



**US Army Corps  
of Engineers**

Buffalo District

*BUILDING STRONG*

March 2017

## FACT SHEET

### Nationwide Permit Reissuance

Regulatory

#### Location

- Nationwide

#### Project Description

- Reissuance of Nationwide Permits and Regional Conditions

#### Congressional Interests

- All

#### Project Managers

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#### Background

Under Section 404(e) of the Clean Water Act, the U.S. Army Corps of Engineers (USACE) can issue general permits to authorize activities that have only minimal individual and cumulative adverse environmental effects. General permits can be issued for a period of no more than five years. A nationwide permit is a general permit that authorizes activities across the country, unless a district or division commander revokes the nationwide permit in a state or other geographic region. The nationwide permits authorize approximately 40,000 reported activities per year, as well as approximately 30,000 activities that do not require reporting to USACE districts. There are currently 50 nationwide permits, and they authorize a wide variety of activities such as mooring buoys, residential developments, utility lines, road crossings, mining activities, wetland and stream restoration activities, and commercial shellfish aquaculture activities.

The process for issuing nationwide permits is a rulemaking activity. The proposal to reissue the nationwide permits was published in the Federal Register on June 1, 2016, for a 60-day public comment period ending on August 1, 2016. USACE proposed to reissue all 50 of its existing nationwide permits. USACE also proposed to issue two new nationwide permits to restore streams and improve public safety, and to authorize an approach to control coastal erosion that provides some environmental benefits. Concurrent with the Federal Register notice, districts issued local public notices to solicit comment on proposed regional conditions to further restrict the use of the nationwide permits to protect local aquatic resources.

Approximately 54,000 comments were received in response to the Federal Register notice. The comments were evaluated and the draft final nationwide permit rule was prepared. The draft final rule was submitted to OMB on October 28, 2016, for interagency review. Five agencies provided comments on the draft final rule. The agency comments were reviewed and some modifications were made to the draft final nationwide permits to address the agency comments.

#### 2017 Nationwide Permits

Most of the reissued nationwide permits have no major changes from 2012, the last time the nationwide permits were authorized in accordance with the law. The revised permits will streamline the requirements of the Clean Water Act, and are informed by extensive feedback from the public and key stakeholders. The Corps is reissuing 50 permits and adding two new ones. These permits provide expedited review of

projects that have minimal impact on the aquatic environment. Categories of activities that may be covered under these NWP's include linear transportation projects, bank stabilization activities, residential development, commercial and industrial developments, aids to navigation and certain maintenance activities.

The two new nationwide permits provide an appropriate mechanism for quickly evaluating the removal of low-head dams and the construction and maintenance of living shorelines. Notification requirements have been revised for some permits to provide greater national consistency and foster making timely decisions for the regulated community. Effective decisions will be enhanced by interagency coordination on certain activities while continuing to maintain an expeditious process for all permit evaluations. All improvements, additions, and revisions to the package are consistent with our commitment to evaluate minor activities efficiently, while ensuring appropriate environmental protection for our nation's aquatic resources.

### **Regional General Conditions**

USACE division engineers may add, after public review and consultation, regional conditions to nationwide permits in order to protect local aquatic ecosystems such as fens or bottomland hardwoods, or to minimize adverse effects on fish or shellfish spawning, wildlife nesting or other ecologically critical areas. Division and district commanders are also charged with ensuring appropriate coordination and consultation occurs with federally-recognized American Indian and Alaska Native governments.

Regional Conditions within the Buffalo District address several general categories of activities, including, but not limited to, protection of mitigation areas within multiple lot subdivisions (NY and OH), culvert size and placement (NY), waterward encroachment of fills (NY and OH), additional protections of certain specific water resources (NY and OH), sand prefill/littoral transport (OH), specific in-water exclusion periods (OH), cultural resources (NY and OH) and endangered species (NY and OH).

Highlights of the 2017 Nationwide Permits: NWP 48 – The NWP 48 for Existing Commercial Shellfish Aquaculture Activities is revised to provide greater flexibility in its use. For example, NWP 48 now incorporates provisions that authorize activities that are consistent with other federal/state/tribal and local regulatory authorities. Incorporating these already authorized activities will reduce the number of activities that require individual review by Corps districts.

NWP 53 – This new NWP covers the removal of low-head dams. The removal of these dams will restore rivers and streams. It will also improve public safety through the removal of dams that are hazardous to swimmers and users of small craft.

NWP 54 – This new NWP covers the construction and maintenance of living shorelines. Living shorelines control shore erosion in coastal areas by using vegetation or other living, natural "soft" elements alone or in combination with some type of harder shoreline structure (e.g., oyster or mussel reefs or rock sills) for added protection and stability.

### **Public Interests**

The nationwide permit reissuance is of interest to various entities involved in the development of our nation's economy and the employment and well-being of our citizens, such as agricultural producers, housing developers, industrial and commercial development companies, utility companies, mining industries, transportation departments, and commercial and recreational uses of our navigable waterways. The nationwide permit reissuance is also of interest to government agencies and non-governmental organizations who seek protection of natural resources and other environmental qualities. The nationwide permits provide incentives to avoid and minimize impacts to wetlands, streams, and other aquatic resources because of the limits and other conditions imposed on these authorizations. The signed nationwide permit final rule have been submitted to the Federal Register for publication and will be published on January 6, 2017. The final nationwide permits will also be posted on USACE's Web site <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>.