



**US Army Corps
of Engineers** ®
Fort Worth District

Public Notice

Action: Nationwide Permits Reissuance
Date Issued: 21 February 2012
Comments Due: 22 March 2012

**PUBLIC NOTICE FOR FEDERAL REGISTER NOTICE
ANNOUNCING THE REISSUANCE OF THE NATIONWIDE PERMITS
U.S. ARMY CORPS OF ENGINEERS**

AND

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AND
TEXAS RAILROAD COMMISSION
ANNOUNCING PUBLIC COMMENT ON SECTION 401 WATER QUALITY
CERTIFICATION**

On February 21, 2012, the U.S. Army Corps of Engineers (Corps) published the notice in the *Federal Register* announcing the reissuance of all existing nationwide permits (NWP), general conditions, and definitions with some modifications. The Corps also issued two new NWPs, three new general conditions, and three new definitions. The NWPs will be effective on March 19, 2012, and will expire on March 18, 2017.

With the publication of this *Federal Register* notice, Corps districts will begin finalizing their regional conditions for the new and reissued NWPs. Regional conditions will provide additional protection for the aquatic environment, and will help ensure 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 Districts.

The publication of this *Federal Register* notice also begins the 60-day period for states, Indian Tribes, and the Environmental Protection Agency (EPA) to complete their water quality certification (WQC) process for the NWPs. The 60-day period for WQC will end on April 20, 2012. This *Federal Register* notice also begins the 90-day period for coastal states to complete their Coastal Zone Management Act (CZMA) consistency determination processes. The 90-day period for CZMA consistency determinations will end on May 21, 2012.

While the states, Indian Tribes, and EPA complete their WQC processes, the use of an NWP to authorize a discharge into waters of the United States is contingent upon obtaining individual water quality certification or a case-specific WQC waiver. Likewise, while coastal states complete their CZMA consistency determination processes, the use of an NWP to authorize an activity within, or outside, a state's coastal zone that will affect land or water uses or natural resources of that state's coastal zone, is contingent upon obtaining an individual CZMA consistency determination, or a case-specific presumption of CZMA concurrence.

The February 21, 2012, *Federal Register* notice is available for viewing at the Corps' Fort Worth District office located at 819 Taylor Street, Room 3A37, Fort Worth, Texas 76102, or on the Internet at

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx> . As an alternate,

Internet users can access the *Federal Register* through the U.S. Government Printing Office at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR> .

The Corps has also issued final decision documents for the new and reissued NWPs. These documents are also available on the Internet at

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx> and Corps district offices. Furthermore, the NWP decision documents will be

supplemented by Division Engineers to address decisions concerning the addition of regional conditions to the NWPs.

Concurrent with Corps processing of this notice, the Texas Commission on Environmental Quality (TCEQ) is reviewing this notice under Section 401 of the CWA and in accordance with Title 30, Texas Administrative Code Section 279.1-279.13 to determine if the work would comply with State water quality standards. This public notice is also issued for the purpose of advising all known interested persons that there is pending before the TCEQ a decision on water quality certification under such act. Any comments concerning this notice may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MC-150, P.O. Box 13087, Austin, Texas 78711-3087. The public comment period extends **30 days** from the date of publication of this notice. A copy of the public notice with a description of the work is made available for review in the TCEQ's Austin office. The complete notice may be reviewed in the Corps office listed in this public notice. The TCEQ may conduct a public meeting to consider all comments concerning water quality if requested in writing. A request for a public meeting must contain the following information: the name, mailing address, notice title, or other recognizable reference to the application; a brief description of the interest of the requester, or of persons represented by the requester; and a brief description of how the notice, if granted, would adversely affect such interest.

Railroad Commission of Texas (RRC) certification is required for activities associated with the exploration, development, or production of oil, gas, or geothermal resources, as described in Tex. Nat. Res. Ann. §91.101. Concurrent with the processing of notice, the RRC is reviewing Section 401 of the Clean Water Act and Title 16, Texas Administrative Code, Section 3.93, to determine if the proposed work would comply with applicable water quality laws and regulations. By virtue of an agreement between the Corps and the RRC, this public notice is issued for the purpose of advising all known interested persons that there is pending before the RRC a decision on water quality certification under the above authorities. Written comments concerning the request for certification may be submitted to the Assistant Director, Environmental Services, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. The public comment period extends **30 days** from the date of publication of this notice. The RRC may also hold a public meeting on the request for certification if the RRC determines that a public meeting is in the public interest. If the RRC holds a meeting to receive public comment on a request for certification, the RRC will give notice of the meeting to the applicant, the USACE, and persons identified under 16 TAC §3.93(d)(2) at least ten days prior to the meeting.

This notice contains a copy of the Texas regional conditions. You may also find a copy on the Galveston District's Internet Site at <http://www.swg.usace.army.mil/reg/>.

Also enclosed is a copy of the final NWP's, general conditions, further information, and definitions. They are also available through Corps Home Page or the *Federal Register*.

Index of Nationwide Permits, Conditions, District Engineer's Decision, Further Information, 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 and 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

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. Pre-Construction Notification

District Engineer's Decision

See Section D

Further Information

See Section E

Definitions

See Section F

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

NATIONWIDE PERMIT REGIONAL CONDITIONS FOR THE STATE OF TEXAS

The following regional conditions apply within the entire State of Texas:

1. Compensatory mitigation is required at a minimum one-for-one ratio for all special aquatic site losses that exceed 1/10 acre and require pre-construction notification, and for all losses to streams that exceed 300 linear feet and require pre-construction notification, unless the appropriate District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement.

2. For all discharges proposed for authorization under nationwide permits (NWP) 3, 6, 7, 12, 14, 18, 19, 25, 27, 29, 39, 40, 41, 42, 43, 44, 51, and 52, into the following habitat types or specific areas, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 31 (Pre-Construction Notification). The Corps of Engineers (Corps), except for the Tulsa District, will coordinate with the resource agencies as specified in NWP General Condition 31(d) (Pre-Construction Notification). The habitat types or areas are:
 - a. Pitcher Plant Bogs: Wetlands typically characterized by an organic surface soil layer and include vegetation such as pitcher plants (Sarracenia sp.), sundews (Drosera sp.), and sphagnum moss (Sphagnum sp.).

 - b. Bald Cypress-Tupelo Swamps: Wetlands comprised predominantly of bald cypress trees (Taxodium distichum), and water tupelo trees (Nyssa aquatica), that are occasionally or regularly flooded by fresh water. Common associates include red maple (Acer rubrum), swamp privet (Forestiera acuminata), green ash (Fraxinus pennsylvanica) and water elm (Planera aquatica). Associated herbaceous species include lizard's tail (Saururus cernuus), water mermaid weed (Proserpinaca spp.), buttonbush (Cephalanthus occidentalis) and smartweed (Polygonum spp.). (Eyre, F. H. Forest Cover Types of the United States and Canada. 1980. Society of American Foresters, 5400 Grosvenor Lane, Bethesda, Maryland 20814-2198. Library of Congress Catalog Card No. 80-54185)

3. For all activities proposed for authorization under NWP 12 that involve a discharged of fill material associated with mechanized land clearing in a forested wetland, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 31 (Pre-Construction Notification) prior to commencing the activity.

4. For all activities proposed for authorization under NWP 16, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 31 (Pre-Construction Notification), and work cannot begin under NWP 16 until the applicant has received written approval from the Corps.

The following regional conditions apply only within the Fort Worth District in the State of Texas:

5. For all discharges proposed for authorization under all NWP's, into the area of Caddo Lake within Texas that is designated as a "Wetland of International Importance" under the Ramsar Convention, the applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 31. The Corps will coordinate with the resource agencies as specified in NWP General Condition 31(d) (Pre-Construction Notification).
6. For all discharges proposed for authorization under NWP 43 that occur in forested wetlands, the applicant shall notify the Fort Worth District Engineer in accordance with the General Condition 31 (Pre-Construction Notification).
7. For all discharges proposed for authorization under any nationwide permit in Dallas, Denton, and Tarrant Counties that are within the study area of the "Final Regional Environmental Impact Statement (EIS), Trinity River and Tributaries" (May 1986), the applicant shall meet the criteria and follow the guidelines specified in Section III of the Record of Decision for the Regional EIS, including the hydraulic impact requirements. A copy of these guidelines is available upon request from the Fort Worth District and at the District website www.swf.usace.army.mil (select "Permits").
8. Federal Projects. The applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 31 (Pre-Construction Notification) for any regulated activity where the applicant is proposing work that would result in the modification or alteration of any completed Corps of Engineer projects that are either locally or federally maintained and for work that would occur within the conservation pool or flowage easement of any Corps of Engineers Lake project. PCN's cannot be deemed complete until such time as the USACE has made a determination relative to 33 USC Section 408, 33 CFR Part 208, Section 208.10, 33 CFR Part 320, Section 320.4.
9. Invasive and Exotic Species. Best management practices are required where practicable to reduce the risk of transferring invasive plant and animal species to or from project sites. Information concerning state specific lists and threats can be found at: <http://www.invasivespeciesinfo.gov/unitedstates/tx.shtml>. Best management practices can be found at: <http://www.invasivespeciesinfo.gov/toolkit/prevention.shtml>. Known zebra mussel waters within can be found at: <http://nas.er.usgs.gov/queries/zmbyst.asp>.
10. For all discharges proposed for authorization under NWP's 51 and 52, the Corps will provide the PCN to the USFWS as specified in NWP General Condition 31(d)(2) for their review and comments.

The following regional conditions apply only within the Galveston District in the State of Texas:

11. Nationwide permit (NWP) 12 shall not be used to authorize discharges within 500 feet of vegetated shallows and coral reefs; as defined by 40 CFR 230.43 and 230.44 respectfully. Examples include, but not limited to: seagrass beds, oyster reefs, and coral reefs.

12. For all 3-D seismic testing activities proposed for authorization under NWP 6, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 31 (Pre-Construction Notification). The pre-construction notification must state the time period for which the temporary fill is proposed, and must include a restoration plan for the special aquatic sites. 3-D seismic testing will not be authorized under NWP 6 within the Cowardin Marine System, Subtidal Subsystem; as defined by the U.S. Fish and Wildlife, Classification of Wetlands and Deepwater Habitats of the United States, December 1979/Reprinted 1992.

13. All NWPs, except NWP 3, shall not be used to authorize discharges into Mangrove marshes. Mangrove marshes are dominated by mangroves (Avicennia sp. and Rhizophora sp.). (Preliminary Guide to Wetlands of the Gulf Coastal Plain. 1978. Technical Report - U.S. Army Engineer Waterways Experiment Station: Y-78-5. P.O. Box 631, Vicksburg, Miss. 39180.)

14. All NWPs, except NWP 3, shall not be used to authorize discharges into the following waters of the United States within the coastal zone of Texas: Coastal Dune Swales, “wetlands and other waters of the United States that are formed as depressions within and among multiple beach ridge barriers, dune complexes, or dune areas adjacent to beaches fronting the tidal waters of the Gulf of Mexico and adjacent to the tidal waters of bays and estuaries. Coastal dune swales are generally comprised either of impermeable muds that act as reservoirs which collect precipitation or of groundwater nourished wetlands in sandy soils. As such, they generally have a high fresh to brackish water table. Vegetation species characteristically found in coastal dune swales include but are not limited to marshhay cordgrass (Spartina patens), gulfdune paspalum (Paspalum monostachyum), bulrush (Scirpus spp.), seashore paspalum (Paspalum vaginatum), common reed (Phragmites australis), groundsel bush (Baccharis halimifolia), rattlebush (Sesbania drummondii), camphor weed (Pluchea camphorata), smartweed (Polygonum spp.), water hyssop (Bacopa monnieri), cattail (Typha spp.), umbrella sedge (Cyperus spp.), softrush (Juncus spp.), sedge (Carex spp.), beakrush (Rhynchospora spp.), frog-fruit (Phyla spp.), duckweed (Lemna spp.), buttonweed (Diodia virginiana), mist flower (Eupatorium coelestinum), creeping spotflower (Acmella oppositifolia var. repens), pennywort (Hydrocotyle spp.), and bushy bluestem (Andropogon glomeratus).” (U.S. Fish and Wildlife Service, Houston, Texas, and the Texas General Land Office, Austin, Texas).

15. For all discharges and work proposed in tidal waters under NWP 14 and 18 the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 31 (Pre-Construction Notification). The Corps will coordinate with the National Marine Fisheries Service in accordance with NWP General Condition 31(d) (Pre-Construction Notification).

16. For all work in the San Jacinto River Waste Pits (SJWP) Area of Concern (AOC), authorized under a NWP, requires a waiver from the Galveston District Engineer. The applicant shall notify the Galveston District Engineer (DE) in accordance with the NWP General Condition 31 (Pre-Construction Notification (PCN)). This PCN shall be used to review the project to determine if it will result in more than minimal effects to the region, and does not lessen the restriction provided by any General Condition of the NWPs. The applicant must receive written approval, including a waiver from the Galveston DE prior to starting work in jurisdictional areas of waters of the United States.

17. The use of NWP 51 and 52 are administratively denied, within the Galveston District boundaries.

The following regional conditions apply only within the Albuquerque District in the State of Texas:

18. Nationwide Permit No. 23 – Approved Categorical Exclusions. Notification to the District Engineer in accordance with General Condition 31 (Pre-Construction Notification) is required for all proposed activities under nationwide permit 23.

19. Nationwide Permit No. 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities. For all proposed activities under Nationwide Permit 27 that require Pre-Construction Notification, a monitoring plan commensurate with the scale of the proposed restoration project and the potential for risk to the aquatic environment must be submitted to the Corps. (See “Guidelines for Nationwide Permit 27 Submittals” at <http://www.spa.usace.army.mil/reg/>).

20. Nationwide Permits No. 29 - Residential Developments, and No. 39 – Commercial and Institutional Developments. These permits do not authorize channelization or relocation of any intermittent or perennial water course regardless of size or rate of flow, except when, as determined by the Albuquerque District, the proposed channelization would impact a previously channelized stream reach, or the relocation would result in a net increase in functions of the aquatic ecosystem within the watershed.

21. Activities in Special Aquatic Sites, Including Wetlands. Notification to the District Engineer in accordance with General Condition 31 (Pre-Construction Notification) is required for all proposed impacts that exceed 1/10 acre in special aquatic sites, including wetlands.

22. Activities in Intermittent and Perennial Streams. Notification to the District Engineer in accordance with General Condition 31 (Pre-Construction Notification) is required for all proposed activities that involve fills greater than 1/10 acre in perennial or intermittent streams and is not covered by other notification requirements.

23. Springs. All nationwide permits require preconstruction notification pursuant to General Condition 31 for discharges of dredged or fill material within 100 feet of the point of groundwater discharge of natural springs. A spring source is defined as any location where ground water emanates from a point in the ground and a jurisdictional nexus to another water of the United States. For purposes of this regional condition, springs do not include seeps or other discharges which lack a jurisdictional nexus to another water of the United States.

24. Suitable Fill. Use of broken concrete or used tires formed into bales as fill or bank stabilization material requires notification to the District Engineer in accordance with General Condition 31 (Pre-Construction Notification). Applicants must demonstrate that soft engineering methods utilizing native or non-manmade materials are not practicable (with respect to environment, cost, existing technology, and logistics), before broken concrete or used tires as bales are allowed as suitable fill.