

## Nationwide Permit for Utility Line Activities (NWP 12)

Activities required for the construction, maintenance, and repair of utility lines and associated facilities in waters of the United States as follows:

- (i) Utility lines: The construction, maintenance, or repair of utility lines, including outfall and intake structures and the associated excavation, backfill, or bedding for the utility lines, in all waters of the U.S., provided there is no change in preconstruction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication (see Note 1 below). Material resulting from trench excavation may be temporarily sidecast (up to 3 months) into waters of the U.S., provided that the material is not placed in such a manner that it is dispersed by currents or other forces. The District Engineer (DE) may extend the period of temporary sidecasting not to exceed a total of 180 days, where appropriate. In wetlands, the top 6 inches to 12 inches of the trench should normally be backfilled with topsoil from the trench. Furthermore, the trench cannot be constructed in such a manner as to drain waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a french drain effect). For example, utility line trenches can be backfilled with clay blocks to ensure that the trench does not drain the waters of the U.S. through which the utility line is installed. Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.
- (ii) Utility line substations: The construction, maintenance, or expansion of a substation facility associated with a power line or utility line in non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, provided the activity does not result in the loss of greater than 1/2 acre of non-tidal waters of the U.S.
- (iii) Foundations for overhead utility line towers, poles, and anchors: The construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the U.S., provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.
- (iv) Access roads: The construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the U.S., excluding non-tidal wetlands adjacent to tidal waters, provided the discharges do not cause the loss of greater than 1/2 acre of non-tidal waters of the U.S. Access roads shall be the minimum width necessary (see Note 2 below). Access roads must be constructed so that the length of the road minimizes the adverse effects on waters of the U.S. and as near as possible to preconstruction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above preconstruction contours and elevations in waters of the U.S. must be properly bridged or culverted to maintain surface flows.

The term "utility line" does not include activities which drain a water of the U.S., such as drainage tile, or french drains; however, it does apply to pipes conveying drainage from another area. For the purposes of this Nationwide permit (NWP), the loss of waters of the U.S. includes the filled area plus waters of the U.S. that are adversely affected by flooding, excavation, or drainage as a result of the project. Activities authorized by paragraphs a through d may not exceed a total of 1/2-acre loss of waters of the U.S. Waters of the U.S. temporarily affected by filling, flooding, excavation, or drainage, where the project area is restored to preconstruction contours and elevation, is not included in the calculation of permanent loss of waters of the U.S. This includes temporary construction mats (e.g., timber, steel, geotextile) used during construction and removed upon completion of the work. Where certain functions and values of waters of the U.S. are permanently adversely affected, such as the conversion of a forested wetland to a herbaceous wetland in the permanently maintained utility line right-of-way, mitigation will be required to reduce the adverse effects of the project to the minimal level.

Mechanized land clearing necessary for the construction, maintenance, or repair of utility lines and the construction, maintenance and expansion of utility line substations, foundations for overhead utility lines, and access roads is authorized, provided the cleared area is kept to the minimum necessary and preconstruction contours are maintained as near as possible. The area of waters of the U.S. that is filled, excavated, or flooded must be limited to the minimum necessary to construct the utility line, substations, foundations, and access roads. Excess material must be removed to upland areas immediately upon completion of construction. This NWP may authorize utility lines in or affecting navigable waters of the U.S. even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322).

Notification: The permittee must notify the DE in accordance with General Condition 13, if any of the following criteria are met:

- a. Mechanized land clearing in a forested wetland for the utility line right-of-way;
- b. A Section 10 permit is required;
- c. The utility line in waters of the U.S., excluding overhead lines, exceeds 500 feet;
- d. The utility line is placed within a jurisdictional area (i.e., water of the U.S.), and it runs parallel to a stream bed that is within that jurisdictional area;

- e. Discharges associated with the construction of utility line substations that result in the loss of greater than 1/10 acre of waters of the U.S.; or
- f. Permanent access roads constructed above grade in waters of the U.S. for a distance of more than 500 feet.
- g. Permanent access roads constructed in waters of the U.S. with impervious materials.

Note 1: Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit; except for pipes or pipelines used to transport gaseous, liquid, liqescent, or slurry substances over navigable waters of the U.S., which are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material associated with such pipelines will require a U.S. Army Corps of Engineers (Corps) permit under Section 404.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work and the area restored to preconstruction contours, elevations, and wetland conditions. Temporary access roads for construction may be authorized by NWP 33.

Note 3: Where the proposed utility line is constructed or installed in navigable waters of the U.S. (i.e., Section 10 waters), copies of the Preconstruction Notification (PCN) and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service, for charting the utility line to protect navigation. This NWP is authorized pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act. This NWP (33 CFR 330) became effective March 18, 2002, following publication in the Federal Register.

General Conditions: The following general conditions must be followed for any authorization by this NWP to be valid:

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.
2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the U.S. during periods of low flow or no flow.
4. Aquatic Life Movements. No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low-flow conditions.
5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
6. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)). Additionally, any case specific conditions added by the Corps or by the state or tribe in its Section 401 Water Quality Certification (see enclosure).  
For all discharges proposed for authorization under any NWP into the following habitat types or specific locations, the applicant shall notify the appropriate DE in accordance with the NWP General Condition 13. The Corps will coordinate with the resource agencies as specified in NWP General Condition 13(e).
  - a. Wetlands, typically referred to as pitcher plant bogs, that are 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. Swamps dominated by bald cypress (*Taxodium distichum*) and tupelo gum (*Nyssa aquatica*) tree species.
7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service (USFWS)).
8. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
9. Water Quality.
  - a. In certain states and tribal lands, an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)).

b. For NWP 12, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams (refer to General Condition 19 for vegetated buffer requirements for the NWPs).

This condition is only applicable to projects that have potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

10. Coastal Zone Management. Not Applicable.

11. Endangered Species.

a. No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-Federal permittees shall notify the DE if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the DE that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the USFWS, the DE may add species-specific regional endangered species conditions to the NWPs.

b. Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS or their world wide web pages at <http://www.fws.gov/r9endspp/endspp.html>.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR, Part 325, Appendix C. The prospective permittee must notify the DE if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the DE that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see

33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification.

a. Timing. Where required by the terms of the NWP, the prospective permittee must notify the DE with a PCN as early as possible. The DE must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the DE will notify the prospective permittee that the notification is still incomplete and the PCN review process will not commence until all of the requested information has been received by the DE. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the DE that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified in writing by the District or Division Engineer that an individual permit is required; or

(3) Unless 45 days have passed from the DE's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

b. Contents of Notification. The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP (Sketches usually clarify the project and when provided result in a quicker decision.);

(4) For NWP 12, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

(6) For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

c. Form of Notification: The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b)(1)-(6) of General Condition 13. A letter containing the requisite information may also be used.

d. DE's Decision: In reviewing the PCN for the proposed activity, the DE will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The DE will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the DE determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the DE will notify the permittee and include any conditions the DE deems necessary. The DE must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the DE will expeditiously review the proposed compensatory mitigation plan. The DE must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the DE to be minimal, the DE will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the DE determines that the adverse effects of the proposed work are more than minimal, then the DE will notify the applicant either:

(1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit;

(2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or

(3) that the project is authorized under the NWP with specific modifications or conditions.

Where the DE determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the U.S. will occur until the DE has approved a specific mitigation plan.

e. Agency Coordination: The DE will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

For activities requiring notification to the DE that result in the loss of greater than 1/2 acre of waters of the U.S., the DE will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate Federal or state offices (USFWS, state natural resource or water quality agency, Environmental Protection Agency, and State Historic Preservation Officer). These agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the DE notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the DE will wait an additional 15 calendar days before making a decision on the notification. The DE will fully consider agency comments received within the specified timeframe, but will provide no response to the

resource agency. The DE will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

f. **Wetland Delineations:** Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. **Compliance Certification.** Every permittee who has received NWP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;

b. A statement that any required mitigation was completed in accordance with the permit conditions; and

c. The signature of the permittee certifying the completion of the work and mitigation.

15. **Use of Multiple NWPs.** The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the U.S. authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the U.S. for the total project cannot exceed 1/3 acre).

16. **Water Supply Intakes.** No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. **Shellfish Beds.** No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. **Suitable Material.** No activity, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the CWA).

19. **Mitigation.** The DE will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

a. The project must be designed and constructed to avoid and minimize adverse effects to waters of the U.S. to the maximum extent practicable at the project site (i.e., on site).

b. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

c. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the DE determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the DE will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

d. Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example, 1/4 acre of wetlands cannot be created to change a 3/4-acre loss of wetlands to a 1/2-acre loss associated with NWP 39 verification. However, 1/2 acre of created wetlands can be used to reduce the impacts of a 1/2-acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.

e. To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

f. Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or

aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the DEs may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the DE may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

g. Compensatory mitigation proposals submitted with the "notification" may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the U.S.

h. Permittees may propose the use of mitigation banks, in-lieu fee arrangements, or separate activity-specific compensatory mitigation. In all cases that require compensatory mitigation, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

20. Spawning Areas. Activities, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the U.S. or discharges of dredged or fill material.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the U.S. or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include National Wild and Scenic Rivers, critical habitat for Federally-listed threatened and endangered species, state natural heritage sites, and outstanding National resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the DE after notice and opportunity for public comment. The DE may also designate additional critical resource waters after notice and opportunity for comment.

Except as noted below, discharges of dredged or fill material into waters of the U.S. are not authorized by NWP 12 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the U.S. may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally-listed threatened or endangered species if the activity complies with General Condition 11 and the USFWS or the NMFS has concurred in a determination of compliance with this condition.

26. Fills Within 100-Year Floodplains. For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps. The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. Construction Period. For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12 months after such date (including any modification that affects the project). For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps. For projects that have been verified by the Corps, an extension of a Corps approved completion date maybe requested. This request must be submitted at least 1 month before the previously approved completion date.

#### Further Information

1. The DEs have authority to determine if an activity complies with the terms and conditions of an NWP.
2. The NWPs do not obviate the need to obtain other Federal, state, or local permits, approvals, or authorizations required by law.
3. The NWPs do not grant any property rights or exclusive privileges.
4. The NWPs do not authorize any injury to the property or rights of others.
5. The NWPs do not authorize interference with any existing or proposed Federal project.

For additional information concerning the NWP, please contact the Regulatory Branch, Tulsa District, U.S. Army Corps of Engineers, 1645 South 101st East Avenue, Tulsa, OK 74128-4609, or telephone 918-669-7400.



**Section 401 Clean Water Act (CWA) Water Quality Certification (WQC)  
For Nationwide Permits (NWP) Under Section 404 CWA In Oklahoma  
May 29, 2002**

The Oklahoma Department of Environmental Quality (DEQ) grants WQC pursuant to Section 401 CW A for activities authorized under NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43, and 44, at locations outside the watersheds of Outstanding Resource Waters (ORWs), subject to the following special conditions:

1. All spills of fuel or other pollutants in excess of five gallons shall be reported to the DEQ, within twenty-four (24) hours, to the pollution prevention hotline at 1-800-522-0206.
2. All fueling and servicing of vehicles and equipment shall be done above the Ordinary High Water Mark (OHWM).
3. Permittee shall provide access to the property for DEQ inspection purposes.
4. Any material and fuels used in the project shall be stored and/or stockpiled above the Ordinary High Water Mark (OHWM) and shall be removed from a likely flood zone prior to any predicted flood.
5. If a stormwater discharge permit for construction activities is required, one can be obtained from the DEQ at 405-702-8100.

Denial of Water Quality Certification: For NWPs 16 and 34, Section 401 WQC is denied within Oklahoma.

Denial of Water Quality Certification for Activities Located within the Watersheds of ORWs: For NWP 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 36, 39, 40, 41, 42, 43, and 44, Section 401 WQC is denied for all activities in the watersheds of ORWs. This WQC denial does not apply to NWPs 20, 37, and 38 which are certified by the above conditions statewide. ORWs are designated in Oklahoma's Water Quality Standards (OWQSs), Oklahoma Administrative Code Title 785, Chapter 45 Appendix A, as follows (including tributaries):

- (1) Flint Creek tributaries in Adair County,
- (2) Illinois River in Cherokee, Adair, and Delaware Counties,
- (3) Barren (Baron) Fork River in Cherokee and Adair Counties,
- (4) Mountain Fork River -Upstream of the 600 feet above mean sea level (' msl) elevation (Broken Bow Reservoir) in McCurtain and LeFlore Counties,
- (5) Big Lee Creek -Above 420 feet above mean sea level (' msl) elevation in Sequoyah County,
- (6) Little Lee Creek in Adair and Sequoyah Counties.

This WQC supercedes all previous WQCs for NWPs in the state of Oklahoma.



PERMITTEE CONSTRUCTION SCHEDULE WORKSHEET

\* MAIL TO ADDRESS ON REVERSE WITHIN 30 DAYS OF "DATE OF ISSUANCE"

PERMIT NO.:

REGULATORY PROJECT MANAGER:

PERMITTEE NAME:

DATE OF ISSUANCE:

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Please provide the following information:

Anticipated/Known Construction Start Date: \_\_\_\_\_

Anticipated Completion Date: \_\_\_\_\_

I have read and understand the obligations and requirements of this authorization.

\_\_\_\_\_  
SIGNATURE OF PERMITTEE

\_\_\_\_\_  
DATE

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(FOR AGENCY USE ONLY - DO NOT WRITE BELOW THIS LINE)

RECEIVED IN CESWT-PE-R: \_\_\_\_\_

INSPECTION NEEDED:                    Y / N

CONSTRUCTION INSPECTION SCHEDULED: \_\_\_\_\_

FINAL INSPECTION SCHEDULED: \_\_\_\_\_

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant:	File Number:	Date:
Attached is:		See Section below A,B,C, Not Applicable
APPROVED JURISDICTIONAL DETERMINATION		D
PRELIMINARY JURISDICTIONAL DETERMINATION		E

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/> or Corps regulations at 33 CFR Part 331.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved jurisdictional determination (JD) or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

### SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

### POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:  Regulatory Branch  Telephone 918-669-7400	If you only have questions regarding the appeal process you may also contact: Mr. James Gilmore Appeals Review Officer (CESWD-ETO-R) U.S. Army Corps of Engineers 1100 Commerce Street, Room 8E9 Dallas, TX 75242-0216 Telephone 214-767-2457
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**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

_____ Signature of appellant or authorized agent.	Date:	Telephone number:
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