



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

# DISTRICT PUBLIC NOTICE

## NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

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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](http://www.regulations.gov), or by email to [nationwidepermits2020@usace.army.mil](mailto: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 the state of New Mexico.

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 in the state of New Mexico. 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: Stephen Roethle Regulatory Division, 4101 Jefferson Plz NE, Albuquerque, NM 87109. E-mail: [stephen.r.roethle@usace.army.mil](mailto:stephen.r.roethle@usace.army.mil). Phone: (505) 342-3280

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](http://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](http://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



## Enclosure 2: 2020 Proposed Regional Conditions to Nationwide Permits in the State of New Mexico

U.S. Army Corps of Engineers  
Albuquerque District

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

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 (USACE) 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: (a) 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 32.

(b) For projects in lakes, intermittent and perennial streams, and special aquatic sites in which the New Mexico Environment Department (NMED) is the water quality certifying agency, the applicant must also notify the NMED Surface Water Quality Bureau and obtain confirmation of CWA, Section 401 Water Quality Certification prior to commencing work. Electronic submittals are preferred. A copy of NMED's confirmation must be provided to the USACE within 10 days of NMED's receipt of the applicant's notification.

3. Individual Water Quality Certification and Pre-Construction Notification: For all activities subject to regulation under the CWA Section 404 where Section 401 individual water quality certification is required, the applicant must provide Pre-Construction Notification to the District Engineer in accordance with General Condition 32 at the same time notification is provided 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. 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. Fens, Bogs, and other Peatlands: PCN is required for all activities involving the discharge of dredged or fill material in peatlands. For the purposes of this requirement, a peatland is defined as a wetland with saturated organic soil (greater than or equal to 16 inches in thickness) that is classified as a histosol in the Natural Resources Conservation Service (NRCS) 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 [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/nrcs142p2\\_053171.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_053171.pdf).

5. Temporary Fills and Impacts: (a) 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.

(b) 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. Nationwide Permit No. 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 1/4 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 'a' under Additional Information regarding suitable fill.

9. Nationwide Permit No. 23 – Approved Categorical Exclusions: Pre-Construction Notification to the District Engineer in accordance with General Condition 32 is required for all proposed activities under Nationwide Permit 23.

10. Nationwide Permit No. 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities: For all proposed activities under Nationwide Permit 27 that require Pre-Construction Notification, 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 USACE. (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 **General Condition 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. **General Condition 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 **General Condition 12**.
3. Permittees should note that for Nationwide Permit No. 27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities: Pilot channels in perennial rivers do not constitute creation of wetlands and would not be authorized under Nationwide Permit No. 27. Further

discharge of excavated materials into Waters of the U.S. to change sediment load are not restoration activities under Nationwide Permit No. 27