



Nationwide Permit Reissuance

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U.S. ARMY CORPS OF ENGINEERS

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Questions and Answers

Q1. Why are you issuing Nationwide Permits (NWP) now?

A1. The Clean Water Act of 1977 requires the Corps to reissue nationwide permits every five years. The current suite of 49 nationwide permits will expire on March 18, 2012, so we are issuing the 2012 NWPs now to ensure the regulated public continues to have an efficient tool in place to authorize activities with minor impacts to the aquatic environment. The 2012 NWPs become effective on March 19, 2012.

Q2. How many NWPs are being issued?

A2. The Corps is issuing 50 nationwide permits. This includes reissuing 48 permits from the 2007 NWP package and 2 new permits. Of the 48 permits from 2007 being reissued, 23 are being reissued without change.

Q3. Is the Corps issuing any new NWPs?

A3. The Corps is issuing two new NWPs. NWP 51 authorizes the construction of land-based renewable energy generation facilities. The other new NWP, NWP 52, authorizes pilot projects for water-based renewable energy generation facilities, such as hydrokinetic energy and wind turbines located in waters.

Q4. Are there any NWPs the Corps is not reissuing?

A4. The Corps is not reissuing NWP 47, which authorized activities in waters and wetlands associated with time sensitive inspections and repairs of pipelines. That NWP was issued in reliance on a reporting tool that was not fully developed by the U.S. Department of Transportation. Since the reporting tool is not available, the activities authorized by NWP 47 can be authorized by existing NWPs, such as NWP 3, Maintenance, and NWP 12, Utility Line Activities.

Q5. Is the Corps making any changes to NWP 48, which authorizes existing commercial shellfish aquaculture activities?

A5. The Corps is reissuing NWP 48 with some changes. NWP 48 has been modified to authorize expansion of existing operations and new activities, with a 0.5 acre limit of disturbance to submerged aquatic vegetation beds. We have also removed the reporting requirement for certain on-going commercial shellfish aquaculture activities.

Q6. How long does the Corps have to make a decision on NWP proposals?

A6. Some NWPs require project proponents to notify Corps district engineers prior to commencing NWP activities. These notifications are called pre-construction notifications (PCNs), and they provide district engineers with opportunities to confirm whether or not the proposed activities qualify for NWP authorization. For most NWPs, the district engineer has to

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respond to a notification within 45 days of receipt of a complete PCN (see General Condition 31). If, after reviewing the PCN, the district engineer determines that the proposed activity qualifies for NWP authorization, the district engineer issues an NWP verification letter to the project proponent. The NWP verification may contain special conditions to ensure that the NWP activity results in minimal individual and cumulative effects on the aquatic environment and the Corps public interest review factors.

Q7. Do all NWPs require pre-construction notification?

A7. No, seventeen of the 50 nationwide permits do not require PCN. Of the remaining 33 NWPs, twenty one require prospective permittees to submit PCNs for proposed activities for review to the Corps in order to verify the activity qualifies for the NWP.

Q8. Does the Corps coordinate PCNs with other agencies?

A8. For all NWP activities that require preconstruction notification and result in a loss of greater than 0.5 acre of waters of the U.S.; for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require PCN and will result in the loss of greater than 300 linear feet of intermittent and ephemeral stream bed; and for all NWP 48 activities that require PCN, a copy of the complete PCN is sent to the appropriate state and Federal resource and regulatory offices. Agency comments are to explain the adverse effects of the proposed project on the aquatic environment will be more than minimal. Those comments will be considered prior to the Corps making a decision on the proposal.

Q9. What is a primary goal of the NWPs?

A9. The primary goal of the NWPs is to authorize, with limited delay and paperwork, certain activities that have minimal adverse effects on the environment.

Q10. How do the 2012 nationwide permits protect streams?

A10. Several of the nationwide permits limit the length of stream that can be filled or excavated to 300 linear feet. The 300 linear foot limit currently applies to perennial, intermittent, and ephemeral streams. If the Corps determines in writing that the impacts are minimal, the 300 linear foot limit can be waived for intermittent and ephemeral streams after coordination with state and Federal agencies of those PCNs where an applicant is seeking authorization for such proposals.

Q11. You say that the NWPs are for activities that have minimal impacts to the aquatic environment yet you are proposing to reissue NWP 21, which permits surface coal mining. Why?

A11. To make a fully informed decision, we sought comment on three options concerning NWP 21. We have selected Option 2: to reissue NWP 21 with a 0.5 acre limit, including a 300 linear foot limit for the loss of stream bed, which cannot be waived for perennial streams. The reissued nationwide permit 21 also prohibits the use of the NWP to authorize the construction of valley fills. The Corps review is focused on adverse effects to the aquatic environment, and determining the appropriate mitigation that may be needed to ensure the adverse effects on the aquatic environmental are minimal, individually and cumulatively. It does not extend to the mining operation as a whole.

Previous versions of NWP 21 did not have any acreage or linear foot limits, and relied solely on the pre-construction notification review process and permit conditions to reduce adverse effects on the aquatic environment to satisfy the minimal adverse environmental effects requirement for general permits. We believe the new acreage and linear foot limits will ensure this NWP contributes no more than minimal individual and cumulative adverse effects to the aquatic environment, by limiting the amount of waters of the United States that can be filled by each NWP 21 activity.

Q12. Has the Corps coordinated these changes with other federal agencies?

A12. Yes. We have coordinated with the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Department of Transportation, Office of Management and Budget, the President's Council on Environmental Quality, Small Business Administration, and others.