



**US Army Corps  
of Engineers**

Omaha District

## PUBLIC NOTICE

**Issue Date:** September 4, 2001

**Expiration Date:** September 24, 2001

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**Helena Regulatory Office**

**301 South Park, Drawer 10014**

**Helena, Montana 59626-0014**

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### *INITIAL PUBLIC NOTICE*

## **NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS AND PUBLIC HEARING**

On August 9, 2001, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the Nationwide Permits (NWP).

The U.S. Army Corps of Engineers Headquarters Office will conduct a public hearing in Washington, D.C., on September 12, 2001, at the GAO Building, 7<sup>th</sup> floor auditorium. The intent of this hearing is to solicit public comments; both oral and written, on the NWP Program as a whole or on individually proposed NWPs on a national level. The public record for this hearing will conclude at close of business September 22, 2001. This date is separate from the Federal Register notice closing date for the receipt of written comments. For further information on the hearing or the proposed NWPs, please contact Mr. Rich White at (202) 761-4599, or Mr. Sam Collinson, at (202) 761-4594.

NWPs are general permits issued on a nationwide basis to authorize minor activities with minimal evaluation time. Some activities authorized by NWPs require pre-construction notification to the District Engineer before commencing with the work. This notification requirement to the District Engineer is necessitated to ensure that activities authorized by these NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

This notice is the public's opportunity to comment on the proposed re-issuance of existing NWPs and conditions. Comments on the national issues relating to these NWPs should be sent to the GAO Building, Office of the Chief of Engineers, Regulatory Branch (ATTN: CECW-OR), 441 G Street, N.W., Washington, D.C. 20314-1000. Comments on the proposed new and modified NWPs are due by September 24, 2001.

In addition to the NWP general conditions, Division Engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or State. Regional conditions are an important mechanism to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division Engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., States or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. Enclosed to this public notice (Enclosure 1) are the proposed regional conditions currently under consideration by the Omaha District, Helena Regulatory Office for the State of Montana. The Helena Regulatory Office is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that impacts authorized by the proposed NWPs are minimal. In response to the comments received on regional conditions, an additional public notice announcing any additional proposed regional

conditions will be published. When the Division Engineer approves regional conditions, those regional conditions become effective when the final NWP public notice is announced. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the State of Montana. Comments on regional issues pertinent to the proposed NWPs and regional conditions should be sent to:

Allan Steinle  
US Army Corps of Engineers  
Helena Regulatory Office  
301 South Park Avenue, Drawer 10014  
Helena, Montana 59626-0014

Comments are due by September 24, 2001. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices.

For those NWPs that result in a discharge into waters of the United States, individual Tribal or State Section 401 Water Quality Certification or waiver is required. The Corps believes, in general, that these NWPs comply with State and Tribal Water Quality Certification standards. However, Corps Districts are working individually with the appropriate State or Tribal agencies to identify and resolve any issues before finalizing these NWPs.

The Montana Regulatory Office is issuing this notice in coordination with the Montana Department of Environmental Quality. Comments with regard to the State's Water Quality Certification process under Section 401 of the Clean Water Act should be directed to:

Jeff Ryan  
Montana Department of Environmental Quality  
PO Box 200901  
Helena, Montana 59620-0901

Comments relevant to Section 401 Certification are also due by September 24, 2001.

Provisional determinations, including environmental documents, have been prepared indicating that these NWPs comply with the requirements for issuance under general permit authority. These documents, as well as the proposed NWPs and public hearing information, are available for viewing at the Internet addresses listed below.

The Corps will prepare final decision documents when the NWPs are issued or modified. These documents will be available as indicated in the preceding paragraph. Furthermore, the NWP decision documents will be supplemented by Division Engineers to address their decision concerning regional conditions of the NWPs

Enclosed is an index of the proposed NWPs and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWPs through the Corps Home Page or GPO Federal Register address listed below.

Internet addresses:

<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/> (National Regulatory Office)  
<http://www.access.gpo.gov/> (Federal Register through the Government Printing Office (GPO))  
<http://www.nwo.usace.army.mil/html/od-rmt/frame.html/> (Montana Regulatory Office)

## *Index of Nationwide Permits, Conditions, Further Information, and Definitions*

### *Proposed 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. Outsell Structures and Maintenance
8. Oil and Gas Structures
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. Oil Spill Cleanup
21. Surface Coal Mining Activities\*
22. Removal of Vessels
23. Approved Categorical Exclusions
24. State Administered Section 404 Programs
25. Structural Discharges
26. *RESERVED*
27. Stream and Wetland Restoration Activities\*
28. Modifications of Existing Marinas
29. Single-family Housing
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. Residential, Commercial, and Institutional Developments\*
40. Agricultural Activities\*
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities\*
43. Stormwater Management Facilities\*
44. Mining Activities

***Nationwide Permit General Conditions***

1. Navigation
2. Proper Maintenance
3. Soil Erosion and Sediment Controls
4. Aquatic Life Movements\*
5. Equipment
6. Regional and Case-by-Case Conditions
7. Wild and Scenic Rivers
8. Tribal Rights
9. Water Quality\*
10. Coastal Zone Management
11. Endangered Species
12. Historic Properties
13. Notification\*
14. Compliance Certification
15. Use of Multiple Nationwide Permits.
16. Water Supply Intakes
17. Shellfish Beds
18. Suitable Material
19. Mitigation\*
20. Spawning Areas
21. Management of Water Flows\*
22. Adverse Effects from Impoundments
23. Waterfowl Breeding Areas
24. Removal of Temporary Fills
25. Designated Critical Resource Waters
26. Fills Within 100-year Floodplains\*
27. Construction Period \*

***Definitions***

Best Management Practices  
Compensatory Mitigation  
Creation  
Enhancement  
Ephemeral Stream  
Farm Tract  
Flood Fringe  
Floodway  
Independent Utility  
Intermittent Stream  
Loss of Waters of the United States  
Non-tidal Wetland  
Open Water  
Perennial Stream  
Permanent Above-grade Fill  
Preservation  
Restoration  
Riffle and Pool Complex  
Single and Complete Project  
Stormwater Management  
Stormwater Management Facilities

Stream Bed  
Stream Channelization  
Tidal Wetland  
Vegetated Buffer  
Vegetated Shallows  
Waterbody

**\* Proposed change, simplification or modification to NWP or General Condition**

**NATIONWIDE PERMITS  
REGIONAL CONDITIONS  
STATE OF MONTANA  
OMAHA DISTRICT – CORPS OF ENGINEERS**

**Fens**

For nationwide permits 3, 5, 20, and 32 permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any activity impacting fens in Montana.

Nationwide permits 1, 2, 4, 6-19, 21-25, 28-30, 33-36, 39-44 are revoked for use in fens in Montana.

Wetlands commonly known as fens are defined as wetlands that are characterized by waterlogged spongy ground and contain (in all or in part) soils classified as histosols or mineral soils with a histic epipedon. To determine whether this provision applies, the entire wetland must be examined for the presence of histosols or histic epipedons.

**Springs**

For all nationwide permits, permittees must notify the Corps in accordance with General Condition No. 13 (Notification) for activities located within 100 feet of the water source in natural spring areas in Montana. For purposes of this condition, a spring source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season, and there is a visible ordinary high water mark or wetland characteristics present. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source.

**Pool and Riffle Complexes**

For all nationwide permits, permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any activity involving the discharge of dredge or fill material into pool and riffle complexes. The notification must contain identification of the location of pool and riffle complexes in the project area. Projects involving the discharge of dredged or fill material into a pool and riffle complex will not be authorized by a nationwide permit unless the permittee demonstrates that avoidance is impracticable. Compensatory mitigation for unavoidable adverse impacts may be required.

**Yellowstone River**

In addition to those nationwide permit activities that require notification to the Corps, all activities proposed to be undertaken on the Yellowstone River in accordance with NWPs 3, 12, 13, 14, 16, 18, 19, 39, 40, and 42 require prior notification to the Corps in accordance with General Condition No. 13 (Notification).

**Bitterroot River**

In addition to those nationwide permit activities that require notification to the Corps, all activities proposed to be undertaken on the Bitterroot River in accordance with NWPs 3, 12, 13, 14, 16, 18, 19, 39, 40, and 42 require prior notification to the Corps in accordance with General Condition No. 13 (Notification).

**Nationwide Permit 12 - Utility Line Activities**

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any utility line activity that involves the discharge of dredged or fill material into a flowing stream (including intermittent streams) in Montana.

Utility line projects through waters of the US including wetlands must be designed and constructed to prevent the trench and bedding material from acting as a subsurface drain. Cutoff collars will be installed if necessary to prevent wetland drainage.

### **Nationwide Permit 13 - Bank Stabilization**

Bank stabilization structures that project into the stream, such as barbs or vanes, must meet the following criteria for consideration under this nationwide permit:

- The end of the structure at the bank will be no higher than the ordinary high water mark.
- The structure must angle upstream.
- The top of the structure must decrease in elevation from the bank to the end of the structure away from the bank.
- The structure must be keyed into the bed and the bank.

Structures that project from the bank that are perpendicular to the normal flow direction, or angle downstream, or extend above the ordinary high water mark, or are designed horizontally level, will not be considered under Nationwide Permit 13. Projects that meet the bulleted criteria above may be reviewed under individual permit procedures if the Corps determines the project may have adverse impacts to adjacent properties, river functions, or essential habitat. Structures that occupy more than 10-25% of the existing bankfull channel width are more likely to be evaluated under individual permit procedures. Any permitted structure that fails must be repaired or all material removed from below ordinary high water.

### **Nationwide Permit 23 - Approved Categorical Exclusions**

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any activities involving the discharge of dredged or fill material into waters of the United States.

### **Nationwide Permit 27 - Stream and Wetland Restoration Activities**

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any wetland or riparian restoration or creation activities that involve the discharge of dredged or fill material into waters of the United States.

### **Nationwide Permit 39 - Residential, Commercial, and Institutional Developments**

Permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any work that involves the discharge of dredged or fill material in waters of the US including wetlands.

### **Placement and Removal of Temporary Fills**

General Condition No. 24 is amended by adding the following: When temporary fills are placed in waters of the US including wetlands, a horizontal marker (e.g., fabric, certified weed-free straw, etc.) must be used to delineate the existing ground elevation of wetlands that will be temporarily filled during construction to facilitate removal to original grade and contour and to aid in restoration of impacted vegetation.

### **Channel Straightening and Relocation Activities**

For all nationwide permits, permittees must notify the Corps in accordance with General Condition No. 13 (Notification) prior to initiating any activity that would result in straightening, relocating and/or shortening an existing perennial stream channel. For all such activities, the following conditions must be met:

- (1) The total channel length reduction is less than 100 feet; and

(2) The project is necessary to prevent significant damage to private or public structures (roads, buildings, bridges, etc.); or

(3) The project involves relocation of a previously straightened stream channel and net length is not reduced.

In addition to the above, the following conditions must be adhered to:

(a) Buffer strips will be set aside along the entire length of the new channel with a minimum width of 30 feet measured from the top of each side slope. The buffer strip shall be planted to appropriate permanent, perennial, native vegetation and will remain in this condition. Trees/shrubs removed by the construction will be replaced at a minimum ratio of 2 (replanted): 1 (removed). Higher ratios may be required in higher valued resource areas. The trees/shrubs will be replanted within the buffer strip, extending up and downstream of the project area, if necessary.

(b) The side slopes of the channel will be no steeper than three-foot horizontal to one-foot vertical [3(h): 1(v)]. If steeper slopes are proposed, a registered professional engineer must certify their stability. In no case will unarmored slopes steeper than 2(h): 1(v) be acceptable.

(c) Wetland losses greater than 0.1 acre will be mitigated. Replacement of riffle/pool complexes may be required if it is determined that their loss results in more than minimal impact.