

## Status Update: Wetland Permitting

During the week of November 15, 2021, the U.S. Army Corps of Engineers (USACE) began reissuing the 16 Clean Water Act (CWA) Section 404 nationwide permits (NWPs) that it suspended during the week of November 1, 2021. On November 24, 2021, the Virginia Department of Environmental Quality (DEQ) confirmed USACE's action.

USACE's [decision to suspend issuance of the 16 NWPs](#) resulted from a ruling by the U.S. District Court for the Northern District of California on October 21, 2021. The ruling vacated a 2020 federal rule (i.e., CWA Section 401 Certification Rule) that revised an existing process for states to ensure that federally-issued permits did not affect the quality of water under their jurisdiction. As a result of the ruling, an existing federal rule from 1971 became effective. USACE thus stopped issuing permits that received state 401 approval under the 2020 Rule. Of the 16 NWPs, several affected residential and commercial development including #29 (residential developments) and #39 (commercial and institutional developments).

Despite the reissuance in permitting, the situation in Virginia remains complex. While USACE has begun issuing permits again, the rule change raises some uncertainty about whether previous 401 certification is still valid. In these cases, USACE District Offices are confirming with DEQ whether the certification stands.

HBAV members should contact USACE District Offices, and work with their environmental and engineering clients, to determine the status of permit applications. In addition, at the federal level, USACE is working on a replacement to the 1971 Rule. The National Association of Home Builders (NAHB) is closely following that rulemaking and working with USACE and others to advocate on behalf of builders and developers. HBAV will keep members updated regarding any developments.

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