



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL

**DELAWARE COASTAL
MANAGEMENT PROGRAM**

**89 KINGS HIGHWAY
DOVER, DELAWARE 19901**

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April 4, 2012

Mr. Frank J. Cianfrani
Chief, Regulatory Branch
U.S. Army Corps of Engineers
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390

RE: Delaware 401 Water Quality Certification and Coastal Zone Management Federal Consistency Certification (FC 2011.0067) for the 2012 Nationwide Permit Program

Dear Mr. Cianfrani:

The purpose of this letter is to provide your office with State of Delaware Section 401 Water Quality Certification and Coastal Zone Management Federal Consistency Determination for the Nationwide Permit (NWP) Program, as published in the Federal Register on February 16, 2012. The decisions detailed below assume adherence to the Regional Conditions for Delaware as published in the Federal Register on February 21, 2012.

Federal Consistency Certification

The Delaware Coastal Management Program (DCMP) has reviewed your consistency determination for the above referenced permit program. Based upon our review of the original program publication document and the associated Regional Conditions for Delaware, and pursuant to National Oceanic & Atmospheric Administration regulations (15 CFR 930), the DCMP concurs with your consistency determination for the following Nationwide Permits as modified by the associated "Regional Conditions for Delaware": **1, 2, 4, 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 45, 47, 48, 49 and 50.**

401 Water Quality

The State of Delaware hereby certifies that the following Nationwide Permits as modified by the associated "Regional Conditions for Delaware" will comply with the Delaware "Surface Water Quality Standards" as amended June 11, 2011: **1, 2, 4, 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 45, 47, 48, 49 and 50.**

The State of Delaware hereby denies Federal Consistency Certification and 401 Water Quality Certification for the following Nationwide Permits: **8, 40, 41, 42, 43, 44, 46, 51 and 52.**

Delaware's good nature depends on you!

Delaware remains concerned that not enough data or information has been gathered regarding the two new Nationwide Permits for Land and Water-Based Renewable Energy Generation Pilot Projects to make a determination that these projects will have only minimal impacts, individually or cumulatively. As such, Delaware believes that individual 401 Water Quality Certification and Federal Consistency reviews should be required for such projects until such time as better information becomes available regarding their environmental effects.

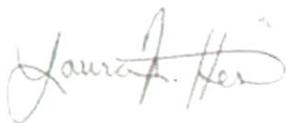
In addition, the State of Delaware hereby denies the following Nationwide Permits in Critical Resource Waters, including State Natural Heritage Sites as required in Regional General Condition G-5 and approved by the Division Engineer on March 15, 2012: **3, 13, 18, 29 and 39.**

Finally, DNREC would like to take this opportunity to express a continuing concern that the U.S. Army Corps of Engineers (USACE) is not adequately tracking, monitoring or evaluating the permanent and temporary impacts to waters of the U.S. that result from implementation of the Nationwide Permit Program. DNREC's recent wetland status assessment, - "Delaware Wetlands: Status and Changes from 1992 to 2007" - shows that Delaware continues to lose wetland acreage and function at an alarming and increasing rate. Many of the documented losses are small in spatial extent, similar to NWP impacts, but have significant cumulative effect. As a result, we would like to see action to rectify this data and information gap by establishing a group of USACE Philadelphia District, EPA, and State personnel to create a successful protocol for information sharing and tracking in Delaware.

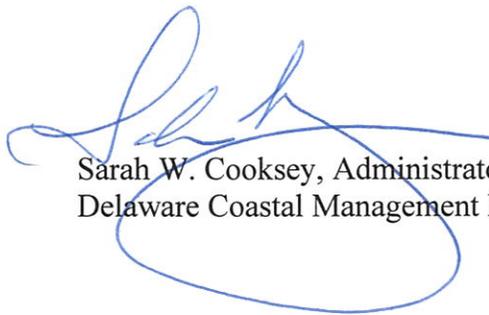
DNREC strongly encourages the USACE to improve and upgrade their permitting database to include permit type, latitude and longitude, impact acreage, wetland type, compensation, and consistent permit identification numbers so that all information can be easily queried to determine impact by permit type. The database should use geo-referencing so that data can be displayed spatially in GIS form. All this information should be routinely shared with cooperating resource agencies so that informed decisions can be made regarding changes to permitting programs and effects on the wetland resource, both spatially and functionally.

We look forward to working with you and your staff to implement the Nationwide Permit Program in Delaware. Please contact Tricia Arndt of the Delaware Coastal Management Program at (302) 739-9283 if you have questions or concerns.

Sincerely,



Laura Herr, Section Manager
Wetlands and Subaqueous Lands Section



Sarah W. Cooksey, Administrator
Delaware Coastal Management Program

Cc: Collin P. O'Mara, Secretary
Kathy Stiller, Director, Division of Water
Frank Piorko, Director, Division of Watershed Stewardship
Ed Bonner, USACE