



Public Notice

U.S. Army Corps
of Engineers
Tulsa District

Reply To:

U.S. Army Corps of Engineers
ATTN: Regulatory Office
1645 South 101st East Avenue
Tulsa, Oklahoma 74128-4609

Special
Public Notice

June 6, 2016
Public Notice Date

August 1, 2016
Expiration Date

PURPOSE

The purpose of this public notice is to inform you of the proposal to reissue the Nationwide Permits and proposed regional conditions in which you might be interested and to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest.

SECTION 10

The U.S. Army Corps of Engineers is directed by Congress through Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) to regulate all work or structures in or affecting the course, condition, or capacity of navigable waters of the United States. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404

The U.S. Army Corps of Engineers is directed by Congress through Section 404 of the Clean Water Act (33 U.S.C. 1344) to regulate the discharges of dredged and fill material into all waters of the United States. These waters include lakes, rivers, streams, mudflats, sandflats, sloughs, wet meadows, natural ponds, and wetlands adjacent to other waters. The intent of the law is to protect these waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical, and biological integrity.

NOTICE TO PUBLISHERS

This public notice has been provided as a public service and may be reprinted at your discretion. However, any cost incurred as a result of reprinting or further distribution shall not be a basis for claim against the Government.

INITIAL PUBLIC NOTICE

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On June 1, 2016, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the 50 existing Nationwide Permits (NWP) and issue 2 new NWP.

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in no more than minimal individual and cumulative adverse environmental effects. Many of the proposed NWP require notification to the District Engineer before commencing those activities, to ensure that the activities authorized by those NWP cause no more than minimal individual and cumulative adverse environmental effects.

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, identified as docket number COE-2015-0017, by any of the following methods: at www.regulations.gov, by email to NWP2017@usace.army.mil, or by mail to U.S. Army Corps of Engineers, ATTN: CECW-CO-R, 441 G Street, NW, Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the June 1, 2016, Federal Register notice. Comments on the proposed NWP are due by August 1, 2016.

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 the adverse environmental effects of activities authorized by the NWP are no more than 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 the adverse environmental effects caused by activities 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 Southwestern Division for Oklahoma (Enclosure 1) and portions of Texas (Enclosure 2). The Tulsa District is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that the adverse environmental effects of activities authorized by the proposed NWP are no more than minimal, individually and cumulatively. Unless otherwise noted, all proposed regional conditions listed on these enclosures are applicable for activities in Tulsa District. Comments on regional issues relating to the proposed NWP and proposed regional conditions should be sent to Tulsa District, ATTN: CESWT-RO, 1645 South 101st East Ave., Tulsa, Oklahoma 74128; phone: 918-669-7400; email: ceswt-ro@usace.army.mil. Comments relating to regional conditions are due by July 21, 2016. 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's are issued, the final regional conditions will be issued after they are approved by the Division Commander. Following issuance of the final NWP's, States and Tribes will make their Clean Water Act Section 401 Water Quality Certification and States will make their 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 March 19, 2017.

Draft decision documents for each of the proposed NWP's, which include environmental documentation prepared for the purposes of the National Environmental Policy Act, have been written by Corps Headquarters. The decision documents will address compliance of the NWP's with the requirements for issuance under the Corps general permit authority. These documents, as well as the proposed NWP's, are available for viewing at www.regulations.gov, docket number COE-2015-0017. Final decision documents will be prepared for the NWP's that are issued. In addition, the final 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 general conditions (Enclosure 3). 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/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>, at www.regulations.gov in docket number COE-2015-0017, or at the Federal Register at <https://www.gpo.gov/fdsys/pkg/FR-2016-06-01/pdf/2016-12083.pdf>.

DRAFT 2017 NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS
FOR THE STATE OF OKLAHOMA

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

1. 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, 49, 51, and 52, into the following habitat types or specific areas, the applicant shall notify the appropriate District Engineer in accordance with NWP General Condition 32, Pre-Construction Notification (PCN). The Corps of Engineers will coordinate with the resource agencies as specified in NWP General Condition 32(d) (PCN). 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* spp.), sundews (*Drosera* spp.), and sphagnum moss (*Sphagnum* spp.).
- b. **Bald Cypress-Tupelo Swamps:** Wetlands dominated by bald cypress (*Taxodium distichum*) and/or water tupelo (*Nyssa aquatic*).

2. **Designated Critical Resource Waters (CRWs):** CRWs are Outstanding Resource Waters (ORWs) and their watersheds, and High Quality Waters (HQWs) designated by the State of Oklahoma in Appendix A of the Water Quality Standards (OAC 785, Chapter 45). The ORWs include all waters in the supporting watersheds, HQWs do not. Both ORWs and HQWs include adjacent wetlands. The current list of CRWs is available on the Corps website: <http://www.swt.usace.army.mil/portals/41/docs/missions/regulatory/wqc/crw.pdf> (See GC 22 *Designated CRWs*).

3. **Invasive Species:** For all activities proposed for authorization under NWP in Palustrine and Lacustrine aquatic resource types, Best Management Practices (BMPs) are required to reduce the risk of transferring invasive plant and animal species to or from project sites. The following BMPs, as a minimum, will be required:

- a. **Clean:** Clean both the inside and outside of equipment and gear by removing all plants, animals, and mud and thoroughly washing the equipment using a high pressure spray nozzle. Equipment operated or stored in a water body on the Oklahoma list of zebra mussel (*Dreissena polymorpha*) infected water bodies shall be decontaminated in accordance with State of Oklahoma procedures prior to relocation.
- b. **Drain:** Drain all water from receptacles before leaving the area, including livewells, bilges, ballast, and engine cooling water on boats.

c. Dry: Allow time for your equipment to dry completely before relocating in other waters. Minimum drying time is one week. Equipment operated or stored in a water body on the Oklahoma list of zebra mussel (*Dreissena polymorpha*) infected water bodies shall be dried a minimum of 20 days prior to relocation. High temperature pressure washing (at least 140 degrees Fahrenheit) or professional cleaning may be substituted for drying time.

4. Upland Disposal: Material disposed of in uplands shall be placed in a location and manner that prevents discharge of the material and/or return water into waters or wetlands unless otherwise authorized by the Tulsa District Engineer.

5. Major Rivers: The applicant shall notify the Tulsa District Engineer, in accordance with NWP General Condition 32, for all NWP 14 verifications that encompass activities, within the permit area, crossing major rivers within Tulsa District. For the purposes of this condition, major rivers include the following: Arkansas River, Canadian River, North Canadian River, Cimarron River, Grand-Neosho River, Illinois River, Red River, Verdigris River, and Washita River.

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DRAFT 2017 NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS
FOR THE STATE OF TEXAS (LOCATED WITHIN TULSA DISTRICT)

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

1. 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, 49, 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 32, Pre-Construction Notification (PCN). The Corps of Engineers (Corps) will coordinate with the resource agencies as specified in NWP General Condition 32(d) (PCN). 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* spp.), sundews (*Drosera* spp.), and sphagnum moss (*Sphagnum* spp.).
 - b. Bald Cypress-Tupelo Swamps: Wetlands dominated by bald cypress (*Taxodium distichum*) and/or water tupelo (*Nyssa aquatic*).
2. For all activities proposed for authorization under NWP 16, the permittee will obtain an individual Section 401-water quality certification from the Texas Commission Environmental Quality for the effluent or return water from the upland dredge material placement areas to be used. The applicant shall notify the District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification). The pre-construction notification will not be considered complete until the applicant has submitted a copy of the individual Section 401-certification to the District Engineer.
3. For all activities proposed for authorization under NWP 12 that involve a discharge of fill material associated with mechanized land clearing in native scrub/shrub wetland(s), the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity.
4. For all activities proposed for authorization under NWP at sites identified as compensatory mitigation sites (either permittee-responsible, mitigation bank and/or in-lieu fee) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity.

5. For all activities proposed for authorization under NWP in Palustrine and Lacustrine aquatic resource types, best management practices (BMPs) are required to reduce the risk of transferring invasive plant and animal species to or from project sites. The following BMPs, as a minimum, will be required:

- a. Clean: Clean both the inside and outside of equipment and gear, by removing all plants, animals, and mud and thoroughly washing the equipment using a high pressure spray nozzle. Equipment operated or stored in a water body on the Texas list of zebra mussel (*Dreissena polymorpha*) infected water bodies shall be decontaminated in accordance with State of Texas law prior to relocation.
- b. Drain: Drain all water from receptacles before leaving the area, including livewells, bilges, ballast, and engine cooling water on boats.
- c. Dry: Allow time for your equipment to dry completely before relocating in other waters. Minimum drying time is one week. Equipment operated or stored in a water body on the Texas list of zebra mussel (*Dreissena polymorpha*) infected water bodies shall be dried a minimum of 20 days prior to relocation. High temperature pressure washing (in excess of 140F) or professional cleaning may be substituted for drying time.

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

6. Upland Disposal: Material disposed of in uplands shall be placed in a location and manner that prevents discharge of the material and/or return water into waters or wetlands unless otherwise authorized by the Tulsa District Engineer.

7. Major Rivers: The applicant shall notify the Tulsa District Engineer, in accordance with NWP General Condition 32, for all NWP 14 verifications that encompass activities, within the permit area, crossing major rivers within Tulsa District. For the purposes of this condition, major rivers include the following: Canadian River, Prairie Dog Fork of the Red River, and Red River.

Index of Proposed Nationwide Permits, Conditions, and Definitions

Nationwide Permits

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Further Information

Definitions

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Waterbody