

**Questions and Answers
U.S. Army Corps of Engineers
Nationwide Permits Renewal/Revision
16 February 2011**

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 in March 18, 2012, so we are seeking public comments before renewing them.

Q2. Is the Corps proposing to issue any new NWP?

A2. The Corps is proposing to issue two new NWPs. One proposed new NWP would authorize the construction of land-based renewable energy generation facilities. The other proposed new NWP would authorize pilot projects for water-based renewable energy generation facilities, such as hydrokinetic energy and wind turbines located in waters.

Q3. Are there any NWP the Corps is not proposing to reissue?

A3. The Corps is proposing not to reissue 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.

Q4. Is the Corps proposing to make any changes to NWP 48, which authorizes existing commercial shellfish aquaculture activities?

A4. The Corps is proposing to reissue NWP 48 with some changes. We are proposing to modify this NWP to authorize expansion of existing operations. We are also considering removing the reporting requirement for certain on-going commercial shellfish aquaculture activities. We are seeking comment on whether to modify NWP 48 to authorize new commercial shellfish aquaculture activities or issue a new NWP to authorize those activities.

Q5. Are permittees required to provide compensatory mitigation to offset losses of wetlands and waters caused by NWP activities?

A5. In general, the Corps will require mitigation for wetland losses in excess of 1/10 acre to ensure minimal impacts. The Corps may also require mitigation for stream losses. Mitigation requirements added to NWP authorizations help maintain aquatic resource functions and services in watersheds.

Q6. How do the new NWP protect endangered species?

A6. General Condition 19 relates directly to endangered species. The Corps is proposing to modify this general condition to clarify the NWP requirements applicable to the Endangered Species Act. The Corps would make "may effect" or "no effect" determinations on covered species within 45 days of receipt of a complete application for NWP authorization, and notify the permittees of those determinations.

Q7. How do the new NWP protect historic properties?

A7. General Condition 20 relates directly to historic properties. This general condition clarifies the NWP requirements applicable to the National Historic Preservation Act. The Corps would make “no potential to cause effects,” “no effect,” “no adverse effect,” and “adverse effect” determinations on historic properties within 45 days of receipt of a complete application for NWP authorization, and notify the permittees of those determinations.

Q8. How do Nationwide Permits address cumulative effects to the aquatic environment?

A8. The Corps’ district engineers are required to evaluate cumulative adverse effects that occur as a result of activities authorized by the NWPs. To comply with the requirements of the National Environmental Policy Act and Section 404(e) of the Clean Water Act, the Corps evaluates potential cumulative impacts when it issues the NWPs. Division engineers can suspend or revoke an NWP if the cumulative impacts of that NWP in a district or other geographic area (such as a watershed) would be more than minimal.

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. What is the difference between a NWP and an Individual Standard Permit?

A10. An individual standard permit is a type of Corps permit that is issued for a specific activity, after a public notice and comment period. The Corps considers comments submitted in response to the proposed work described in the public notice, before issuing the individual permit. In contrast, an NWP is issued to authorize a category of activities. Although a public notice and comment period is required for the issuance of an NWP, specific activities are authorized by that NWP without a public notice. Some NWPs require submission of a pre-construction notification, which is reviewed by the Corps to determine whether the proposed activity qualifies for the NWP. Certain NWPs also require the Corps to coordinate proposals with other federal and state regulatory and resource agencies. Other NWPs do not require this review, and can proceed as long as the proposed activity meets all of the terms and conditions of the NWP.

Q11. Can Corps Districts choose not to use the NWPs, and if so, what happens then?

A11. Corps districts may choose to use other types of general permits instead of the NWPs, especially in cases where it could reduce duplication between the Corps and state government, where the state government has implemented a regulatory program similar to the Corps program. In those cases, regional general permits are used in place of the NWPs to authorize activities with minimal adverse environmental effects. The regional general permits authorize minor activities similar to those authorized by the state regulatory program, which helps to reduce duplication.

Q12. How do you measure mitigation?

A12. Mitigation should replace lost aquatic resource functions resulting from permitted activities, so the Corps determines mitigation requirements and other permit conditions accordingly. The mitigation may be measured on an acreage or linear foot basis, or through the assessment of wetland or stream functions. The Corps is currently upgrading its internal databases to better track impacts and mitigation.

Q13. How do the proposed nationwide permits protect streams?

A13. Several of the proposed 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 that the impacts are minimal, the 300 linear foot limit can be waived for intermittent and ephemeral streams. We are proposing to require agency coordination if an applicant is seeking NWP authorization to fill or excavate more than 1,000 linear feet of intermittent and ephemeral stream.

Q14. What are the differences between perennial streams, intermittent streams and ephemeral features?

A14. Perennial streams flow 365 days a year in a normal year. Intermittent streams flow for a substantial portion of a normal year, but may not have flowing water during dry periods of the year. Ephemeral features flow only during, and a short time after, rainfall events and snowmelt. All three features can be important ecologically, even though they may provide different ecological functions.

Q15. 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?

A15. To make a fully informed decision, we are seeking comment on three options concerning NWP 21. The Corps preferred option is to reissue NWP 21 with a 1/2 acre limit, including a 300 linear foot limit for filling or excavating stream beds and a prohibition against using the NWP to authorize the construction of valley fills. Another option is to reissue NWP 21 with a 1/2 acre limit, including a 300 linear foot limit for filling or excavating stream beds. The third option is to not reissue NWP 21. We will carefully review the comments received on these three options.

Q16. Has the Corps coordinated these changes with other federal agencies?

A16. Yes. USACE 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, and others.