



Public Notice

Published: January 18, 2002

**U.S. Army Corps
of Engineers**

In Reply Refer To:

Buffalo District CELRB-CO-R RE: 02-001-2(3) Section: NY and OH 10 and 404

**PUBLIC NOTICE FOR FEDERAL REGISTER NOTICE
ANNOUNCING ISSUED NATIONWIDE PERMITS**

On 15 January 2002, the Corps published a notice in Part II of the Federal Register (67 FR 2020-2095) announcing the issuance of Nationwide Permits (NWP). These NWPs are activity-specific and authorize certain activities in non-tidal waters of the United States that have minimal adverse effects on the aquatic environment. A summary of the changes made to the Nationwide Permits and general conditions is attached.

After the publication of this Federal Register notice, Corps districts will begin finalizing their regional conditions for the NWPs. Regional conditions will 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 publication of this Federal Register notice also begins a 60 day process for States and Tribes to make their Section 401 water quality certification and Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 60 days of publication of the 15 January 2002 Federal Register. At the end of this 60 day period, the NWPs and Corps regional conditions will become effective on 16 March 2002.

The 15 January 2002 Federal Register notice is available for viewing at the Buffalo District Corps of Engineers Regulatory Branch, 1776 Niagara Street, Buffalo, New York 14207-3199, or on the Internet at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>. As an alternative, World Wide Web users can access the Federal Register through the U.S. Government Printing Office at http://www.access.gpo.gov/su_docs/aces/aces140.html.

The Corps has also issued final decision documents for the NWPs. These documents are also available on the Internet at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/> and at Corps district offices. Furthermore, the NWP decision documents will be supplemented by Division Engineers to address decisions concerning regional conditioning of the NWPs.

Questions pertaining to the regional conditioning of the proposed Nationwide permits described in this notice should be directed to Martin Wargo (Ohio) or Bridget Brown (NY), who can be contacted by calling (716) 879-4116 and (315) 255-0143, respectively, or by e-mail at: Martin.P.Wargo@usace.army.mil or Bridget.Brown@usace.army.mil



Paul G. Leuchner
Chief, Regulatory Branch

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously until 15 March 2002. Summary of Changes to Nationwide Permits and General Conditions

Summary of changes to NWPs and general conditions: Attached

NWP Number	Activity	2001 Proposed	2002 Final
NWP 14	Linear Transportation Crossings	<ul style="list-style-type: none"> <input type="checkbox"/> All linear transportation projects in non-tidal limited to 1/2-acre. <input type="checkbox"/> All linear transportation projects in tidal limited to 1/3-acre. <input type="checkbox"/> Removing 200 linear-feet provision. 	<ul style="list-style-type: none"> <input type="checkbox"/> Adopted with the proposed changes
NWP 21	Surface Coal Mining Activities	<ul style="list-style-type: none"> <input type="checkbox"/> Require case by case review to ensure minimal adverse effect on aquatic environment and adequate mitigation <input type="checkbox"/> Clarify the evaluation of impacts to the aquatic environment 	<ul style="list-style-type: none"> <input type="checkbox"/> Adopted with the proposed changes <input type="checkbox"/> Reevaluate NWP21 when the mountain top mining/valley fill EIS is complete.
NWP 27	Stream and Wetland Restoration Activities	<ul style="list-style-type: none"> <input type="checkbox"/> Simplify from four to three provisions. Combined provisions (a)(2) <i>Any Federal land</i> and (a)(4) <i>Any private or public land</i>. List as provision (a)(3) <i>Any other public, private or tribal land</i>. 	<ul style="list-style-type: none"> <input type="checkbox"/> Adopted the proposed changes <input type="checkbox"/> Added the National Marine Fisheries Service and the National Ocean Service to paragraph (a)(1) <input type="checkbox"/> Added "the construction of oyster habitat over unvegetated bottom in tidal waters" to the list of examples of activities authorized by this NWP <input type="checkbox"/> Modified the text of this NWP by adding the phrase "... to the extent that a Corps permit is required, ..." after the phrase "Activities authorized by this NWP include...". <input type="checkbox"/> Added the phrase "...and the planting of appropriate wetland species" after the phrase "...activities needed to reestablish vegetation..." and changing "... mechanized land clearing to remove undesirable vegetation ..." to "... mechanized land clearing to remove non-native invasive, exotic or nuisance vegetation ...".
NWP 30	Moist Soil Management for Wildlife	<ul style="list-style-type: none"> <input type="checkbox"/> No changes proposed 	<ul style="list-style-type: none"> <input type="checkbox"/> Modified to allow activities on local government agency owned or managed property to also be authorized by this NWP.
NWP 31	Maintenance to Existing Flood Control Facilities	<ul style="list-style-type: none"> <input type="checkbox"/> Clarify policy and requirements regarding: mitigation for maintenance activities and documentation requirements for baselines determination <input type="checkbox"/> Allow maintenance of areas that are part of a flood control facility without constructed channels can be done, provided best management practices are used to ensure minimal adverse effects 	<ul style="list-style-type: none"> <input type="checkbox"/> Adopted with the proposed changes
NWP 32	Completed Enforcement Actions	<ul style="list-style-type: none"> <input type="checkbox"/> No changes proposed 	<ul style="list-style-type: none"> <input type="checkbox"/> Added Federal environmental legal resolutions (i.e. part iii) <input type="checkbox"/> Added clarification that this NWP only applies to the extent that a Corps permit is required.

NWP 37	Emergency Watershed Protection and Rehabilitation	<ul style="list-style-type: none"> <input type="checkbox"/> Add emergency work conducted or funded by the Department of the Interior's (DOI) Wildland Fire Rehabilitation Program <input type="checkbox"/> The DOI Agencies included in this program are the Bureau of Land Management, Bureau of Indian Affairs, National Park Service, US Fish & Wildlife Service, and Bureau of Reclamation. 	<ul style="list-style-type: none"> <input type="checkbox"/> Adopted with the proposed changes <input type="checkbox"/> Grammatical change, removing the "Work done or funded by" from the beginning of subsections "b" and "c" in order to be consistent with subsection "a".
NWP 39	Residential, Commercial, and Institutional Developments	<ul style="list-style-type: none"> <input type="checkbox"/> Simplify the "Subdivision" provision <input type="checkbox"/> Retain the 300 LF prohibition but allow a case by case waiver for work under NWPs 39, 40, 42, 43 provided that the Corps determines no more than minimal impacts. <input type="checkbox"/> <u>Federal Register</u> dated 8/9/01 contained an <u>error</u>, stated maximum threshold was "1/10 acre". <input type="checkbox"/> Correction issued in the <u>Federal Register</u> on 8/21/01, maximum threshold should be "1/2 acre" <input type="checkbox"/> Remove the one-cfs restriction on stream impacts 	<ul style="list-style-type: none"> <input type="checkbox"/> Adopted with the proposed changes <input type="checkbox"/> Adopted the case by case 300 LF waiver for only intermittent streams under NWPs 39, 40, 42, 43, provided that the Corps determines no more than minimal impacts. Perennial stream impacts over 300 LF are excluded from the proposed case by case waiver.
NWP 40, 42, and 43	Agricultural activities, Recreation and Stormwater Management Facilities	<ul style="list-style-type: none"> <input type="checkbox"/> Retain the 300 LF prohibition but allow a case by case waiver for work under NWPs 40, 42, 43 provided that the Corps determines no more than minimal impacts. 	<ul style="list-style-type: none"> <input type="checkbox"/> Adopted the case by case 300 LF waiver for only intermittent streams under NWPs 39, 40, 42, 43, provided that the Corps determines no more than minimal impacts. Perennial stream impacts over 300 LF are excluded from the proposed case by case waiver.

General Condition	Activity	2001 Proposed	2002 Final
GC 3	Soil Erosion and Sediment Controls	<input type="checkbox"/> None	<input type="checkbox"/> Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
GC 4	Aquatic Life Movements	<input type="checkbox"/> Clarify that authorized activities must not inhibit life-cycle movements	<input type="checkbox"/> Adopted as proposed
GC 9	Water Quality	<input type="checkbox"/> Clarify that detailed studies and documentation are not requirement <input type="checkbox"/> Clarify that local water quality practices are acceptable	<input type="checkbox"/> Adopted as proposed
GC 11	Endangered Species	<input type="checkbox"/> None	<input type="checkbox"/> Adopted without change (but with the inadvertently omitted sentence restored).
GC 13	Notification	<input type="checkbox"/> Add that sketches should be provided to the Corps when necessary to show that the activity complies with the terms of the NWP. For those cases that the Corps determines that such sketches are necessary to show that the activity complies with the terms of the NWP, the "Notification" will be considered incomplete until such sketches are provided for the record. This is not a requirement for detailed engineering plans	<input type="checkbox"/> Adopted as proposed
GC 19	Mitigation	<input type="checkbox"/> Clarify that Mitigation will be required to ensure no more than minimal adverse effects on aquatic environment. <input type="checkbox"/> Provide flexibility to require mitigation that is best for the aquatic environment. <input type="checkbox"/> Remove the required 1 to 1 mitigation ratio & buffer restriction that reduced ability to require the best mitigation for the aquatic environment. Sometimes more and sometimes less than a one to one ratio is appropriate (e.g. high quality wetlands or low quality wetlands)	<input type="checkbox"/> Adopted as proposed <input type="checkbox"/> Direct District Offices to ensure that their verified NWPs achieve at least one-for-one mitigation of all wetlands impacts, on an acreage basis for the District as a whole. In documenting compliance with this requirement, districts should not include preservation of existing wetlands in their district-level tally of compensating wetlands mitigation.
GC 21	Management of Water Flows	<input type="checkbox"/> Clarify that detailed studies and monitoring not required in most cases	<input type="checkbox"/> Adopted as proposed
GC 26	Fills within the 100-year Floodplain	<input type="checkbox"/> Expand to all NWPs: that must comply with FEMA requirements in mapped floodplains <input type="checkbox"/> Retain existing prohibitions for NWPs 39, 40, 42, 43, 44 for discharges resulting in permanent above grade fills within the floodplain below the headwaters discharges and for discharges resulting in permanent above grade fills within the floodway above headwaters	<input type="checkbox"/> Adopted as proposed

		<input type="checkbox"/> Remove PCN and documentation requirements that only applied to NWPs 12, 14, 29, 39, 40, 42, 43, & 44	
GC 27	Construction Period	<input type="checkbox"/> For those projects that are verified by the Corps that the Corps would be allowed to establish project completion dates beyond the expiration of the NWPs.	<input type="checkbox"/> Adopted as proposed