



Proposed Changes to the 2017 Nationwide Permits

On June 1, 2016, the US Army Corps of Engineers proposed to reissue the existing 50 Nationwide Permits (NWP) and issue an additional two new NWP which will go into effect March 19, 2017. The draft NWP were open for comments from June 1 to August 1, 2016.

All current NWP are set to expire on March 31, 2017. There are a number of changes to a variety of Nationwide Permits. The following is a summary of some of those relevant to infrastructure and land-use projects. The first topic is Nationwide conditions limiting or clarifying use of the permits. The other topics summarized include protected species, and review for project's infringement on navigability within certain Virginia waters.

NATIONAL CONDITIONS APPLICABLE TO NWP:

Proposed Changes to Existing NWP

NWP 3 – Maintenance

Would authorize removal of previously authorized structures and fills and use of temporary mats, if they require Department of the Army authorization.

NWP 12 – Utility Line Activities

Would authorize the use of temporary mats. Also, refers to Corps regulations for required minimum clearances of overhead electric power transmission lines over navigable waters.

Would only authorize crossings of waters of the United States associated with the construction, maintenance, and repair of utility lines. In cases where Department of the Army authorization is required, the NWP would authorize inadvertent returns of drilling muds through sub-soil fractures (frac-outs that might occur during directional drilling operations to install utility lines). It would also authorize utility line maintenance and repair activities that do not qualify for the CWA Section 404(f) exemption for maintenance.

NWP 13 – Bank Stabilization

Would authorize a variety of bank stabilization techniques, not just bulkheads and revetments. Cubic yard limit to be measured along the bank, to address in-stream fills for bank stabilization. It would require proper maintenance, and authorizes repair and maintenance of bank stabilization activities. Native plants appropriate for the site must be used for bioengineering or vegetative stabilization.

NWP 19 – Minor Dredging

Requirement would clarify that dredged material be deposited in an area that has no jurisdictional waters or wetlands, unless authorized by the Corps by a separate permit.

NWP 33 – Temporary Construction, Access, and Dewatering

Would only require Pre-Construction Notifications (PCNs) for activities in Section 10 waters.

NWP 35 – Maintenance Dredging of Existing Basins

This modification will require that dredged material be deposited in an area with no waters of the United States, unless authorized by the Corps by a separate permit.

NWP 40 – Agricultural Activities

Clarifies that any losses of stream bed are applied to the 1/2-acre limit.

NWP 42 – Recreational Facilities

Clarifies that any losses of stream bed are applied to the 1/2-acre limit.

NWP 43 – Stormwater Management Facilities

Clarifies that stormwater or wastewater management facilities that are created in dry land (33 CFR 328.3(b)(6)) are not waters of the United States, and maintenance does not require a section 404 permit. Any losses of stream bed are applied to the 1/2-acre limit.

NWP 48 – Existing Commercial Shellfish Aquaculture Activities

Specifies that project areas include lands where other legally binding agreements establish enforceable property interests. Defines “new commercial shellfish aquaculture operation” as operating in an area where such activities have not occurred during the past 100 years. Removes the PCN threshold for dredge harvesting, tilling, or harrowing in areas inhabited by submerged aquatic vegetation. Does not authorize activities that directly affect more than 1/2-acre of submerged aquatic vegetation beds in an area that has not been used for commercial shellfish aquaculture during the past 100 years. PCN must include all species that are planned to be cultivated during the period the NWP is in effect. PCN must specify whether suspended cultivation techniques will be used and indicate the general water depths in the project area.

New NWPs

NWP A – Removal of Low- Head Dams

Applicability: All waters of the U.S. (Section 10/404 waters).

Purpose: Authorize removal of low-head dams for river restoration and public safety. Low-head dam defined as a dam built to pass upstream flows over the entire width of the dam crest on an uncontrolled basis.

Limitations: None

NWP B – Living Shorelines

Applicability: All waters of the U.S. (Section 10/404 waters).

Purpose: Authorize construction and maintenance of living shorelines for shore erosion control. Living shorelines consist of natural and man-made materials to establish and maintain marsh fringes or other living elements to reduce erosion while retaining or enhancing ecological processes. May include stone or reef structures to protect the shoreline from low to moderate waves. Does not authorize beach nourishment or land reclamation activities.

Limitations: 30 feet from mean high water (unless waived by District Engineer (DE)); 500 feet along the bank (unless waived by DE)

REGIONAL CONDITIONS APPLICABLE TO MULTIPLE AND/OR ALL NWPS:

Conditions for Federally Listed Species and Designated Critical Habitat

If Official Species List from US Fish and Wildlife database (IPaC) identifies any federally listed endangered or threatened species, you will be required to submit a PCN for the proposed activity, unless you can clearly make a “no effect” determination. Further information about the Virginia Field Office “Project Review Process” may be found at: <http://www.fws.gov/northeast/virginiafield/endangered/projectreviews.html>.

Additional consultation may also be required with National Marine Fisheries Service for species or critical habitat under their jurisdiction. For additional information about their jurisdiction in Virginia, please see <http://www.greateratlantic.fisheries.noaa.gov/>.

Conditions Pertaining to Countersinking of Pipes and Culverts in Nontidal Waters

Following excavation of the stream bottom and the placement of a pipe/culvert, clean fill material shall be used to bring the stream bottom elevation outside of the pipe openings both upstream and downstream back to pre-construction elevations, rather than filling the excavated stream bottom with riprap. The purpose of this requirement is to insure re-establishment of a surface water channel to allow for the movement of aquatic organisms.

Condition for Projects Requiring Coordination Under Section 408

The following navigation channels require individual consultation with the Norfolk District Corps of Engineers Operations Branch regarding section 408; therefore work proposed within these waterways requires a PCN:

Lower North Landing River from Blackwater Creek to the North Carolina State Line (Atlantic Intracoastal Waterway).

Hampton Roads (Channel to Newport News, Norfolk Harbor and anchorages).

Chincoteague Channel and Inlet.

The Elizabeth River, the Eastern Branch of the Elizabeth River to the Norfolk and Western Railroad Bridge, the Southern Branch of the Elizabeth River to a point 0.8 miles upstream of the I-64 Bridge, and the Western Branch of the Elizabeth River to a point 0.34 miles upstream of the West Norfolk Bridge.

The James River from Richmond to Hopewell and including Richmond Harbor and the Richmond Deepwater Terminal.

Little River (Creek) except the Northwest Branch and Pretty Lake.

Norfolk Harbor Channel, all reaches.

The York River from the Poropotank River to the Virginia Highway 33 Bridge at West Point.

For other waterways that contain a Federal Navigation Channel with setbacks, notification is only required if the 85-foot setback cannot be met. Written authorization will be given, if appropriate, after coordination with the Norfolk District Corps of Engineers Operations Branch has been completed.

Maps showing the locations of these projects can be viewed at: http://www.nao.usace.army.mil/Portals/31/docs/regulatory/RPSPdocs/RP-17_Corps_Project_Maps.pdf

To view the 2017 Nationwide Permit Information, visit: <http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

Please contact us at (757) 963-2008 to answer any questions you may have regarding these pending regulations.

Kerr Environmental Services Corp. provides environmental consulting, water resources engineering, stream and wetland restoration, and shoreline stabilization.

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