

INITIAL PUBLIC NOTICE

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On February 16, 2011, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue 48 of its existing nationwide permits (NWP) and issue two new NWP.

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWP require notification to the district engineer before commencing the work, to ensure that the activities authorized by those NWP have minimal individual and cumulative adverse impacts on the aquatic environment.

National Issues Concerning the Proposed NWP: The Federal Register notice is the public's opportunity to comment on the proposed NWP, general conditions, and definitions. Comments on national issues relating to these NWP should be submitted to docket number COE-2010-0035 at www.regulations.gov, or by email to NWP2012@usace.army.mil or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the February 16, 2011 Federal Register notice. Comments on the proposed NWP are due by April 18, 2011.

Regional Issues Concerning the Proposed NWP, Including Regional Conditioning: Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWP are minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWP in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWP may be more than minimal. An enclosure for this public notice lists the proposed regional conditions currently under consideration by the Omaha District in the State of Nebraska. The Nebraska 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 NWP are minimal. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the State of Nebraska. Comments on regional issues relating to the proposed NWP and regional conditions are to be sent to **Kearney Regulatory Field Office, 2214 2nd Avenue, Kearney, NE 68847-5315, (308) 234-1403**. Comments relating to regional conditions are due by **April 3, 2011**. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices.

After the final NWP are issued, the final regional conditions will be issued after they are approved by the Division Commander. After the final NWP are issued, States and Tribes will make their Clean Water Act Section 401 (401) water quality certification and Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must

be made within 90 days of the Federal Register notice announcing the issuance of the NWP's. The final NWP's will go into effect on or before March 19, 2012.

Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWP's with the requirements for issuance under general permit authority. These documents, as well as the proposed NWP's, are available for viewing at the Omaha District, 1616 Capitol Avenue, Omaha, Nebraska or on the Internet at www.regulations.gov, docket number COE-2010-005. Final decision documents will be prepared for those NWP's that are issued. In addition, the national NWP decision documents will be supplemented by division engineers to address their decisions concerning regional conditions for the NWP's.

Enclosed is an index of the proposed NWP's and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP's through the Corps Home Page at <http://www.usace.army.mil/CECW/Pages/nmpi.aspx>, www.regulations.gov, docket number COE-2010-0035, or the Federal Register address listed below.

Index of Proposed Nationwide Permits, Conditions, 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. Existing Commercial Shellfish Aquaculture Activities
- 49. Coal Remining Activities
- 50. Underground Coal Mining Activities
- A. Land-Based Renewable Energy Generation Facilities
- B. 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. Discovery of Previously Unknown Remains and Artifacts
- 15. Proper Maintenance
- 16. Single and Complete Project
- 17. Wild and Scenic Rivers
- 18. Tribal Rights
- 19. Endangered Species
- 20. Historic Properties
- 21. Designated Critical Resource Waters
- 22. Mitigation
- 23. Safety of Impoundment Structures
- 24. Water Quality
- 25. Coastal Zone Management
- 26. Regional and Case-by-Case Conditions
- 27. Use of Multiple Nationwide Permits
- 28. Transfer of Nationwide Permit Verifications
- 29. Compliance Certification
- 30. Pre-Construction Notification

Definitions

- Best management practices (BMPs)
- Compensatory mitigation

Currently serviceable
Discharge
Enhancement
Ephemeral stream
Establishment (creation)
High Tide Line
Historic property
Independent utility
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

**2012 NATIONWIDE PERMIT
REGIONAL CONDITIONS
OMAHA DISTRICT - U.S. ARMY CORPS OF ENGINEERS
STATE OF NEBRASKA**

Regional Conditions #1 through #13 apply to ALL nationwide permits.

1. Rainwater Basin Wetlands

For all Nationwide Permits, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition #30 prior to initiating any regulated activity in any traditional Rainwater Basin wetland found in the 17-county Rainwater Basin area of south central Nebraska. The following link provides a map showing the general location of the Rainwater Basin geographic area: <http://www.fws.gov/rainwater/> .

2. Eastern Saline Wetlands, Salt Creek and its tributaries, including Rock Creek and its tributaries, in Saunders and Lancaster Counties

a. For all Nationwide Permits, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition #30 prior to initiating any regulated activity in any Eastern Saline wetland, Salt Creek and its tributaries, including Rock Creek and its tributaries, found in Saunders or Lancaster Counties. The map located at the end of this document shows the Salt Creek Tiger Beetle recovery areas and projects in these areas will receive additional scrutiny.

b. All mitigation involving Eastern Saline wetlands shall be pursuant to the Eastern Saline Mitigation Guidelines. The Guidelines can be found at:
<http://www.nwo.usace.army.mil/html/od-rne/mitbanking.html> .

3. Wetlands Classified as Peatlands

For all Nationwide Permits, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition #30 prior to initiating any regulated activity in any fen wetland found in Nebraska.

“Peatlands” are saturated and inundated wetlands where conditions inhibit organic matter decomposition and allow for the accumulation of peat. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Peatlands can be primarily classified into ombrotrophic bogs and minerotrophic fens; the latter subdivided into poor, moderate-rich, and extreme-rich fens, each with distinctive indicator species, community physiognomy, acidity, alkalinity, and base cation content.

4. Springs

For all Nationwide Permits, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition #30 prior to initiating any regulated activity located within 100 feet of the water source in natural spring areas.

For the purpose of this condition, a spring water source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source of waters. Springs do not include drain tile outlets.

5. Wild and Scenic Rivers, National River Inventory Rivers

For all Nationwide Permits, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition #30 prior to initiating any regulated activity located on the Niobrara National Scenic River, the Missouri National Recreational River or any National River Inventory river.

The following link provides a map showing the location of the Niobrara National Scenic River: <http://www.nps.gov/carto/PDF/NIOBmap1.pdf>

The following link provides a map showing the location of the Missouri National Recreational River: <http://www.nps.gov/mnrr/planyourvisit/maps.htm>

The following link provides a map showing the location of the Nebraska rivers listed on the National River Inventory list: <http://www.nps.gov/ncrc/programs/rtca/nri/states/ne.html>

6. North Platte River, South Platte River, Platte River, Loup River, Elkhorn River, Republican River and all jurisdictional Class A State Resource Waters.

For all Nationwide Permits, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition #30 prior to initiating any regulated activity located on the above named rivers and waters. A list of Class A State Resource Waters can be found at: [http://www.deq.state.ne.us/RuleAndR.nsf/23e5e39594c064ee852564ae004fa010/9f07eae313ae56d68625688005bc61e/\\$FILE/Wqs05.pdf](http://www.deq.state.ne.us/RuleAndR.nsf/23e5e39594c064ee852564ae004fa010/9f07eae313ae56d68625688005bc61e/$FILE/Wqs05.pdf)

7. Topeka Shiner habitat

For all Nationwide permits, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition #30 prior to initiating any regulated activity located on Taylor Creek and its associated tributaries in Madison County, Big and Brush Creeks and their associated tributaries in Cherry County and the segment of Union Creek and its associated tributaries in Madison and Stanton Counties located in an area that is bounded by Highway 121 to the west, Highway 57 to the east, the Platte County line to the south and 833 Road (main east-west road between Enola and Stanton, Nebraska) to the north.

8. Missouri River

For all Nationwide Permits, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition #30 prior to initiating any regulated activity on the Missouri River.

9. Revegetation of Disturbed Areas

a. All areas adjacent (contiguous, bordering, neighboring) to jurisdictional waters disturbed by construction shall be revegetated with appropriate perennial, native grasses and forbs and maintained in this condition. *Phalaris arundinacea* (Reed Canary Grass), *Lythrum salicaria* (Purple Loosestrife), *Bromus inermis* (Smooth Brome), *Phragmites, sp.* (Common Reed, River Reed) and *Tamarix, sp.* (Salt Cedar), are *NOT* appropriate choices of vegetation. A cover crop may be planted to aid in the establishment of native vegetation. The disturbed areas shall be reseeded concurrent with the project or immediately upon completion. Revegetation shall be acceptable when ground cover of desirable species reaches 75%. If this seeding cannot be accomplished by September 15 the year of project completion, then an erosion blanket shall be placed on the disturbed areas. The erosion blanket shall remain in place until ground cover of desirable species reaches 75%. If the seeding can be accomplished by September 15, all seeded areas shall be properly mulched to prevent additional erosion.

b. When the vegetation has become established, all temporary erosion control materials shall be removed from the project site. Biodegradable or photodegradable materials need not be removed.

10. Temporary Structures/Work/Fill

a. The use of dredged material in the construction of temporary structures or used for temporary work or used as temporary fill shall not be allowed. The term “dredged material” means material that is excavated or dredged from waters of the U.S. All temporary fill material shall be obtained from an upland source.

b. Plans for the temporary structure/work/fill shall be submitted to and approved by the Nebraska Regulatory Office prior to the commencement of construction.

c. The Nebraska Regulatory Office shall be notified with documentation (i.e. photos) when the site has been restored to its pre-project condition.

11. Stream Channelization Projects

Stream channelization is defined as “The manipulation of a stream’s course, condition, capacity or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.”

a. For all Nationwide Permits that allow channelization activities, the following conditions shall apply:

- (1) The net loss of stream channel length shall not exceed 100 linear feet; and
- (2) No more than a total of 300 feet of channel shall be impacted.

12. Suitable Material

Permittees are reminded of General Condition #6 which prohibits the use of unsuitable material.

13. Borrow Sites/Borrow Material

The permittee is responsible for ensuring that the Corps is notified of the location of any borrow site that will be used in conjunction with the construction of the authorized activity so that the Corps may evaluate the site for potential impacts to aquatic resources, historic properties, and endangered species. For projects where there is another lead Federal agency, the permittee shall provide the Corps documentation indicating that the lead Federal agency has complied with the National Historic Preservation Act and Endangered Species Act for the borrow site. The permittee shall not initiate work at the borrow site in conjunction with the authorized activity until approval is received from the Corps.

Nationwide Permit #13

a. All permittees shall submit a pre-construction notification to the Nebraska Regulatory Office in accordance with General Condition #30 prior to commencing any regulated activity under Nationwide Permit #13.

Nationwide Permit #16

a. All permittees shall submit a pre-construction notification to the Nebraska Regulatory Office in accordance with General Condition #30 prior to commencing any regulated activity under Nationwide Permit #16.

Nationwide Permit #27

a. All permittees shall submit a pre-construction notification to the Nebraska Regulatory Office in accordance with General Condition #30 prior to commencing any regulated activity under Nationwide Permit #27.

b. A functional assessment will be required for all proposed projects. The functional assessment method shall be provided to the Nebraska Regulatory Office for approval prior to use.

