



**US Army Corps
of Engineers®**
Albuquerque District

FINAL PUBLIC NOTICE

PUBLIC NOTICE FOR THE FINAL REGIONAL CONDITIONS IN NEW MEXICO APPLICABLE TO THE 41 NATIONWIDE PERMITS PUBLISHED IN THE FEDERAL REGISTER ON DECEMBER 27, 2021

On December 27, 2021, the U.S. Army Corps of Engineers (Corps) published a final rule in the *Federal Register* (86 FR 73522) announcing the reissuance of 40 existing nationwide permits (NWP) and one new NWP as well as the reissuance of NWP general conditions and definitions with some modifications. These 41 NWP will go into effect on February 25, 2022, and they will expire on March 14, 2026:

- NWP 1 – Aids to Navigation
- NWP 2 – Structures in Artificial Canals
- NWP 3 – Maintenance
- NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures and Associated Intake Structures
- NWP 8 – Oil and Gas Structures on the Outer Continental Shelf
- NWP 9 – Structures in Fleeting and Anchorage Areas
- NWP 10 – Mooring Buoys
- NWP 11 – Temporary Recreational Structures
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water From Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 18 – Minor Discharges
- NWP 19 – Minor Dredging
- NWP 20 – Response Operations for Oil or Hazardous Substances
- NWP 22 – Removal of Vessels
- NWP 23 – Approved Categorical Exclusions
- NWP 24 – Indian Tribe or State Administered Section 404 Programs
- NWP 25 – Structural Discharges
- NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- NWP 28 – Modifications of Existing Marinas
- NWP 30 – Moist Soil Management for Wildlife
- NWP 31 – Maintenance of Existing Flood Control Facilities
- NWP 32 – Completed Enforcement Actions
- NWP 33 – Temporary Construction, Access, and Dewatering
- NWP 34 – Cranberry Production Activities

- NWP 35 – Maintenance Dredging of Existing Basins
- NWP 36 – Boat Ramps
- NWP 37 – Emergency Watershed Protection and Rehabilitation
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 46 – Discharges in Ditches
- NWP 49 – Coal Remining Activities
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines
- NWP 59 – Water Reclamation and Reuse Facilities

The new NWP 59 authorizes discharges of dredged or fill material into waters of the United States for the construction, expansion, and maintenance of water reclamation and reuse facilities.

The December 27, 2021, *Federal Register* notice is available for viewing at <https://www.federalregister.gov/documents/2021/12/27/2021-27441/reissuance-and-modification-of-nationwide-permits>. As an alternative, interested parties can access the December 27, 2021, and January 13, 2021, final rules and related documents at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

It should be noted that on January 13, 2021, the U.S. Army Corps of Engineers (Corps) published a final rule in the Federal Register (86 FR 2744) announcing the reissuance of 12 existing nationwide permits (NWPs) and four new NWPs, as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWPs went into effect on March 15, 2021 and will expire on March 14, 2026:

- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 21 – Surface Coal Mining Activities
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 44 – Mining Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
- NWP 55 – Seaweed Mariculture Activities
- NWP 56 – Finfish Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances

The regional conditions for these 16 NWPs remain in effect and can be found at <https://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/NWP/>.

In accordance with the U.S. Environmental Protection Agency's (EPA's) current water quality certification (WQC) regulations at 40 Code of Federal Regulations (CFR) Part 121, the Albuquerque District has reviewed Clean Water Act Section (CWA) 401 WQC decisions received from certifying authorities. The Albuquerque District has determined that all accepted granted and denied WQC decisions in New Mexico satisfied the requirements set forth in 40 CFR 121.7. For a list of WQC decisions in New Mexico see the summary spreadsheet attached to this public notice.

If a permittee conducts activities under the terms and conditions of a NWP, the permittee must also comply with any applicable regional conditions. In New Mexico, the following regional conditions apply to the 41 NWPs listed above:

REGIONAL CONDITIONS APPLICABLE TO ALL NATIONWIDE PERMITS WITHIN THE STATE OF NEW MEXICO

1. All Activities Conducted Under Nationwide Permits (NWPs): In accordance with 33 Code of Federal Regulations (CFR) § 330.4(c), the Corps hereby incorporates the current conditions of Clean Water Act (CWA) Section 401 water quality certifications as conditions of the Section 404 Nationwide Permits in New Mexico. Water quality certifications are available at: <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/WaterQualityCertification.aspx>.

2. Dredge and Fill Activities in Lakes, Intermittent and Perennial Streams, and Special Aquatic Sites: For all activities subject to regulation under the CWA Section 404 in lakes, intermittent and perennial streams, and special aquatic sites (including wetlands, riffle and pool complexes, and sanctuaries and refuges), Pre-Construction Notification to the District Engineer is required in accordance with general condition (GC) 32.

3. Individual Water Quality Certification and Pre-Construction Notification (PCN): For all activities subject to regulation under the CWA Section 404 where Section 401 individual water quality certification is required, the applicant must provide a PCN to the District Engineer in accordance with GC 32 at the same time a request for water quality certification is submitted to the water quality certifying authority. A copy of the individual 401 water quality certification must be provided to the District Engineer prior to commencing the regulated activity. The activity may not commence until the Corps has completed post-certification with U.S. Environmental Protection Agency (EPA), Region 6 in accordance with CWA Sec. 401(a)(2). A list of state agencies and tribes with Section 401 authority is on our website available at: <http://www.spa.usace.army.mil/Missions/Regulatory-Program-and-Permits/Water-Quality-Certification/>

4. Peatlands: The use of the NWPs for the discharge of dredged or fill material into peatlands is prohibited. The term peatland includes fens and bogs. For the purposes of this regional condition, a peatland is defined as a wetland with organic soil that is classified as a histosol in the Natural Resources Conservation Service (NRCS) guidance document entitled Field Indicators of Hydric Soils in the United States (Version 8.0, 2016). A copy of the document can be obtained from the NRCS at: <https://www.nrcs.usda.gov/wps/portal/nrcs/main/soils/use/hydric/>.

5. Temporary Fills and Impacts: Temporary fills and/or impacts to waters of the U.S. shall be removed in their entirety and the affected areas returned to pre-construction elevations in the shortest time frame practicable, not to exceed six months unless otherwise approved by the District Engineer. Site restoration of temporarily filled or impacted areas shall include returning the area to pre-project ground surface contours. The permittee shall appropriately revegetate temporarily filled or impacted areas with

native, noninvasive herbs, shrubs, and/or tree species sufficient in number, spacing, and diversity to replace affected aquatic functions. Temporary erosion and sediment control measures must be removed as soon as the area has established vegetation sufficient to control erosion and sediment.

6. Suitable Fill: Use of broken concrete as fill or bank stabilization material is prohibited unless the applicant demonstrates that its use is the only practicable material (with respect to cost, existing technology, and logistics). Any applicant who wishes to use broken concrete as bank stabilization must provide notification to the District Engineer in accordance with General Condition 32 (Pre-Construction Notification) along with justification for such use. Use of broken concrete with rebar, used tires (loose or formed into bales), or car bodies is prohibited in all waters of the United States.

7. Timing and Dewatering: Unless determined to be not practicable by the Corps, no dredged and/or fill material shall be discharged within standing or flowing waters. For perennial or intermittent drainages (e.g., natural or relocated streams, creeks, rivers), this may be accomplished through construction during periods of low flow (winter months) or during the dry season.

When work is required to occur in flowing water, a dewatering plan is required to constitute a complete PCN. All dewatering structures and/or fills shall be removed within 30 days following completion of construction activities in waters of the U.S.

(a) For all dewatering activities that propose structures or fill in waters of the U.S. a dewatering plan must contain the following:

- 1) Information on why it is not practicable to conduct construction activities during periods of low flow or during the dry season;
- 2) The proposed methods for dewatering;
- 3) The equipment that would be used to conduct the dewatering;
- 4) The length of time the area is proposed to be dewatered;
- 5) The area (in acres) and length (in linear feet) and locations of all structure(s) and/or fill in waters of the U.S.;
- 6) The expected extent of temporary impacts to downstream waters;
- 7) The method for removal of the structures and/or fill;
- 8) The method for how the proposed work shall be conducted to allow safe fish and wildlife passage during construction; and
- 9) The method for restoration of the waters of the U.S. affected by the structure or fill following construction.

REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS WITHIN THE STATE OF NEW MEXICO

8. NWP 13 – Bank Stabilization: For bank stabilization activities in intermittent or perennial streams that average less than 20 feet in width (measured between the ordinary high water marks on each bank), the placement of fill is limited to no more than one cubic yard of suitable fill* material per running foot below the plane of the ordinary high water mark, unless the District Engineer waives this criterion by making a written determination concluding that the discharge will result in minimal adverse effects. *See Note 1 under Additional Information regarding suitable fill.

9. NWP 23 – Approved Categorical Exclusions: Pre-Construction Notification to the District Engineer in accordance with GC 32 is required for all proposed activities under NWP 23.

10. NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities: For all proposed activities under NWP 27 that require PCN, a monitoring plan commensurate with the scale of the proposed restoration project and the potential for risk to the aquatic environment must be submitted to the Corps. (See “NWP 27 Guidelines” at <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/NWP.aspx>).

ADDITIONAL INFORMATION

The following provides additional information regarding minimization of impacts and compliance with existing general conditions:

1. Permittees are reminded of **GC 6**, which prohibits the use of unsuitable material. Organic debris, building waste, asphalt, car bodies, individual tires, concrete jersey barriers, and trash are **not** suitable fill material.
2. **GC 12** requires appropriate erosion and sediment controls (i.e., all fills must be permanently stabilized to prevent erosion and siltation into water and/or wetlands at the earliest practicable date). Streambed material or other small aggregate material placed along a bank as stabilization will not meet GC 12.