



US Army Corps
of Engineers
Memphis District

PUBLIC NOTICE

NATIONWIDE PERMITS

Date: May 28, 2002

PUBLIC NOTICE ANNOUNCING REGIONAL CONDITIONS FOR NATIONWIDE PERMITS

On May 17, 2002, the Mississippi Valley Division Engineer approved regional conditions for the Nationwide Permits (NWP). These conditions apply to all activities authorized by NWPs. Regional conditions provide additional protection for the aquatic environment by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will help ensure protection of high value waters within the District.

The Memphis District has posted its Corps regional conditions for the NWPs on its Internet home page at: <http://mvm.usace.army.mil/regulatory/public-notice/pn.htm>. A copy of the regional conditions is provided in Attachment 1.

Arkansas Department of Environmental Quality has issued Section 401 water quality certification for all NWPs, contingent on an individual certification being obtained from the state if the activity impacts extraordinary resource waters, ecologically sensitive waters and natural and scenic waters as delineated in the State Regulation No. 2.

Illinois Environmental Protection Agency has issued Section 401 water quality certification for NWPs 3, 4, 5, 6, 7, 20, 22, and 36. Conditional certification is issued for the following NWPs: 12, 13, 14, 27, 29, 38, 41, and 44. Certification is denied for the following NWPs: 15, 16, 17, 18, 19, 21, 23, 25, 30, 31, 32, 33, 34, 37, 39, 40, 42, and 43.

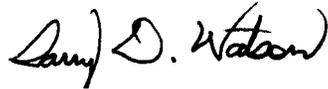
Kentucky Department for Environmental Protection has issued Section 401 water quality Certification for NWPs 1, 2, 4, 5, 6, 8, 9, 10, 11, 15, 18, 19, 20, 22, 24, 28, 29, 33, 34, 35, 36, 40, 41, and 42. Conditional certification is issued for the following NWPs: 3, 7, 12, 13, 14, 21, 23, 25, 27, 30, 31, 37, 39, and 43. Certification is denied for the following NWPs: 16, 17, 32, 38, and 44.

Mississippi Department of Environmental Quality has issued conditional Section 401 water quality certification for all NWPs except NWPs 21 and 44. These two NWPs were denied, and would require an individual certification from the State prior to utilization.

The Division Engineer considers the Missouri Department of Natural Resources' Section 401 water quality certifications for selected NWPs denied. Individual Section 401 water quality certification will be required for any project requiring authorization under Section 404 of the Clean Water Act.

Tennessee Department of Environment and Conservation has issued conditional Section 401 water quality certification for NWP's 3, 4, 7, 12, 13, 14, 15, 16, 17, 20, 22, 23, 25, 27, 30, 32, 33, 34, 36, 37, 38, and 42. Certification was issued for the following NWP's in accordance with the provisions and general terms and conditions of the State's corresponding general permits: 5, 6, 13, 18, 19, 21, and 36. Certification is denied for the following NWP's: 29, 31, 39, 40, 41, 43, and 44.

Questions concerning implementation of the new and modified NWP's and conditions or the Corps regional conditions within the Memphis District should be sent to Memphis District, Corps of Engineers, ATTN: Richard Mochow, Ph.D., CEMVM-CO-R, 167 North Main Street, RM B202, Memphis TN 38103-1894.

A handwritten signature in black ink that reads "Larry D. Watson". The signature is written in a cursive style with a large initial "L" and "W".

Larry D. Watson, P.E.
Chief
Regulatory Branch

NOTICE TO POSTMASTERS:

Please post this notice for 30 days from the issuance date.

NOTICE TO EDITORS:

This notice is provided as background information for your use in formatting news stories. This notice is not a contract for classified display advertising. For more information call the Rock Island District Public Affairs Office, 309/794-5274.

Attachment 1

NOTE: None of the regional conditions pertain to paragraph a. of Nationwide Permit Number 40.

REGIONAL CONDITIONS WITHIN ARKANSAS

Regional Condition No. 1. For NWP 7 and 12, intake structures shall be constructed with screening to prevent entry of fish.

Regional Condition No. 2. For activities proposed in the following listed waters, the prospective permittee shall provide written notification to the appropriate District. Notification will be to the District Engineer according to *General Condition No. 13 (Federal Register, 63 FR 36075-36076)*.

* **Fens** - A peat-accumulating wetland that receives some drainage from surrounding mineral soil and usually supports marshlike vegetation.

* **Bogs** - A peat-accumulating wetland that has no significant inflows or outflows and supports acidophilic mosses, particularly sphagnum.

* **Groundwater seeps** - wetlands at the base of steep slopes where the groundwater surface intersects with the land surface.

* **Dune depressional wetlands** - wetlands in shallow depressions that have no significant outflows but receives runoff from the surrounding land, located between sandy ridges in northeast Arkansas and southeast Missouri. These wetlands often support pondberry (*Lindera melissifolia*), a federally-listed endangered plant.

* **CACHE RIVER AND ADJACENT WETLANDS** from the mouth upstream to AR Highway 18 near Grubbs.

Regional Condition No. 3. Mining activities in navigable waters designated by the Corps of Engineers within the State of Arkansas shall require an individual Department of the Army permit or authorization by a regional general permit. These activities will not be authorized by NWP 44.

Regional Condition No. 4. For Nationwide Permit 3, 12, 14, 39, 40, 41, 42, and 43, and in the waters listed below, the prospective permittee shall provide written notification to the appropriate District. Notification will be to the District Engineer according to *General Condition No. 13 (Federal Register, 63 FR 36075-36076)*. This notification shall be used to review the project for Federally listed threatened or endangered species and to determine if the project would have a minimal impact on the aquatic environment. The application will be coordinated with the Arkansas Department of Environmental Quality and other agencies as appropriate. This condition doesn't lessen the restrictions provided by General Condition 11 for the NWPS.

Alum Fork Saline River - Saline County

Species Of Concern: Arkansas fat mucket (LAMPSILIS POWELII -LT)

ARKANSAS RIVER - IN THE FOLLOWING COUNTIES

CONWAY	PERRY
CRAWFORD	POPE
FAULKNER	PULASKI
JOHNSON	SEBASTIAN
LOGAN	YELL

Species of concern: interior least tern (*Sterna antillarum athalassos -le*), Arkansas River shiner (*Notropis girardi* -PE, of historic occurrence)

Bar Lake - Desha County

Species of concern: bald eagle (*Haliaeetus leucocephalus* -lt, proposed for delisting, nesting occurrence)

Bear Lake - Arkansas and Phillips Counties

Species of concern: bald eagle (*Haliaeetus leucocephalus* -lt, proposed for delisting, nesting occurrence)

Big Lake - Mississippi County

Species of concern: bald eagle (*Haliaeetus leucocephalus* -lt, proposed for delisting, nesting occurrence)

Billy Moore Lake - Desha County

Species of concern: bald eagle (*Haliaeetus leucocephalus* -lt, proposed for delisting, nesting occurrence)

Cache River and adjacent wetlands from the mouth upstream to AR Highway 18 near Grubbs – Monroe, Woodruff, and Jackson Counties

Species Of Concern: Several species of mussels

Horseshoe Lake - Monroe County

Species of concern: bald eagle (*Haliaeetus leucocephalus* -LT, proposed for delisting, nesting occurrence)

L'Anguille River - Lee County

SPECIES OF CONCERN: FAT POCKETBOOK (POTAMILUS CAPAX -PE)

Little Bay Ditch - Craighead County

Species of concern: fat pocketbook (*Potamilus capax* -PE)

Mississippi River - Crittenden, Desha, Lee, Mississippi, And Phillips

Counties Species of concern: interior least tern (*Sterna antillarum athalassos* -LE), PALLID STURGEON (*Scaphirhynchus albus* -LE)

Moon Lake - Desha County

Species of concern: bald eagle (*Haliaeetus leucocephalus* -LT, proposed for delisting, nesting occurrence)

St. Francis River System and associated ditches - Cross, Lee, Poinsett And St. Francis Counties

Species of concern: fat pocketbook (*Potamilus capax* -pe), pallid sturgeon (*Scaphirhynchus albus* -LE)

Swawn Lake - Desha County

Species of concern: bald eagle (*Haliaeetus leucocephalus* -LT, proposed for delisting, nesting occurrence)

White River - Arkansas, Baxter, Carroll, Independence, Jackson, Marion, Monroe, Prairie, White And Woodruff Counties

Species of concern: pink mucket (*Lampsilis abrupta* -LE), bald eagle (*Haliaeetus leucocephalus* -lt, proposed for delisting, nesting occurrence)

In addition to the above waterbodies, the following federal concern species are known to occur in various wetland areas, or cave streams:

Pondberry (*Lindera melissifolia* - LE)

Ashley

Clay

Jackson

Lawrence

Woodruff

Legend:

- C** = Candidate species. The U.S. Fish and Wildlife Service has enough scientific information to warrant proposing these species for listing as endangered or threatened under the Endangered Species Act.
- LE** = Listed Endangered; the U.S. Fish and Wildlife Service has listed these species as endangered under the Endangered Species Act.
- LT** = Listed Threatened; the U.S. Fish and Wildlife Service has listed these species as threatened under the Endangered Species Act.
- PE** = Proposed Endangered; the U.S. Fish and Wildlife Service has proposed these species for listing as endangered.

2. NWP's with mitigation may require recording of the permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and provide proof of recording to the Corps.
3. Mitigation shall be scheduled for construction prior to or concurrent with the construction of the main project.

REGIONAL CONDITIONS WITHIN ILLINOIS

NOTE: The Chicago District has proposed alternate regional conditions for work in McHenry, Kane, Lake, DuPage, Will and Cook Counties in Illinois. Information regarding Chicago District requirements can be accessed through their website at <http://www.lrc.usace.army.mil/co-r/>. If you have any questions regarding the Chicago District proposal, please contact Ms. Karon Marzec, Senior Project Manager, by telephone at 312/353-6400, ext. 4030 or e-mail karon.m.marzec@usace.army.mil.

1. Bank stabilization projects involving armoring of the streambank with riprap or the construction of retaining walls within High Value Subwatersheds exceeding 250 feet will require a PCN to the Corps of Engineers in accordance with Notification Condition (Number 13).
2. A proposed activity to be authorized under Nationwide Permits 12 or 14 within the Cache River Wetlands Areas (Alexander and Pulaski Counties), Kaskaskia River (Clinton, St. Clair, and Washington Counties), or Wabash River (Gallatin and White Counties) will require a PCN to the Corps of Engineers in accordance with the Notification Condition (Number 13).
3. Stormwater management facilities shall not be located within an intermittent stream.

High Value Subwatersheds – The state of Illinois has defined these areas through a combination of factors. Various sources of information were used to analyze and rank subwatersheds. Federal Threatened and Endangered Species, % of wetlands in the watershed, Natural Areas Inventory, and Biological Stream Categorization were factors used for High Value designation. A map highlighting these areas is attached with a numerical listing of the 8-digit hydrologic units.

REGIONAL CONDITIONS FOR NATIONWIDE PERMITS IN KENTUCKY

Notification - Notifications for all Nationwide Permits should include a location map (USGS topographical map) and project drawings on 8½" x 11" paper.

Outstanding Resource Waters (ORWs) Notification - For activities in ORWs for the NWP's listed below, a Pre-Construction Notification (PCN) will be required to the Corps. The Corps will coordinate with the appropriate resource agencies on these NWP's for impacts to ORWs, or for impacts greater than 0.25 acre of "waters of the United States".

NWP 3 (Maintenance), 7 (Outfall Structures and Maintenance), 12 (Utility Line Activities), 14 (Linear Transportation Crossings), 27 (Stream and Wetland Restoration Activities), 29 (Single Family), 39 (Residential, Commercial, and Institutional Developments), 40 (Agricultural Activities), 41 (Drainage Ditches), 42 (Recreational Facilities), 43 (Stormwater Management Facilities), 44 (Mining Activities).

Further information:

Outstanding Resource Waters (ORW's) in Kentucky are streams designated by the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet. The list is attached.

Pre-Construction Notification (PCN) Information on PCN can be found at NWP General Condition No. 13 (Federal Register, Volume 66, No. 154, Thursday August 9, 2001, pp 42095-42097).

NWP Mitigation Information

Mitigation includes measures that avoid, minimize, or compensate for impacts to the aquatic ecosystem. Avoidance and minimization associated with nationwide permit authorizations are limited to on-site measures.

Avoid: Take all appropriate and practicable measures to avoid adverse impacts to the aquatic ecosystem.

Minimize: Take all appropriate and practicable measures to minimize adverse impacts to the aquatic ecosystem.

Compensate: The applicant may be required to implement appropriate and practicable measures to compensate for adverse project impacts to the aquatic ecosystem that cannot reasonably be avoided or minimized. Compensatory mitigation can take many forms. Some of which are the use of buffer zones adjacent to the stream corridors and wetland areas; stream restoration or "naturalization"; project specific mitigation; mitigation banking; in-lieu fee based mitigation; protection of areas by deed restrictions, or conservation easements.

Department of the Army permittees are responsible for developing a mitigation plan and submitting it to the Corps. A mitigation plan should generally include:

1. A complete description of efforts made to avoid and minimize adverse project impacts to the aquatic ecosystem, and a thorough description of the proposed compensatory mitigation.
2. A jurisdictional determination, including wetland delineation (if appropriate) conducted in accordance with the 1987 Corps of Engineers Wetlands Delineation Manual.
3. A detailed description of the nature and location of all proposed ground disturbing activities and structures associated with the compensatory mitigation project.
4. For work that would create new aquatic resources or modify existing aquatic resources, provide as appropriate a description of the proposed hydrology, a soil description, and a planting plan.
5. A proposal for monitoring the success of the proposed mitigation plan, including the name and telephone number of the responsible party, success criteria, and a compliance reporting program. Generally, monitoring should be for five years or continue at least two years after all mitigation project activities have been completed and planting survival requirements have been achieved. Include all appropriate contingency plans and address provisions for long-term operations and maintenance.

NOTE: A list of all excluded waters can be obtained from the Kentucky Division of Water or from the respective Corps of Engineers District Office.

REGIONAL CONDITIONS FOR NATIONWIDE PERMITS IN MISSISSIPPI

Nationwide Permit 7: Outfall Structures and Maintenance.

Activities involving the construction of associated intake structures shall be constructed with fish screening devices.

Nationwide Permit 14: Linear Transportation Crossings.

Preconstruction notification (PCN) in accordance with the "Notification" General Condition No. 13 (Federal Register, 63 FR 36075-36076), to the Corps of Engineers shall be required for activities in the following waters:

- The Hatchie and Tuscumbia Rivers, from the Tennessee state line upstream one-half mile.
- The Wolf River and adjacent wetlands, from the Tennessee state line upstream to the headwaters.
- Horn Lake Creek and adjacent wetlands in Desoto County.

Nationwide Permit 39: Residential, Commercial and Institutional Development.

Preconstruction notification (PCN) in accordance with the "Notification" General Condition No. 13 (Federal Register, 63 FR 36075-36076), to the Corps of Engineers shall be required for activities in the following waters:

- The Hatchie and Tuscumbia Rivers, from the Tennessee state line upstream one-half mile.
- The Wolf River and adjacent wetlands, from the Tennessee state line upstream to the headwaters.
- Horn Lake Creek and adjacent wetlands in Desoto County.

Nationwide Permit 41: Reshaping Existing Drainage Ditches.

Preconstruction notification (PCN) in accordance with the "Notification" General Condition No. 13 (Federal Register, 63 FR 36075-36076). to the Corps of Engineers shall be required for activities in the following waters:

- The Hatchie and Tuscumbia Rivers, from the Tennessee state line upstream one-half mile.
- The Wolf River and adjacent wetlands, from the Tennessee state line upstream to the headwaters.
- Horn Lake Creek and adjacent wetlands in Desoto County.

Nationwide Permit 42: Recreational Facilities.

Preconstruction notification (PCN) in accordance with the "Notification" General Condition No. 13 (Federal Register, 63 FR 36075-36076). to the Corps of Engineers shall be required for activities in the following waters:

- The Hatchie and Tuscumbia Rivers, from the Tennessee state line upstream one-half mile.
- The Wolf River and adjacent wetlands, from the Tennessee state line upstream to the headwaters.
- Horn Lake Creek and adjacent wetlands in Desoto County.

Nationwide Permit 43: Stormwater Management Facilities.

Preconstruction notification (PCN) in accordance with the "Notification" General Condition No. 13 (Federal Register, 63 FR 36075-36076). to the Corps of Engineers shall be required for activities in the following waters:

- The Hatchie and Tuscumbia Rivers, from the Tennessee state line upstream one-half mile.
- The Wolf River and adjacent wetlands, from the Tennessee state line upstream to the headwaters.
- Horn Lake Creek and adjacent wetlands in Desoto County.

REGIONAL CONDITIONS WITHIN MISSOURI

1. NWP 3 – Maintenance. The permittee must notify the District Engineer when repairing, rehabilitating or replacing low water crossings if: discharges of fill or dredged material would raise or lower the lowest elevation of the crossing by a total of 12-inches or more, or when removing the structure. The permittee must propose and employ measures to mitigate the potential impact of impounding gravel above the low water crossing or of releasing impounded-gravel downstream of the structure. Such mitigation might include: removing impounded gravel in the unstable area upstream of the low water crossing to prevent it from being transported downstream and/or constructing a notched weir to slow the release of impounded gravel from upstream of the low water crossing.

2. NWP 12 - Utility Activities. Except for a minimal corridor that is essential for operation and maintenance of the utility line, the right-of-way must be allowed to re-vegetate naturally to native tree species when forested wetlands or riparian wooded areas are cleared in order to construct the utility line. This does not preclude the planting of native vegetation.

3. NWP 23 - Approved Categorical Exclusions. The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 13) when a Federal agency's categorically excluded activities are in or affect waters of the United States. This notification must include a delineation of special aquatic sites, including wetlands. In addition to information required by NWP general condition 13 (b), the notification must identify the approved categorical exclusion that applies (i.e. list Federal Register citation) and include documentation that the project fits the categorical exclusion.

4. NWP 27 - Stream and Wetland Restoration Activities. NWP 27 will not be used to authorize discharges associated with relocation of forested wetlands.

5. NWP 29 - Notification Requirements. Prior to issuing a verification letter for this NWP, the District Engineer will coordinate all requests for NWP 29 with the U.S. Fish and Wildlife Service (USFWS) for its evaluation of impacts to Federally listed endangered species. Coordination with the USFWS will follow the procedures in general condition 13(e) for agency coordination in January 15, 2002, Federal Register, Issuance of Nationwide Permits; Notice (67 FR 2092).

6. NWP 43 - Stormwater Management Facilities. The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 13) when a regulated in-stream basin impacts an intermittent stream. The permittee's mitigation plan must specifically identify measures to prevent the

export of contaminants directed into any in-stream basin by the upland collection system. The permittee must also include mitigation for any in-stream projects that would adversely impact normal aquatic life migration. This NWP does not authorize the retention of water, in excess of that required to meet stormwater management requirements, for other purposes such as recreational lakes, reflecting pools and irrigation.

7. Recording Mitigation (Applicable To All NWPs). NWPs with mitigation may require recording of the permit mitigation areas with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property and provide proof of recording to the Corps.

8. Notification Requirement for Activities Proposed in Fens, Seeps and Bogs (Applicable To All NWPs). The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 13) when any regulated activity impacts a fen, seep or bog of any size.

9. Notification for Confined Animal Feeding Operations (Applicable To All NWPs). The permittee must notify the District Engineer in accordance with the "Notification" general condition for agency coordination (general condition 13(e)) about any discharges of dredged or fill material associated with the construction of any portion of a confined animal feeding operation (CAFO).

10. Seasonal Restrictions for Activities Proposed in Spawning Areas (Applicable To All NWPs). In addition to the requirements of NWP general condition 20, for any regulated activity, the following specific seasonal restrictions apply. Between the closed dates listed in the Missouri Combined Stream Spawning List, the permittee must not excavate from or discharge into the listed waters. The list of waters with seasonal restrictions is available on request from the Corps or at <http://www.nwk.usace.army.mil/regulatory/gravel.txt> (Missouri Combined Stream Spawning Season List).

11. District-Designated Waters.

St. Louis District: For any discharge or excavation activity requiring authorization, proposed under NWPs 39, 41, 42 and 43, in any ephemeral, intermittent, and perennial streams in the following Missouri watersheds, the permittee must notify the District Engineer in accordance with the "Notification" general condition 13 (Federal Register, 67 FR 2090-2092).

St. Louis County: Wildhorse Creek, Bonhomme Creek, Creve Coeur Creek, Fox Creek, and Deer Creek.

St. Charles County: Dardenne Creek and Peruque Creek.

Jefferson County: Saline/Sugar/Romaine Creeks, Rock Creek, Dulin/Bourne/Heads/Bear Creeks, La Barque Creek, Glaize Creek, and Joachim/Sandy Creeks.

Ste. Genevieve and Perry Counties: Saline Creek.

Cape Girardeau County: Indian Creek, Williams/Hubble/Randol/ Goose Creeks, Ramsey Branch, Ranney Creek, and Byrd Creek.

Memphis District: For any regulated activity proposed under NWPs 14, 39, 41, 42 and 43, in the following waters; the permittee must notify the District Engineer in accordance with the "Notification" general condition 13 (Federal Register, 67 FR 2090-2092).

St. Francis Floodway from 1 mile below Wappapello Lake to the Arkansas/Missouri state line below U.S. Highway 314, in Dunklin County.

Castor River from the Union Pacific Railroad bridge, in Stoddard County, to the headwater levee, in Bollinger County.

Ramsey Branch from St. Louis District line to Headwater Diversion Channel in Cape Girardeau and Scott Counties.

Ramsey Creek from the Headwater Diversion Channel to State Routes PP & N (East Branch), and Scott County Route 325 (West Branch) in Scott County.

REGIONAL CONDITIONS FOR NATIONWIDE PERMITS IN TENNESSEE

Below are listed additional specific conditions for each activity. Notification is required for the following Nationwide permits throughout the state of Tennessee.

3. Maintenance.

- Agency notification required for work beyond 100' from structure or if located in outstanding resource streams*.

12. Utility Line Activities.

- Agency notification required for work involving over 0.25 acres of fill in waters of the U.S. or if located in outstanding resource streams*.

14. Linear Transportation Crossings.

- Agency notification required for public linear transportation crossings involving over 0.25 acres of fill in waters of the U.S. or if located in outstanding resource streams*.
- For wetland fills greater than 0.25 acres, compensatory mitigation is required at a minimum 2:1 ratio for restoration or 4:1 for constructed wetlands.

27. Stream and Wetland Activities.

- Agency notification required on all activities.

39. Residential, Commercial, and Institutional Developments.

- Agency notification required for work involving over 0.25 acres of fill in waters of the U.S., if the fill in waters of the United States exceeds 200 linear feet of stream, or if located in outstanding resource streams*.
- For wetland fills greater than 0.25 acres, compensatory mitigation is required at a minimum 2:1 ratio for restoration or 4:1 for constructed wetlands.

40. Agricultural Activities.

- Agency notification required for work involving over 0.25 acres of fill in waters of the U.S.
- For wetland fills greater than 0.25 acres, compensatory mitigation is required at a minimum 2:1 ratio for restoration or 4:1 for constructed wetlands.

42. Recreational Facilities.

- Agency notification required for work involving over 0.25 acres of fill in waters of the U.S., if the fill in waters of the United States exceeds 200 linear feet of stream, or if located in outstanding resource streams*.
- For wetland fills greater than 0.25 acres, compensatory mitigation is required at a minimum 2:1 ratio for restoration or 4:1 for constructed wetlands.

43. Stormwater Management Facilities.

- Agency notification required for work involving over 0.25 acres of fill in waters of the U.S., if the fill in waters of the United States exceeds 200 linear feet of stream, or if located in outstanding resource streams*.

*** TWRA, TDEC, USACE, USFWS, and EPA have held preliminary discussions regarding the development of a list of outstanding resource waters in Tennessee, but to date none have been listed.**