



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

Special Public Notice

Public Notice No. 16-20

Date: June 15, 2016

Application No. N/A

Please address all comments to:
Nashville District, Corps of Engineers,
Regulatory Division
3701 Bell Road, Nashville, TN 37214
Attn: Mr. Casey Ehorn

INITIAL PUBLIC NOTICE

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On June 1, 2016, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the 50 existing nationwide permits (NWP) and issue two 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-2015-0017 at www.regulations.gov, or by email to NWP2017@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 June 1, 2016 Federal Register notice. Comments on the proposed NWP are due by August 1, 2016.

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 important mechanisms to 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 1) lists the proposed regional conditions currently under consideration by the Great Lakes and Ohio River Division for the State of Tennessee. The Nashville District is seeking comments on the proposed regional conditions and seeking comments on the 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 Tennessee. Comments on regional issues relating to the proposed NWP and proposed

regional conditions should be sent to: U.S. Army Corps of Engineers, Nashville District, Regulatory Division, 3701 Bell Road, Nashville, Tennessee 37214, Telephone: (615) 369-7500. Comments relating to regional conditions are due by August 1, 2016. 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. After the final NWP's are issued, States and Tribes will make their Clean Water Act Section 401 (401) water quality certification and States will make their Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 90 days of the Federal Register notice announcing the issuance of the NWP's. The final NWP's will go into effect on March 19, 2017.

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 documents, as well as the proposed NWP's, are available for viewing at www.regulations.gov, docket number COE-2015-0017. Final decision documents will be prepared for the NWP's that are issued. In addition, the final national NWP decision documents will be supplemented by division engineers to address their decisions concerning regional conditions for the NWP's.

Enclosed is an index of the proposed NWP's and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP's through the Corps Home Page at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>, at www.regulations.gov in docket number COE-2015-0017, or at the Federal Register address listed below.

Index of Proposed Nationwide Permits, Conditions, and Definitions

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. Utility Line 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 Aquaculture 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
 - A. Removal of Low-Head Dams
 - B. Living Shorelines

Nationwide Permit 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 Bird and Bald and Golden Eagle Permits
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

District Engineer's Decision

Further Information

Definitions

Best management practices (BMPs)
Compensatory mitigation
Currently serviceable
Direct effects
Discharge
Enhancement
Ephemeral stream
Establishment (creation)
High Tide Line
Historic property
Independent utility
Indirect effects
Intermittent stream
Loss of waters of the United States
Non-tidal wetland
Open water
Ordinary high water mark
Perennial stream
Practicable
Pre-construction notification
Preservation
Re-establishment
Rehabilitation
Restoration
Riffle and pool complex
Riparian areas
Shellfish seeding
Single and complete linear project
Single and complete non-linear project
Stormwater management
Stormwater management facilities

Stream bed
Stream channelization
Structure
Tidal wetland
Vegetated shallows
Waterbody

Enclosure 1

Proposed Regional Conditions for the State of Tennessee

NATIONWIDE PERMIT SPECIFIC REGIONAL CONDITIONS:

1. *Aids to Navigation.*
 - No proposed regional conditions.
2. *Structures in Artificial Canals.*
 - No proposed regional conditions.
3. *Maintenance.*
 - No proposed regional conditions.
4. *Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.*
 - No proposed regional conditions.
5. *Scientific Measurement Devices.*
 - No proposed regional conditions.
6. *Survey Activities.*
 - No proposed regional conditions.
7. *Outfall Structures and Associated Intake Structures.*
 - No proposed regional conditions.
8. *Oil and Gas Structures on the Outer Continental Shelf.*
 - No proposed regional conditions.
9. *Structures in Fleeting and Anchorage Areas.*
 - No proposed regional conditions.
10. *Mooring Buoys.*
 - No proposed regional conditions.
11. *Temporary Recreational Structures.*
 - No proposed regional conditions.

12. Utility Line Activities.

- a. For projects in the Nashville District: PCN in accordance with NWP General Condition 32 and Regional General Condition 4 is required for all discharges of dredged or fill material into wetlands exceeding 1/10 acre.
- b. For projects in the Nashville District: The PCN shall include a restoration plan demonstrating how all temporary fills and structures will be removed and the area restored to pre-project conditions.
- c. For projects in the Nashville District: For temporary crossings in wetlands, the use of best management practices (e.g. construction pads, timber matting, and geotextile fabric) is required to minimize compaction of wetland substrate.
- d. For projects in the Nashville District: For utility crossings in waters of the U.S., the following measures are required to prevent the French drain effect:
 - i. For streams: Check dams and/or anti-seep collars shall be installed in the bedding and backfill of all utility line trenches. Flowable fill encasement, or other methods may be approved on a case-by-case basis.
 - ii. For wetlands: Anti-seep collars or clay plugs shall be utilized for trenching activities conducted in a wetland. Other methods may be approved on a case-by-case basis.
- e. For projects in the Nashville District: Trench excavation in streams and rivers with bedrock-dominated channels: All appropriate and practicable measures shall be employed to minimize the risk of fracturing bedrock and the loss of stream flow. Typical measures include using a rock wheel or similar rock-cutting saw to excavate proposed open-cut trenches across bedrock portions of the stream channel. In the event a rock cutting saw cannot accomplish the proposed open-cut trench across the stream channel, a hoe ram or similar type of hammering machine may be used to accomplish the open-cut trench. To minimize the risk of fracturing bedrock, the hoe ram shall chip a predrilled area of streambed.
- f. For projects in the Nashville District: Pre-construction notifications for aerial electric power transmission lines crossing navigable waters of the United States shall include the nominal system voltage of the proposed aerial electric power transmission line, and the minimum clearances prescribed by 33 CFR Part 322.5(i)(2). See the note and table below for additional information.

Note: The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or

the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length or span, and type of supports as outlined in the National Electrical Safety Code. For any non-electrical cable, the crossing must have a minimum clearance of 20 feet above the clearance required for bridges.

<u>NOMINAL SYSTEM VOLTAGE, KV</u>	<u>ADDITIONAL CLEARANCE, FEET</u>
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750-765	45

13. *Bank Stabilization.*

- a. For projects in the Nashville District: PCN in accordance with NWP General Condition 32 and Regional General Condition 4 is required for the construction of vertical bulkheads. A vertical bulkhead is defined as any structure or fill, with a vertical face. It may be constructed of timber, steel, concrete, etc.

14. *Linear Transportation Projects.*

- a. A separate PCN in accordance with NWP General Condition 32 and Regional General Condition 4 is required for:
 - i. All regulated activities in Section 10 waters; and
 - ii. For projects in the Nashville District: Each single and complete linear project which impacts greater than 200 linear feet of stream.

15. *U.S. Coast Guard Approved Bridges.*

- No proposed regional conditions.

16. *Return Water From Upland Contained Disposal Areas.*

- No proposed regional conditions.

17. *Hydropower Projects.*

- No proposed regional conditions.

18. *Minor Discharges.*

- a. This NWP does not authorize stream relocations, channelization, or impoundments.
- b. For projects in the Nashville District: The loss of waters of the U.S. is limited to 300 feet of stream bed, unless the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects.

19. *Minor Dredging.*

- a. For projects in the Nashville District: PCN in accordance with NWP General Condition 32 and Regional General Condition 4 is required for regulated activities in Section 10 waters.

20. *Response Operations for Oil and Hazardous Substances.*

- No proposed regional conditions.

21. *Surface Coal Mining Activities.*

- No proposed regional conditions.

22. *Removal of Vessels.*

- No proposed regional conditions.

23. *Approved Categorical Exclusions.*

- a. PCN in accordance with NWP General Condition 32 and Regional General Condition 4 is required for use of this NWP. The PCN shall include a statement/form verifying the activity is categorically excluded from the National Environmental Policy Act (NEPA) requirement to prepare an environmental impact statement or environmental assessment analysis, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment. The statement/form shall be signed by an official of the Federal agency that issued the categorical exemption.

24. *Indian Tribe or State Administered Section 404 Programs.*

- No proposed regional conditions.

25. *Structural Discharges.*

- No proposed regional conditions.

26. *Reserved.*

27. *Aquatic Habitat Restoration, Establishment, and Enhancement Activities.*

- a. For projects subject to pre-construction notification, the notification shall explain why any permanent loss of waters of the United States is necessary and show how it would be fully offset by the beneficial impacts of the project. The PCN shall describe pre-project site conditions (e.g. photographs, habitat assessments, etc.), aquatic resource functions the site currently provides, anticipated aquatic resource benefits from project construction, and proposed maintenance and monitoring plans.

28. *Modification to Existing Marinas.*

- No proposed regional conditions.

29. *Residential Developments.*

- No proposed regional conditions.

30. *Moist Soil Management for Wildlife.*

- No proposed regional conditions.

31. *Maintenance of Existing Flood Control Facilities.*

- No proposed regional conditions.

32. *Completed Enforcement Actions.*

- No proposed regional conditions.

33. *Temporary Construction, Access, and Dewatering.*

- a. The maximum allowable timeframe for temporary work in waters of the U.S. is limited to one year from the date the authorized work commences, unless the permittee receives written approval from the Corps granting an extension.
- b. All activities shall be constructed in a manner to withstand expected bankfull events and shall consist of clean and coarse non-erodible materials.

34. *Cranberry Production Activities.*

- No proposed regional conditions.

35. *Maintenance Dredging of Existing Basins.*

- a. For projects in the Nashville District: PCN in accordance with NWP General Condition 32 and Regional General Condition 4 is required for use of this NWP.

36. *Boat Ramps.*

- a. PCN in accordance with NWP General Condition 32 and Regional General Condition 4 is required for any boat ramp proposed to be located within the area between the upstream and downstream arrival points of any Corps of Engineers lock and dam, or within 1,500 feet of any emergency-mooring cell at any lock.

37. *Emergency Watershed Protection and Rehabilitation.*

- No proposed regional conditions.

38. *Cleanup of Hazardous and Toxic Waste.*

- No proposed regional conditions.

39. *Commercial and Institutional Developments.*

- No proposed regional conditions.

40. *Agricultural Activities.*

- No proposed regional conditions.

41. *Reshaping of Existing Drainage Ditches.*

- No proposed regional conditions.

42. *Recreational Facilities.*

- No proposed regional conditions.

43. *Stormwater Management Facilities.*

- a. For projects in the Nashville District: PCN in accordance with NWP General Condition 32 and Regional General Condition 4 is required for use of this NWP.

44. *Mining Activities.*

- No proposed regional conditions.

45. *Repair of Uplands Damaged by Discrete Events.*

- No proposed regional conditions.

46. *Discharges in Ditches.*

- No proposed regional conditions.

47. *[Reserved]*

48. *Commercial Shellfish Aquaculture Activities.*

- No proposed regional conditions.

49. *Coal Remining Activities.*

- No proposed regional conditions.

50. *Underground Coal Mining Activities.*

- No proposed regional conditions.

51. *Land-Based Renewable Energy Generation Facilities.*

- No proposed regional conditions

52. *Water-Based Renewable Energy Generation Pilot Projects.*

- No proposed regional conditions

A. *Removal of Low-Head Dams.*

a. The PCN shall include

- i. The length of the stream/river that the low-head dam currently impounds;
- ii. A sediment characterization and estimated volume of sediment/material collected behind the low-head dam;
- iii. A description of the positive and adverse environmental effects associated with the release of sediment/materials collected behind the low-head dam once the low-head dam is removed; and
- iv. A discussion of the steps taken to minimize the potential adverse effects on the aquatic environment.

B. *Living Shorelines*

- No proposed regional conditions

Regional General Conditions

1. **Advanced credits from in-lieu fee (ILF) programs:** Use of advanced credits from ILF programs as compensatory mitigation involves a lag time between the time impacts are conducted and the time collected fees are used to initiate compensatory mitigation. Therefore, in addition to any compensatory mitigation ratio, function or conditional assessment, or other suitable metric used to determine the amount of compensatory mitigation necessary to offset unavoidable impacts to aquatic resources, an additional compensatory mitigation multiplier of 20% is required to address temporal loss associated with the purchase of advanced credits from ILF programs (see 33 CFR Part 332.2).

2. A PCN in accordance with NWP General Condition 32 and Regional General Condition 4 is required for all uses of NWPs within 2,000 feet of a National Wildlife Refuge, any National Park Service property, Tennessee State Parks, Tennessee State Natural Areas, Tennessee Department of Environment and Conservation wildlife management area (WMAs), or an approved mitigation bank or in-lieu fee site.
3. All impacts to wetlands and open waters shall be calculated and reported in acres. Stream impacts shall be calculated separately and reported in both linear feet and acres.
4. The following information shall be submitted for a PCN to be considered complete:
(NOTE: The 45-day NWP process will not begin until a PCN is determined complete by the Corps District.)
 - a. All information required at NWP General Condition (GC) 32, "Contents of a Pre-Construction Notification."
 - b. The PCN shall include information sufficient to demonstrate the proposed project represents a single and complete project and a description of the ways in which the proposed project has been designed to avoid and minimize adverse impacts to waters of the U.S., including any proposed best management practices (BMPs).
 - c. The PCN shall include the name(s) of the species listed as threatened or endangered under the Endangered Species Act that might be affected by the proposed work or that utilize designated critical habitat that might be affected by the proposed work. An official species list (pursuant to 50 CFR 402.12) shall be submitted with the PCN. An official species list can be obtained from the U.S. Fish and Wildlife Services' IPAC website: <http://ecos.fws.gov/ipac> .
 - d. The PCN shall include a statement regarding the presence of cultural, archaeological, and/or historic resources on the project site. The statement should include the name of the resources consulted, a website printout, and/or a survey report. Information regarding cultural resources and the National Historic Preservation Act can be reviewed at the National Park Service's website: <http://www.nps.gov/nr/> .