2014) and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016). Concrete shall not be permitted to enter the watercourse unless contained by tightly sealed forms or cells. Concrete handling equipment shall not discharge waste washwater into wetlands or watercourses at any time without adequate wastewater treatment as approved by the WVDEP.
12. To maintain the biological integrity of the state's fisheries, a spawning waiver is required for in-stream work in designated warm water streams and their adjacent tributaries during the fish spawning season of April to June and for trout waters and their adjacent tributaries during the trout water fish spawning season of September 15 to March 31. Fish spawning waivers may be requested from West Virginia Division of Natural Resources (WV DNR) Coordination Unit, at (304) 637-0245. For information about specific stream designations contact West Virginia Department of Environmental Protection, Water Quality Standards Section at (304) 926-0495. In-stream work may occur during the respective spawning season in ephemeral waters without a waiver if all reasonable measures are taken to minimize turbidity and sedimentation downstream associated with the proposed project. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016) and Wildlife Resources Declaration of Policy, W.Va. Code §20-2-4 (2017).
13. To protect stream stability and avoid unnecessary degradation of aquatic resources, the project proponent should avoid removal of well-established riparian vegetation where possible and minimize when necessary. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).
14. To protect aquatic life and reduce turbidity and disturbance to aquatic resources, the operation of equipment in-stream is to be minimized and accomplished during low flow periods when practical. Ingress and egress for equipment outside the immediate work area requires prior approval of the WVDNR Office of Land and Stream. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va.

C.S.R. §47-2-3 (2016) and Wildlife Resources Declaration of Policy, W.Va. Code §20-2-4 (2017).

15. To protect aquatic resources, any stream activities permitted under the Nationwide Permit Program require that a West Virginia Public Lands Corporation Right of Entry be obtained. Application for Stream Activity should be made to the WV DNR, Office of Lands and Streams, at <http://www.wvdnr.gov/REM/default.shtm> or (304) 558-3225. This condition is required in accordance with Wildlife Resources Declaration of Policy, W.Va. Code §20-2-4 (2017) and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016). In addition, any activity within the Federal Emergency Management Agency delineated 100-year floodplain requires notification to appropriate Floodplain Manager. This condition is required in accordance with Floodplain and Mudslide Area Management, W.Va. Code §7-1-3.v The following website provides a statewide listing of Floodplain Managers in West Virginia.
<http://www.dhsem.wv.gov/MitigationRecovery/Pages/Floodplain-Management.aspx>
16. If applicable, the permittee must measure and report Large Quantity Water use pursuant to the Water Resources Protection Act, W.Va. Code §22-26-1 (2014)
17. To ensure the protection of West Virginia's high quality and special aquatic resources, prior notification describing the project location and impacts must be given to the WVDEP for use of any Nationwide Permit(s) for all work in streams set forth in Sections A, B, and C below.
 - A. Tier 3 Protection is provided for aquatic resources in accordance with West Virginia Code of State Regulations, Requirements Governing Water Quality Standards, Antidegradation Policy, Title 47, Series 2, Section 4 for Outstanding National Resource Waters to include, but are not limited to, all streams and rivers within the boundaries of Wilderness Areas designated by The Wilderness Act (16 U.S.C. §1131, et seq.) within the State, all Federally designated rivers under the Wild and Scenic Rivers Act, 16 U.S.C. §1271, et seq.; all streams and other bodies of water in state parks which are high quality waters or naturally reproducing trout streams; waters in national parks and forests which are high quality waters or naturally reproducing trout streams; waters designated under the National Parks and Recreation Act of 1978, as amended; and pursuant to W.Va. C.S.R. §§60-5-6, 7 (2008) those waters whose unique character, ecological or recreational value, or pristine nature constitutes a valuable national or state resource. This condition is required in accordance with Tier 3 Protection Review Procedures, W.Va. C.S.R. §§60-5-6, 7 (2008). The listing of Tier 3 streams is located at:
https://dep.wv.gov/WWE/Programs/wqs/Documents/Tier%203%20Info/WVTier_3_Nov2013_web.xlt
 - B. Naturally-Reproducing Trout Streams are protected to ensure the continued propagation and maintenance of naturally-reproducing trout as designated by WV DNR. For information about specific streams contact WV DNR, Wildlife Resource Section, Trout Fisheries Program at 304-637-0245. This condition is required in accordance with Tier 3 Protection Review Procedures, W.Va. C.S.R. §§60-5-6, 7 (2008).

- C. West Virginia Natural Stream Preservation Act identifies the following streams or rivers as protected from activities that would impound, divert or flood the body of water: Greenbrier River from its confluence with Knapps Creek to its confluence with the New River, Anthony Creek from its headwaters to its confluence with the Greenbrier River, Cranberry River from its headwaters to its confluence with the Gauley River, Birch River from Cora Brown Bridge in Nicholas County to the confluence of the river with the Elk River, and New River from its confluence with the Greenbrier River to its confluence with the Gauley River. This condition is required consistent with the authority and requirements of the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).
18. The following mitigation guidelines are established to ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of wetlands and streams without compensating for the aquatic resource functions that will be lost as a result of the permitted activity. The discharge of dredged or fill material into a stream or wetland is authorized based upon the following criteria:
- A. Greater than one-tenth acre of cumulative permanent impact to wetland(s) (including wetland type conversion) requires prior notification describing the project location, impacts, and plan for mitigation to be submitted to the WVDEP.
 - B. The amount of fill in a wetland, wetland complex or wetland system without mitigation is not to cumulatively exceed 1/10 acre.
 - C. Cumulative permanent impacts to perennial and/or intermittent streams greater than 300 linear feet requires prior notification describing the project location, impacts, and plan for mitigation to be submitted to the WVDEP. The West Virginia Stream Wetland Valuation Metric (SWVM) is the preferred assessment methodology to assist with the determination of required mitigation. The metric is available at the Huntington and Pittsburgh USACE web sites.

In all instances, mitigation for all impacts incurred through use of these Nationwide Permits must first be directed to elimination of the impacts, then minimization of the impacts and lastly through compensatory mitigation. In many cases, the environmentally preferable compensatory mitigation may be provided through an approved mitigation bank or the West Virginia In-Lieu Fee Program. Permittee responsible compensatory mitigation may be performed using the methods of: restoration, enhancement, establishment, and in certain circumstances, preservation. In general, the required compensatory mitigation should be located in the same watershed as the impact site and located where it is most likely to successfully replace lost functions and services as the impacted site. However, the use of mitigation banks or in-lieu fee for in-kind replacement is not restricted to the major watershed in which the impact has occurred until such time as mitigation banks or in-lieu projects are developed in each major watershed.

Wetlands. When permittee responsible in-kind replacement mitigation is used, it is to be accomplished at the following ratios until such time an approved functional assessment methodology is established for the state of West Virginia:

Permanent impacts to open water wetlands are to be one (1) acre replaced for one (1) acre impacted.

Permanent impacts to wet meadow/emergent wetlands are to be two (2) acres replaced for one (1) acre impacted.

Permanent impacts to scrub-shrub and forested wetlands are to be three (3) acres replaced for one (1) acre impacted.

In instances where compensatory in-kind mitigation is completed 12 months prior to the impact of the resource, the replacement ratio may be reduced to as low as one (1) acre created/restored to every one (1) acre impacted.

NOTE: The ratio of created/restored wetlands to impacted wetlands not only ensures no net loss, but assures the adequate replacement of the impacted wetlands functions and values at the level existing prior to the impact. For many of the more complicated type wetlands, such as scrub-shrub and forested, the values and functions cannot readily be replaced through creation. Furthermore, not all wetland creation is successful.

In certain instances, the West Virginia Department of Environmental Protection, Division of Water and Waste Management may consider the acquisition of existing wetlands. Acquisition ratios are the following:

- 5 to 1 for open water wetlands
- 10 to 1 for wet meadow/emergent wetlands
- 15 to 1 for scrub-shrub and forested wetlands

Under extenuating circumstances, the Secretary may accept lower ratios for high quality wetlands under significant threat of development.

All wetlands acquired, using the acquisition method of mitigation, shall either be deeded to the WVDNR Public Land Corporation for management by the Wildlife Resources Section or placed under a conservation easement and be protected from disturbance by the permittee or their designee. Third party oversight of the conservation easement by a non-profit conservation organization is preferred.

Streams. When proposing permittee responsible compensatory mitigation, projects should attempt to replace lost functions for permanent stream impacts. Mitigation shall be determined on a case-by-case basis based on the pre- and post- condition stream quality and complexity of the mitigation project preferably utilizing the SWVM worksheets. Compensatory mitigation may require protection through deed restrictions or conservation easements by the permittee or their designee.

These requirements are established in accordance with; Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq, (2008), Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016), WV Water Pollution Control Act, W.Va. Code §22-11-1, et seq. (2014), Rules for Individual State Certification of Activities Requiring a

Federal Permit, W.Va. C.S.R. §47-5A-6 (2014), and Compensatory Mitigation for Losses of Aquatic Resources; Final Rule, 33 C.F.R. §332 (2008).

20. To protect mussel populations in accordance with state and federal requirements, should native freshwater mussels be encountered during the use of any Nationwide Permit, all activity reasonably expected to jeopardize the population is to cease immediately and the WV DNR Wildlife Resources Section, Wildlife Diversity Program is to be contacted (304-637-0245) to determine significance of the mussel population and the action to be taken.

This condition is required in accordance with; Rules for Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-3.1 (2014), Possession of Wildlife, W.Va. Code §20-2-4 (2017) and Fishing Regulations W.Va. C.S.R. §58-60-5.11 (2020).

21. In some cases, the USACE may determine that an activity shall not impact waters of the United States because the waters are considered federally non-jurisdictional and therefore does not require a 404 permit. However, under West Virginia Code §22-11-8(b)(3), a permit is needed to place a waste into any water of the State. Accordingly, any applicant proposing to impact a federally non-jurisdictional water must contact WVDEP to obtain all necessary approvals. This condition is required in accordance with the WV Water Pollution Control Act, W.Va. Code §22-11-1, et seq. (2014)

**Special Conditions of State 401 Water Quality Certification
Applicable to Individual Nationwide Permits**

Nationwide Permits 1, 2, 3, 4, 8, 10, 11, 16, 22, 24, 25, 26, 27, 28, 30, 34, 35, 41, 42, 44, 46, 47, and 53 have no West Virginia 401 Water Quality Certification Special Conditions.

5. Scientific Measurement Devices.

Nationwide Permit 5 West Virginia 401 Water Quality Certification Special Conditions:

To protect the biological integrity of the aquatic ecosystem permanent measurement devices shall not restrict stream flow. No permanent structure authorized by this permit shall entrain or impinge fish or any other aquatic life; or impede or prevent fish movement upstream or downstream; or cause more than minimal impact without specific written authorization from West Virginia Department of Environmental Protection. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008) and Wildlife Resources Declaration of Policy, W.Va. Code §20-2-4 (2017).

6. Survey Activities.

Nationwide Permit 6 West Virginia 401 Water Quality Certification Special Conditions:

To ensure avoidance and minimization considerations are made prior to impacting aquatic resources, the project proponent is required to provide written notification to the West Virginia Department of Environmental Protection, Division of Water and Waste Management for activities proposing exploratory trenching under this permit. This condition is required in accordance with; Rules for Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-4.2 (2014) and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).

7. Outfall Structures and Associated Intake Structures.

Nationwide Permit 7 West Virginia 401 Water Quality Certification Special Conditions:

- A. To ensure the protection of Tier 3 waters and designated uses of the aquatic resources of the State, Individual State Water Quality Certification is required when outfall structures and associated intake structures are being constructed in any streams identified in WQC Standard Condition 17 A, B, and C herein. This condition is required in accordance with Tier 3 Protection Review Procedures, W.Va. C.S.R. §60-5-6 (2008) and the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

- B. To protect the biological integrity of the aquatic ecosystem, a forty-five-day advance notification prior to installation of an outfall must be provided to West Virginia Department of Environmental Protection, Division of Water and Waste Management (WV DEP DWWM) allowing for a determination to be made as to whether the outfall will negatively impact the nursery functions of an embayment, island back channel, or stream mouth on a Section 10 River, necessitating further review or an individual certification. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008) and Wildlife Resources Declaration of Policy, W.Va. Code §20-2-4 (2017).
- C. To prevent cumulative adverse impact to the integrity of aquatic resources associated with the outfall structure and to remain consistent with other nationwide permits bank stabilization thresholds, the permanent bank disturbance shall be limited to 500 linear feet in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).
- D. The structure is to be properly designed to prevent erosion by utilizing outlet protection in accordance with the WVDEP Erosion and Sediment Control Manual, Best Management Practices. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).
- E. To ensure water availability in perennial streams and to protect the integrity of aquatic resources, a forty-five-day advance notification prior to withdrawal must be provided to WV DEP DWWM when this permit is being used for water withdrawal, allowing for a determination of whether the water withdrawal will have more than minimal impacts on aquatic resources, thus necessitating further review or an individual certification. Information to be provided is as follows:
- i. the maximum water withdrawal rate;
 - ii. designs to minimize impingement and entrainment of aquatic life, and
 - iii. a description of how the intake rate will affect streamflow, or be varied, during periods of seasonal low flow and/or drought.

This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

- F. To protect the biological integrity of the aquatic ecosystem, no permanent structure authorized by this permit shall prevent fish movement upstream or downstream in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

9. Structures in Fleeting and Anchorage Areas.

Nationwide Permit 9 West Virginia 401 Water Quality Certification Special Conditions:

To address the loss of public access to aquatic resources, when utilized for fleeting or anchorage, compensatory mitigation is required in accordance with Rules for Individual State Certification of Activities Requiring a Federal Permit, Impacts to Recreational Resources Associated with a Section 10 Permit, W.Va. C.S.R. § 47-5A-6.2.k (2014) for barge fleeting areas.

12. Utility Line Activities.

Nationwide Permit 12 West Virginia 401 Water Quality Certification Special Conditions:

- A. Notification is required to be provided to the WVDEP for any of the following facilities or impacts and the WVDEP Secretary, in his or her sole discretion, reserves the right to require an individual water quality certification in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7.a (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014):
- i. Pipeline crossings on a Section 10 river (unless the bore is greater than 100 feet below the stream bed on the Ohio River mainstem, or greater than 50 feet below the stream bed on all other Section 10 waters), in order to ensure that project activity or an inadvertent return does not result in significant impact to the integrity, or the chemical, physical, hydrologic, or biological components of the aquatic ecosystem;
 - ii. Utility lines within wetlands that would use or consider the use of herbicides for right-of-way maintenance, in order to protect downstream aquatic resources from exposure to herbicide;
 - iii. Projects proposing permanent impacts to any stream identified in WQC Standard Condition 17 A, B, and C herein, to ensure the protection of West Virginia's high quality and special aquatic resources;
 - iv. Cumulative permanent impacts to perennial and intermittent stream(s) totaling greater than 300 linear feet and cumulative wetland impacts exceeding 1/10 acre, to ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of wetlands and streams;
 - v. Pipelines carrying separated natural gas liquids, unless installed with an automated system which will indicate a sudden loss of pressure, to protect against a discharge of a hazardous substance into waters and to protect designated uses.

Individual certification may be required for the above activities to ensure the proposed activity complies with the following; Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011), WV Water Pollution Control Act, W.Va.

Code §22-11-1, et seq. (2014), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016)

- B. To prevent permanent impacts to aquatic resources associated with equipment tracking in wetlands, the use of protective mats when practicable is required. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).
- C. To protect the integrity of aquatic resources dredging for backfill material is not allowed in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).
- D. Submarine pipeline stream crossings (including horizontal directional drilling) must be designed and constructed to prevent flotation and the possibility of leakage or rupture and the top of pipelines must be buried a minimum of three (3) feet below the stream bottom in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).
- E. Horizontal directional drilling for underwater crossings requires an Inadvertent Return Contingency Plan certified by a West Virginia Professional Engineer to be kept on site and made available upon request. This condition is required to ensure the protection of the chemical, physical and biological integrity of the aquatic resource in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).
- F. To ensure water availability in perennial streams and protect the integrity of aquatic resources, a forty-five-day advance notification prior to withdrawal must be provided to WVDEP when this permit is being used for water withdrawal, allowing for a determination of whether the water withdrawal will have more than minimal impacts on aquatic resources, thus necessitating further review or an individual certification. Information to be provided is as follows:
 - i. the maximum water withdrawal rate;
 - ii. designs to minimize impingement and entrainment of aquatic life, and
 - iii. a description of how the intake rate will affect streamflow, or be varied, during periods of seasonal low flow and/or drought.

This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

- G. To protect the biological integrity of the aquatic ecosystem, no permanent structure authorized by this permit shall prevent fish movement upstream or downstream in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).
- H. To prevent erosion of stream banks at Right of Way (ROW) crossings all waterbody banks are to be returned as close as practicable to preconstruction contours. Riparian areas shall be revegetated with native species of conservation grasses, legumes, and woody species (of low determinate growth), similar in density to adjacent undisturbed lands. Routine mowing or clearing adjacent to waterbodies shall be limited to allow a riparian strip at least 25 feet wide, as measured from the waterbody's mean high water mark, to permanently revegetate with native plant species across the entire construction right-of-way. However, to facilitate periodic corrosion/leak surveys, a corridor centered on the pipeline and up to 10 feet wide may be cleared at a frequency necessary to maintain the 10-foot corridor in an herbaceous state. In addition, trees that are located within 15 feet of the pipeline that have roots that could compromise the integrity of the pipeline coating may be cut and removed from the permanent right-of-way. Seeding recommendations can be found in West Virginia Division of Natural Resources' publication, "Enhancing Wildlife Habitat on Oil & Gas Infrastructure." This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

13. Bank Stabilization.

Nationwide Permit 13 West Virginia 401 Water Quality Certification Special Conditions:

- A. Except for activities under Section 14 of the 1946 Flood Control Act, the Secretary of the West Virginia Department of Environmental Protection, in the Secretary's sole discretion, reserves the right to require an individual water quality certification for any of the following facilities or impacts in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7.a (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014):
 - i. Activities permanently impacting one or more of the streams identified in WQC Standard Condition 17 A, B, and C herein, to ensure the protection of West Virginia's high quality and special aquatic resources.

Individual certification may be required for the following activities to ensure the proposed activity complies with the following; Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-, et seq. (2008), Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011), WV Water Pollution Control Act, W.Va. Code §22-11-1, et seq. (2014), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016)

- B. To protect the biological integrity of the aquatic ecosystem, a forty-five-day advance notification prior to installation of bank protection must be provided to WVDEP allowing for a determination to be made as to whether the stabilization activity will negatively impact the nursery functions of an embayment, island back channel, or stream mouth on a Section 10 River, necessitating further review or an individual certification. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008) and Wildlife Resources Declaration of Policy, W.Va. Code §20-2-4 (2017).
- C. Bank protection measures may not be extended into the bed of the stream except as necessary to provide proper footing of the bank stabilization measure. This condition is required in order to ensure no significant adverse impact to resources without appropriate compensation in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).
- D. To reduce erosion and sedimentation of aquatic resources stabilized streambanks, where possible and practicable, should be sloped and revegetated for erosion control purposes. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).
- E. To reduce erosion and sedimentation the use of unconsolidated river gravel (river jack) for streambank stabilization is not allowed. Unconsolidated river material may be used to reconstruct streambanks or form bankfull benches provided they are stabilized by material and/or methods which prevent further erosion under normal or expected high flows. Acceptable material and/or methods are; quarried or shot rock, clean concrete rubble, gabions, cribbing, woody vegetation, and flow diversion structures such as rock vanes. All of the foregoing are to be used in combination with appropriate sloping and engineering specifications. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

14. Linear Transportation Projects.

Nationwide Permit 14 West Virginia 401 Water Quality Certification Special Conditions:

- A. To reduce potential erosion and sedimentation associated with temporary access fills; all temporary cofferdams or other discharges related to accessing the stream for maintenance activities require the use of clean and coarse non-erodible materials with 15% or less of like fines that is properly sized to withstand expected high flows. This condition is required in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014), Antidegradation Implementation Procedures,

W.Va. C.S.R. §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).

- B. Pipe, box, and arched culvert crossings are required to adhere to the following:
- i. The volume of fill for culverted structures is limited to the amount required to achieve transportation purpose.
 - ii. The inlet/outlets must be designed in such a manner as to maintain substrate in the bottom of the culvert (culverts installed in bedrock or with a stream gradient of 4% or greater do not need to be countersunk). Countersinking the culvert to the sub-pavement of the streambed, backwatering or the use of a bottomless culvert will generally fulfill this requirement.
 - iii. If fills associated with the crossing extend onto the floodplain, the use of floodplain culverts is strongly encouraged.

This condition is required to ensure the protection of the chemical, physical and biological integrity of the aquatic resource in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).

- C. To maintain the hydrologic and physical integrity of aquatic resources, the volume of fill for a bridge abutment or piers below the ordinary high-water mark is not to exceed 200 cubic yards for a single bridge project. This condition is required in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).
- D. To maintain and protect Tier 3 waters, and protect the integrity of special aquatic resources of the State, a sixty (60) day advance notification prior to impact must be provided to WVDEP when this permit is being used for the discharge of material to Section 10 waters and streams identified in Section H Standard Condition 17 A, B, and C herein, allowing for a determination of whether the activity will degrade the aquatic resources, thus necessitating further review or an individual certification. Information to be provided is as follows:
- i. A statement of the proposed project purpose;
 - ii. map identifying the project area with proposed aquatic resource impacts;
 - iii. a list of proposed permanent impacts to streams and wetlands; and
 - iv. any proposed temporary impacts to streams and wetlands.

This condition is required in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7.a (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014), Tier 3 Protection Review Procedures, W.Va. C.S.R. §§60-5-6, 7 (2008) and the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

15. U.S. Coast Guard Approved Bridges.

Nationwide Permit 15 West Virginia 401 Water Quality Certification Special Condition:

Notification shall be provided to the West Virginia Department of Environmental Protection, Division of Water and Waste Management for the use of this permit and to ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of aquatic ecosystems in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016) and the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

17. Hydropower Projects.

Nationwide Permit 17 West Virginia 401 Water Quality Certification Special Condition:

An Individual State Water Quality Certification is required for use of this permit. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016) and the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

18. Minor Discharges.

Nationwide Permit 18 West Virginia 401 Water Quality Certification Special Condition:

To protect the biological integrity of the aquatic ecosystem, a forty-five-day advance notification prior to impacts of dredging/filling must be provided to West Virginia Department of Environmental Protection, Division of Water and Waste Management (WV DEP DWWM) allowing for a determination to be made as to whether the activity will negatively impact the nursery functions of an embayment, island back channel, or stream mouth on a Section 10 River, necessitating further review or an individual certification. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008) and Wildlife Resources Declaration of Policy, W.Va. Code §20-2-4 (2017).

19. Minor Dredging.

Nationwide Permit 19 West Virginia 401 Water Quality Certification Special Condition:

To protect the biological integrity of the aquatic ecosystem, a forty-five-day advance notification prior to dredging must be provided to West Virginia Department of Environmental Protection, Division of Water and Waste Management (WV DEP DWWM)

allowing for a determination to be made as to whether the dredging activity will negatively impact the nursery functions of an embayment, island back channel, or stream mouth on a Section 10 River, necessitating further review or an individual certification. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008) and Wildlife Resources Declaration of Policy, W.Va. Code §20-2-4 (2017).

20. Response Operations for Oil and Hazardous Substances.

Nationwide Permit 20 West Virginia 401 Water Quality Certification Special Condition:

To protect the chemical, physical, and biological components of the State's aquatic resources, all substances contained during cleanup or other contaminated dredged or spill material cannot be discharged or disposed of in sensitive areas such as islands, embayments, wetlands, or any water course, but only in disposal areas approved by West Virginia Department of Environmental Protection, Division of Water and Waste Management. This condition is required in accordance with the Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5 (2008), and the Hazardous Waste Management Act, W.Va. Code §22-18-8 (1994).

21. Surface Coal Mining Activities.

Nationwide Permit 21 West Virginia 401 Water Quality Certification Special Conditions:

- A. Individual State Water Quality Certification is required for activities impacting any classification of stream listed in West Virginia 401 Water Quality Certification Standard Condition 17. To ensure the protection of West Virginia's high quality and special aquatic resources, this condition is required in accordance with Tier 3 Protection Review Procedures, W.Va. C.S.R. §60-5-6 (2008) and is required consistent with the authority and requirements of the Natural Streams Preservation Act, W.Va. Code §22-13-1 et seq. (2011).
- B. Individual State Water Quality Certification is required for mining related activities cumulatively impacting greater than ½ acre of intermittent or perennial stream(s). To ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of aquatic ecosystems in accordance with Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014), Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), WV Water Pollution Control Act, W.Va. Code §22-11-1 et seq. (2014) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1 et seq. (2008).

- C. Individual State Water Quality Certification is required for linear transportation projects which involve stream crossings for haul roads, access roads, conveyor belts, pipelines, etc. in intermittent or perennial stream(s) greater than ½ acre cumulative or 300 linear feet per individual crossing. To ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of aquatic ecosystems in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), WV Water Pollution Control Act, W.Va. Code §22-11-1 et seq. (2014), Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1 et seq. (2008).
- D. Individual State Water Quality Certification is required for cumulative permanent wetland impacts greater than ½ acre. To ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of aquatic ecosystems in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014), and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1 et seq. (2008).

23. Approved Categorical Exclusions.

Nationwide Permit 23 West Virginia 401 Water Quality Certification Special Conditions:

An Individual State Water Quality Certification is required for use of this permit. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014).

29. Residential Developments.

Nationwide Permit 29 West Virginia 401 Water Quality Certification Special Conditions:

- A. Projects affecting Section 10 waters and adjacent wetlands require individual state water quality certification. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014).

- B. Placing in-stream stormwater management facilities with this permit requires Individual State Water Quality Certification. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq (2016), the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq (2008), and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014).

31. Maintenance of Existing Flood Control Facilities.

Nationwide Permit 31 West Virginia 401 Water Quality Certification Special Conditions:

In non-emergency situations, prior written notification is required to West Virginia Department of Environmental Protection, Division of Water and Waste Management allowing 45 days to ensure both the minimization of impacts to fisheries and wildlife habitat and the consideration of habitat enhancements. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008) and Wildlife Resources Declaration of Policy, W.Va. Code §20-2-4 (2017).

32. Completed Enforcement Actions.

Nationwide Permit 32 West Virginia 401 Water Quality Certification Special Condition:

To ensure compliance with applicable state water quality requirements notification to the WVDEP is required for use of this permit. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

33. Temporary Construction, Access, and Dewatering.

Nationwide Permit 33 West Virginia 401 Water Quality Certification Special Condition:

Individual State Water Quality Certification is required for use of this permit to construct temporary causeways in Section 10 waters, or for fills in any water anticipated to exceed one year. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq (2014).

36. Boat Ramps.

Nationwide Permit 36 West Virginia 401 Water Quality Certification Special Condition:

To protect the biological integrity of the aquatic ecosystem, a forty-five-day advance notification prior to permit use must be provided to West Virginia Department of Environmental Protection, Division of Water and Waste Management (WV DEP DWWM) allowing for a determination to be made as to whether the boat ramp will negatively impact the nursery functions of an embayment, island back channel, or stream mouth on a Section 10 River, necessitating further review or an individual certification. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008) and Wildlife Resources Declaration of Policy, W.Va. Code §20-2-4 (2017).

37. Emergency Watershed Protection and Rehabilitation.

Nationwide Permit 37 West Virginia 401 Water Quality Certification Special Condition:

Projects that have been coordinated with and obtained concurrence from West Virginia Department of Environmental Protection, Division of Water and Waste Management in the early project planning phase are certified. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq (2016), the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq (2008), and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq (2014).

Note: This certification applies only to those emergency situations that involve threats to life, threat of loss of primary residence, and loss or threat of loss to the areas' infrastructure and/or other community services.

38. Cleanup of Hazardous and Toxic Waste.

Nationwide Permit 38 West Virginia 401 Water Quality Certification Special Condition:

To protect the public health and safety and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes notification is required to be submitted to West Virginia Department of Environmental Protection, Division of Water and Waste Management and notice of the proposed activity must be provided to the West Virginia Department of Environmental Protection, Division of Land Restoration, Office of Environmental Remediation, 601 57th Street, Charleston, West Virginia 25304, as early as possible. This condition is required in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016), Antidegradation

Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and the Hazardous Waste Management Act, W.Va. Code §22-18-8 (1994)

39. Commercial and Institutional Developments.

Nationwide Permit 39 West Virginia 401 Water Quality Certification Special Conditions:

- A. Individual State Water Quality Certification is required for projects impacting Section 10 waters and adjacent wetlands. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq (2014).
- B. Placing in-stream stormwater management facilities with this permit requires Individual State Water Quality Certification. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq (2014).

40. Agricultural Activities.

Nationwide Permit 40 West Virginia 401 Water Quality Certification Special Condition:

Placing in-stream stormwater management facilities with this permit requires Individual State Water Quality Certification. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical habitats, wetlands and other natural resources in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq (2014).

43. Stormwater Management Facilities.

Nationwide Permit 43 West Virginia 401 Water Quality Certification Special Condition:

Placing in-stream stormwater management facilities with this permit requires Individual State Water Quality Certification. This condition is required to ensure that the activity has no significant adverse impact to water resources, fish and wildlife, recreation, critical

habitats, wetlands and other natural resources in accordance with; Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016), the Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq (2014).

45. Repair of Uplands Damaged by Discrete Events.

Nationwide Permit 45 West Virginia 401 Water Quality Certification Special Condition:

To maintain and protect Tier 3 waters, and protect the integrity of special aquatic resources of the State, a sixty (60) day advance notification prior to impact must be provided to WVDEP when this permit is being used for the discharge of material to Section 10 waters and streams identified in Section H Standard Condition 17 A, B, and C herein, allowing for a determination of whether the activity will degrade the aquatic resources, thus necessitating further review or an individual certification. Information to be provided is as follows:

- i. A statement of the proposed project purpose;
- ii. map identifying the project area with proposed aquatic resource impacts;
- iii. a list of proposed permanent impacts to streams and wetlands; and
- iv. any proposed temporary impacts to streams and wetlands.

This condition is required in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7.a (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014), Tier 3 Protection Review Procedures, W.Va. C.S.R. §60-5-6 (2008) and the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

48. Commercial Shellfish Aquaculture Activities.

Nationwide Permit 48 West Virginia 401 Water Quality Certification Special Condition:

To maintain and protect Tier 3 waters, and protect the integrity of special aquatic resources of the State, a sixty (60) day advance notification prior to impact must be provided to WVDEP when this permit is being used for the discharge of material to Section 10 waters and streams identified in Section H Standard Condition 17 A, B, and C herein, allowing for a determination of whether the activity will degrade the aquatic resources, thus necessitating further review or an individual certification. Information to be provided is as follows:

- i. A statement of the proposed project purpose;
- ii. map identifying the project area with proposed aquatic resource impacts;
- iii. a list of proposed permanent impacts to streams and wetlands; and
- iv. any proposed temporary impacts to streams and wetlands.

This condition is required in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7.a (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014), Tier 3 Protection Review Procedures, W.Va. C.S.R. §60-5-6 (2008) and the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

49. Coal Remining Activities

Nationwide Permit 49 West Virginia 401 Water Quality Certification Special Conditions:

- A. Individual State Water Quality Certification is required for activities impacting any classification of stream listed in West Virginia 401 Water Quality Certification Standard Condition 17. To ensure the protection of West Virginia's high quality and special aquatic resources, this condition is required in accordance with Tier 3 Protection Review Procedures, W.Va. C.S.R. §60-5-6 (2008) and is required consistent with the authority and requirements of the Natural Streams Preservation Act, W.Va. Code §22-13-1 et seq. (2011).
- B. Individual State Water Quality Certification is required for mining related activities cumulatively impacting greater than ½ acre of intermittent or perennial stream(s). To ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of aquatic ecosystems in accordance with Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014), Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), WV Water Pollution Control Act, W.Va. Code §22-11-1 et seq. (2014) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1 et seq. (2008).
- C. Individual State Water Quality Certification is required for linear transportation projects which involve stream crossings for haul roads, access roads, conveyor belts, pipelines, etc. in intermittent or perennial stream(s) greater than ½ acre cumulative or 300 linear feet per individual crossing. To ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of aquatic ecosystems in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), WV Water Pollution Control Act, W.Va. Code §22-11-1 et seq. (2014), Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1 et seq. (2008).
- D. Individual State Water Quality Certification is required for cumulative permanent wetland impacts greater than ½ acre. To ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of aquatic ecosystems in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014), and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1 et seq. (2008).

50. Underground Coal Mining Activities

Nationwide Permit 50 West Virginia 44)1 Water Quality Certification Special Conditions

- A. Individual State Water Quality Certification is required for activities impacting any classification of stream listed in West Virginia 401 Water Quality Certification Standard Condition 17. To ensure the protection of West Virginia's high quality and special aquatic resources, this condition is required in accordance with Tier 3 Protection Review Procedures, W.Va. C.S.R. §60-5-6 (2008) and is required consistent with the authority and requirements of the Natural Streams Preservation Act, W.Va. Code §22-13-1 et seq. (2011).
- B. Individual State Water Quality Certification is required for mining related activities cumulatively impacting greater than ½ acre of intermittent or perennial stream(s). To ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of aquatic ecosystems in accordance with Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014), Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), WV Water Pollution Control Act, W.Va. Code §22-11-1 et seq. (2014) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1 et seq. (2008).
- C. Individual State Water Quality Certification is required for linear transportation projects which involve stream crossings for haul roads, access roads, conveyor belts, pipelines, etc. in intermittent or perennial stream(s) greater than ½ acre cumulative or 300 linear feet per individual crossing. To ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of aquatic ecosystems in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), WV Water Pollution Control Act, W.Va. Code §22-11-1 et seq. (2014), Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1 et seq. (2008).
- D. Individual State Water Quality Certification is required for cumulative permanent wetland impacts greater than ½ acre. To ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of aquatic ecosystems in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016), Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014), and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1 et seq. (2008).

51. Land-Based Renewable Energy Generation Facilities.

Nationwide Permit 51 West Virginia 401 Water Quality Certification Special Condition:

To maintain and protect Tier 3 waters, and protect the integrity of special aquatic resources of the State, a sixty (60) day advance notification prior to impact must be provided to WVDEP when this permit is being used for the discharge of material to Section 10 waters and streams identified in Section H Standard Condition 17 A, B, and C herein, allowing for a determination of whether the activity will degrade the aquatic resources, thus necessitating further review or an individual certification. Information to be provided is as follows:

- i. A statement of the proposed project purpose;
- ii. map identifying the project area with proposed aquatic resource impacts;
- iii. a list of proposed permanent impacts to streams and wetlands; and
- iv. any proposed temporary impacts to streams and wetlands.

This condition is required in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7.a (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014), Tier 3 Protection Review Procedures, W.Va. C.S.R. §60-5-6 (2008) and the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

52. Water-Based Renewable Energy Generation Pilot Projects

Nationwide Permit 51 West Virginia 401 Water Quality Certification Special Condition:

To maintain and protect Tier 3 waters, and protect the integrity of special aquatic resources of the State, a sixty (60) day advance notification prior to impact must be provided to WVDEP when this permit is being used for the discharge of material to Section 10 waters and streams identified in Section H Standard Condition 17 A, B, and C herein, allowing for a determination of whether the activity will degrade the aquatic resources, thus necessitating further review or an individual certification. Information to be provided is as follows:

- i. A statement of the proposed project purpose;
- ii. map identifying the project area with proposed aquatic resource impacts;
- iii. a list of proposed permanent impacts to streams and wetlands; and
- iv. any proposed temporary impacts to streams and wetlands.

This condition is required in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7.a (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014), Tier 3 Protection Review Procedures, W.Va. C.S.R. §60-5-6 (2008) and the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

53. Removal of Low - Head Dams

Nationwide Permit 51 West Virginia 401 Water Quality Certification Special Condition:

To maintain and protect Tier 3 waters, and protect the integrity of special aquatic resources of the State, a sixty (60) day advance notification prior to impact must be provided to WVDEP when this permit is being used for the discharge to waters and streams identified in Section H Standard Condition 17 A, B, and C herein, allowing for a determination of whether the activity will degrade the aquatic resources, thus necessitating further review or an individual certification. Information to be provided is as follows:

- i. A statement of the proposed project purpose;
- ii. map identifying the project area with proposed aquatic resource impacts;
- iii. a list of proposed permanent impacts to streams and wetlands; and
- iv. any proposed temporary impacts to streams and wetlands.

This condition is required in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7.a (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1, et seq. (2014), Tier 3 Protection Review Procedures, W.Va. C.S.R. §60-5-6 (2008) and the Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011).

C. Electric Utility Line and Telecommunications Activities

Nationwide Permit C West Virginia 401 Water Quality Certification Special Conditions:

- A. Notification is required to be provided to the WVDEP for any of the following facilities or impacts and the WVDEP Secretary, in his or her sole discretion, reserves the right to require an individual water quality certification in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7.a (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014):
 - i. Pipeline crossings on a Section 10 river (unless the bore is greater than 100 feet below the stream bed on the Ohio River mainstem, or greater than 50 feet below the stream bed on all other Section 10 waters), in order to ensure that project activity or an inadvertent return does not result in significant impact to the integrity, or the chemical, physical, hydrologic, or biological components of the aquatic ecosystem;
 - ii. Utility lines within wetlands that would use or consider the use of herbicides for right-of-way maintenance, in order to protect downstream aquatic resources from exposure to herbicide;
 - iii. Projects proposing permanent impacts to any stream identified in WQC Standard Condition 17 A, B, and C herein, to ensure the protection of West Virginia's high quality and special aquatic resources;

- iv. Cumulative permanent impacts to perennial and intermittent stream(s) totaling greater than 300 linear feet and cumulative wetland impacts exceeding 1/10 acre, to ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of wetlands and streams;

Individual certification may be required for the above activities to ensure the proposed activity complies with the following; Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011), WV Water Pollution Control Act, W.Va. Code §22-11-1, et seq. (2014), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016)

- B. To prevent permanent impacts to aquatic resources associated with equipment tracking in wetlands, the use of protective mats when practicable is required. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).
- C. To protect the integrity of aquatic resources dredging for backfill material is not allowed in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).
- D. Submarine pipeline stream crossings (including horizontal directional drilling) must be designed and constructed to prevent flotation and the possibility of leakage or rupture and the top of pipelines must be buried a minimum of three (3) feet below the stream bottom in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).
- E. Horizontal directional drilling for underwater crossings requires an Inadvertent Return Contingency Plan certified by a West Virginia Professional Engineer to be kept on site and made available upon request. This condition is required to ensure the protection of the chemical, physical and biological integrity of the aquatic resource in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).
- F. To ensure water availability in perennial streams and protect the integrity of aquatic resources, a forty-five-day advance notification prior to withdrawal must be provided to WVDEP when this permit is being used for water withdrawal, allowing for a determination of whether the water withdrawal will have more than minimal impacts on aquatic resources, thus necessitating further review or an individual certification. Information to be provided is as follows:
 - i. the maximum water withdrawal rate;
 - ii. designs to minimize impingement and entrainment of aquatic life, and

- iii. a description of how the intake rate will affect streamflow, or be varied, during periods of seasonal low flow and/or drought.

This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

- G. To protect the biological integrity of the aquatic ecosystem, no permanent structure authorized by this permit shall prevent fish movement upstream or downstream in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).
- H. To prevent erosion of stream banks at Right of Way (ROW) crossings all waterbody banks are to be returned as close as practicable to preconstruction contours. Riparian areas shall be revegetated with native species of conservation grasses, legumes, and woody species (of low determinate growth), similar in density to adjacent undisturbed lands. Routine mowing or clearing adjacent to waterbodies shall be limited to allow a riparian strip at least 25 feet wide, as measured from the waterbody's mean high water mark, to permanently revegetate with native plant species across the entire construction right-of-way. However, to facilitate periodic corrosion/leak surveys, a corridor centered on the pipeline and up to 10 feet wide may be cleared at a frequency necessary to maintain the 10-foot corridor in an herbaceous state. In addition, trees that are located within 15 feet of the pipeline that have roots that could compromise the integrity of the pipeline coating may be cut and removed from the permanent right-of-way. Seeding recommendations can be found in West Virginia Division of Natural Resources' publication, "Enhancing Wildlife Habitat on Oil & Gas Infrastructure." This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

D. Utility Line Activities for Water and Other Substances

Nationwide Permit D West Virginia 401 Water Quality Certification Special Conditions:

- A. Notification is required to be provided to the WVDEP for any of the following facilities or impacts and the WVDEP Secretary, in his or her sole discretion, reserves the right to require an individual water quality certification in accordance with; W.Va. Code §22-1-6.d (2020), WV Water Pollution Control Act, W.Va. Code §22-11-7.a (2014) and Individual State Certification of Activities Requiring a Federal Permit, W.Va. C.S.R. §47-5A-1 et seq. (2014):
 - i. Pipeline crossings on a Section 10 river (unless the bore is greater than 100 feet below the stream bed on the Ohio River mainstem, or greater than 50 feet below the stream bed on all other Section 10 waters), in order to ensure

that project activity or an inadvertent return does not result in significant impact to the integrity, or the chemical, physical, hydrologic, or biological components of the aquatic ecosystem;

- ii. Utility lines within wetlands that would use or consider the use of herbicides for right-of-way maintenance, in order to protect downstream aquatic resources from exposure to herbicide;
- iii. Projects proposing permanent impacts to any stream identified in WQC Standard Condition 17 A, B, and C herein, to ensure the protection of West Virginia's high quality and special aquatic resources;
- iv. Cumulative permanent impacts to perennial and intermittent stream(s) totaling greater than 300 linear feet and cumulative wetland impacts exceeding 1/10 acre, to ensure no significant adverse impact to the chemical, physical, hydrologic, or biological integrity of wetlands and streams;

Individual certification may be required for the above activities to ensure the proposed activity complies with the following; Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), Natural Streams Preservation Act, W.Va. Code §22-13-1, et seq. (2011), WV Water Pollution Control Act, W.Va. Code §22-11-1, et seq. (2014), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016)

- B. To prevent permanent impacts to aquatic resources associated with equipment tracking in wetlands, the use of protective mats when practicable is required. This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).
- C. To protect the integrity of aquatic resources dredging for backfill material is not allowed in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-1, et seq. (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).
- D. Submarine pipeline stream crossings (including horizontal directional drilling) must be designed and constructed to prevent flotation and the possibility of leakage or rupture and the top of pipelines must be buried a minimum of three (3) feet below the stream bottom in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).
- E. Horizontal directional drilling for underwater crossings requires an Inadvertent Return Contingency Plan certified by a West Virginia Professional Engineer to be kept on site and made available upon request. This condition is required to ensure the protection of the chemical, physical and biological integrity of the aquatic resource in accordance with; WV Water Pollution Control Act, W.Va. Code §22-11-8 (2014), Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008), and Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016).

- F. To ensure water availability in perennial streams and protect the integrity of aquatic resources, a forty-five-day advance notification prior to withdrawal must be provided to WVDEP when this permit is being used for water withdrawal, allowing for a determination of whether the water withdrawal will have more than minimal impacts on aquatic resources, thus necessitating further review or an individual certification. Information to be provided is as follows:
- i. the maximum water withdrawal rate;
 - ii. designs to minimize impingement and entrainment of aquatic life, and
 - iii. a description of how the intake rate will affect streamflow, or be varied, during periods of seasonal low flow and/or drought.

This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).

- G. To protect the biological integrity of the aquatic ecosystem, no permanent structure authorized by this permit shall prevent fish movement upstream or downstream in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3.2 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).
- H. To prevent erosion of stream banks at Right of Way (ROW) crossings all waterbody banks are to be returned as close as practicable to preconstruction contours. Riparian areas shall be revegetated with native species of conservation grasses, legumes, and woody species (of low determinate growth), similar in density to adjacent undisturbed lands. Routine mowing or clearing adjacent to waterbodies shall be limited to allow a riparian strip at least 25 feet wide, as measured from the waterbody's mean high water mark, to permanently revegetate with native plant species across the entire construction right-of-way. However, to facilitate periodic corrosion/leak surveys, a corridor centered on the pipeline and up to 10 feet wide may be cleared at a frequency necessary to maintain the 10-foot corridor in an herbaceous state. In addition, trees that are located within 15 feet of the pipeline that have roots that could compromise the integrity of the pipeline coating may be cut and removed from the permanent right-of-way. Seeding recommendations can be found in West Virginia Division of Natural Resources' publication, "Enhancing Wildlife Habitat on Oil & Gas Infrastructure." This condition is required in accordance with Requirements Governing Water Quality Standards, W.Va. C.S.R. §47-2-3 (2016) and Antidegradation Implementation Procedures, W.Va. C.S.R. §60-5-1, et seq. (2008).