



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

DISTRICT PUBLIC NOTICE

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On September 15, 2020, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the 52 existing nationwide permits (NWP) and issue five new NWP.

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in no more than minimal individual and cumulative adverse environmental effects. Many of the proposed NWP require notification to the district engineer before commencing those activities, to ensure that the activities authorized by those NWP cause no more than minimal individual and cumulative adverse environmental effects.

National Issues Concerning the Proposed NWP: The Federal Register notice is the public's opportunity to comment on the proposed NWP, general conditions, and definitions. Comments on national issues relating to these NWP should be submitted to docket number COE-2020-0002 at www.regulations.gov, or by email to nationwidepermits2020@usace.army.mil or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the September 15, 2020 Federal Register notice. Comments on the proposed NWP are due by November 16, 2020.

Regional Issues Concerning the Proposed NWP, Including Regional Conditioning: Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are an important mechanism to help ensure that the adverse environmental effects of activities authorized by the NWP are no more than minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWP in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where the adverse environmental effects caused by activities authorized by those NWP may be more than minimal. An enclosure for this public notice (Enclosure 2) lists the proposed regional conditions currently under consideration by the South Pacific Division for Navajo Nation.

The Albuquerque District is seeking comments on the proposed regional conditions and the potential need for additional regional conditions to help ensure that the adverse environmental effects of activities authorized by the proposed NWP are no more than minimal, individually and cumulatively. Unless otherwise

noted, all proposed regional conditions listed on this enclosure are applicable for activities within Navajo Nation. Comments on regional issues relating to the proposed NWP's and proposed regional conditions should be sent by mail to: U.S. Army Corps of Engineers, Albuquerque District, ATTN: Wyatt Medley Regulatory Division, 1970 East 3rd Avenue, Suite 109, Durango, CO 81301. E-mail: wyatt.t.medley@usace.army.mil. Phone: (970) 471-0213.

Comments relating to regional conditions are due by November 08, 2020. Similar public notices proposing regional conditions in other regions or states are being published concurrently by other division or district offices. After the final NWP's are issued, the final regional conditions will be issued after they are approved by the Division Commander.

States, tribes, and other certifying authorities will make their Clean Water Act Section 401 water quality certification (WQC) decisions after reviewing the proposed NWP's. States will make their Coastal Zone Management Act (CZMA) consistency determination decisions after reviewing the proposed NWP's.

Draft decision documents for each of the proposed NWP's, which include environmental documentation prepared for the purposes of the National Environmental Policy Act, have been written by Corps Headquarters. The decision documents will address compliance of the NWP's with the requirements for issuance under the Corps' general permit authority. These draft decision documents, as well as the proposed NWP's, are available for viewing at www.regulations.gov, docket number COE-2020-0002. Final decision documents will be prepared for the NWP's that are issued.

Enclosed is a list of the proposed NWP's and general conditions (Enclosure 1). Anyone wishing to provide comments may obtain a full text copy of the NWP's through the Corps Home Page at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>, at www.regulations.gov in docket number COE-2020-0002, or at the following Federal Register address: <https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits>.

Enclosure 1: List of Proposed Nationwide Permits and General Conditions

Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Oil or Natural Gas Pipeline Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities

43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Mariculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shorelines
 - A. Seaweed Mariculture Activities
 - B. Finfish Mariculture Activities
 - C. Electric Utility Line and Telecommunications Activities
 - D. Utility Line Activities for Water and Other Substances
 - E. Water Reclamation and Reuse Facilities

General Conditions

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Single and Complete Project
16. Wild and Scenic Rivers
17. Tribal Rights
18. Endangered Species
19. Migratory Birds and Bald and Golden Eagles
20. Historic Properties
21. Discovery of Previously Unknown Remains and Artifacts
22. Designated Critical Resource Waters
23. Mitigation
24. Safety of Impoundment Structures
25. Water Quality
26. Coastal Zone Management
27. Regional and Case-by-Case Conditions

28. Use of Multiple Nationwide Permits
29. Transfer of Nationwide Permit Verifications
30. Compliance Certification
31. Activities Affecting Structures or Works Built by the United States
32. Pre-Construction Notification



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DISTRICT PUBLIC NOTICE

ENCLOSURE 2: 2020 PROPOSED NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS FOR THE NAVAJO NATION

REGIONAL CONDITIONS APPLICABLE TO ALL NATIONWIDE PERMITS WITHIN NAVAJO NATION

1. 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.);
- 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: <http://www.spd.usace.army.mil/Missions/Regulatory/PublicNoticesandReferences.aspx/>)

2. 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.

3. 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.

4. 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.