



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

FINAL PUBLIC NOTICE

PUBLIC NOTICE FOR THE FINAL REGIONAL CONDITIONS IN NAVAJO NATION APPLICABLE TO THE 16 NATIONWIDE PERMITS PUBLISHED IN THE FEDERAL REGISTER ON JANUARY 13, 2021

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 (NWP) and four new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP will go 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 January 13, 2021, *Federal Register* notice is available for viewing at <https://www.federalregister.gov/documents/2021/01/13/2021-00102/reissuance-and-modification-of-nationwide-permits>. As an alternative, interested parties can access the January 13, 2021, final rule and related documents at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

There are 40 existing NWP that were not reissued or modified by the January 13, 2021 final rule. Those 40 NWP were published in the January 6, 2017, issue of the Federal Register (82 FR 1860) and those NWP remain in effect until the Corps issues a final rule reissuing those NWP or March 18, 2022, whichever comes first. The 40 2017 NWP that remain in effect are:

- 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

The regional conditions for these 40 NWPs that were approved by the Division Engineer in 2017 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 granted and denied WQCs in Navajo Nation

satisfies the requirements set forth in 40 CFR 121.7. For a list of WQC decisions in Navajo Nation 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 Navajo Nation, the following regional conditions apply to the 16 NWPs listed above:

1. All Activities Conducted Under Nationwide Permits: In accordance with Code of Federal Regulations (CFR) 33 Part 330.4(c), the U.S. Army Corps of Engineers (Corps) hereby incorporates the current conditions of Clean Water Act (CWA) Section 401 Water Quality Certifications as conditions of the Section 404 Nationwide Permits within Navajo Nation. Water Quality Certifications are available at: <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/WaterQualityCertification.aspx>.

Notes: For all actions that are determined by the Districts to meet the terms and conditions of a NWP and are located within Navajo Nation, individual WQC must be obtained from the NNEPA—with some exceptions for Allottee lands within Navajo Nation. A copy of the individual water quality certification must be provided to the District Engineer prior to commencing the regulated activity. Conditions contained within the individual water quality certification that meet the procedural requirements of 40 CFR Part 121 will be incorporated as part of NWP verifications.

Regarding Navajo Nation Allottee lands, Region 9 of the U.S. Environmental Protection Agency (EPA) is the certifying authority under Section 401 of the CWA. On December 11, 2020 the Districts received written notification from Region 9 of the EPA providing the following:

- Conditional WQC for NWP 43.
 - Denial of WQC for the following NWPs: 12, 29, 39, 40, 42, 44, 51, 57, 58. For all actions determined by the District to meet the terms and conditions of these NWPs and are located on Allottee land, applicants will need to obtain individual WQC from EPA R9. A copy of the individual WQC must be provided to the District Engineer prior to commencing the regulated activity. Conditions contained within the individual WQC that satisfy the procedural requirements of 40 CFR Part 121 will be incorporated as part of NWP verifications.
 - A waiver of their authority to act on CWA Section 401 certification for the following NWPs: 21, 48, 50, 52.
2. Pre-Construction Notification (PCN) for Dredge and Fill Activities in Lakes, Intermittent and Perennial Streams, and Special Aquatic Sites: Notification to the District Engineer in accordance with General Condition 32 is required for all proposed activities in lakes, intermittent and perennial streams, and special aquatic sites (including wetlands, riffle and pool complexes, and sanctuaries and refuges).
 - a. The permittee shall notify the U.S. Army Corps of Engineers (Corps) in accordance with General Condition 32 using either the South Pacific Division Preconstruction Notification (PCN) or application form (ENG Form 4345) with an attachment providing information on compliance with all General and Regional Conditions. In addition, the application shall include:

- 1) A written statement describing how the activity has been designed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States (U.S.); and
 - 2) Drawings, including plan and cross-section views, clearly depicting the location, size and dimensions of the proposed activity, as well as the location of delineated waters of the U.S. on the site. The drawings shall contain a title block, legend and scale, amount (in cubic yards) and area (in acres) of fill in Corps jurisdiction, including both permanent and temporary fills/structures. The ordinary high-water mark or, if tidal waters, the mean high-water mark and high tide line, should be shown (in feet), based on National Geodetic Vertical Datum (NGVD) or other appropriate referenced elevation. Unless specifically waived by a specific Corps District, all drawings shall follow the South Pacific Division February 2016, *Updated Map and Drawing Standards for the South Pacific Division Regulatory Program*, or most recent update (available on the South Pacific Division website:
<https://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx/>
3. **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.
- a. 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. 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.
4. **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.
5. **Compliance:** The permittee shall allow Corps representatives to inspect the authorized activity and any avoidance, preservation and/or compensatory mitigation areas at any time deemed necessary to determine compliance with the terms and conditions of the NWP verification. The permittee will be notified by the Corps in advance of an inspection.