

# DECEMBER 2021 NATIONWIDE PERMITS

Regulatory Branch

U.S. Army Corps of Engineers

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# NATIONWIDE PERMIT BACKGROUND

- General permits issued by Corps Headquarters to authorize activities across the country
  - Categories of activities with no more than minimal individual and cumulative adverse environmental effects
  - Reissuance process every 5 years
  - Rulemaking activity, with interagency review under EO 12866
- Authorize ~35,000 activities per year (reported) plus ~30,000 non-reporting activities
- First NWP's issued in 1977
- The nationwide permits are issued every five years
  - Out-of-cycle exceptions occurred in 1984, 1995, 2000, and 2021



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# ENABLE EFFECTIVE REGULATORY PROGRAM DELIVERY

3

95% percent of all issued/verified permits in FY2020 were General Permits

- ~61% of all issued/verified permits in FY2020 were Nationwide Permits

5% of all issued/verified permits in FY2020 were Individual Permits.

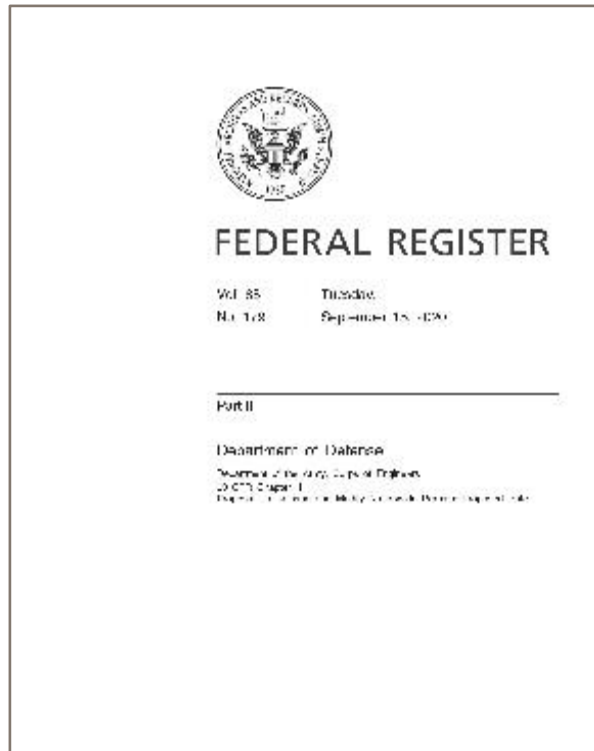
General Permits: an important environmental protection tool



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# SUMMARY OF SEPTEMBER 15, 2020, PROPOSED RULE



- Reissue all 52 existing NWP
- Issue five new NWPs
- Reissue all NWP general conditions
  - With some modifications
  - No new general conditions
- Comment period began: September 15, 2020
- Comment period ended: November 16, 2020
- 22,700 comments received



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# TWO FINAL RULES FOR THE 2021 NWP's

- January 2021 final rule
  - Reissue 12 existing NWPs
  - Issue four new NWPs
  - Finalize NWP general conditions, with some modifications
  - Finalize NWP definitions, with some modifications
  - Effective date: March 15, 2021
- December 2021 final rule
  - Reissue 40 existing NWPs
  - Issue one new NWP
  - Effective date: February 25, 2022
- Expiration date for all 57 NWPs: March 14, 2026



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# DECEMBER 2021 FINAL RULE

- Reissue 40 NWP's before the 40 2017 NWP's expire on March 18, 2022
- Summary of December 2021 final rule
  - Reissue 29 NWP's with no changes
  - Reissue 11 NWP's with minor changes
  - Issue new NWP (NWP 59) for water reclamation and reuse facilities
- Final rule includes summaries of public comments on the 41 NWP's, and responses to those comments
- The 32 NWP general conditions and 39 NWP definitions that were reissued in January 2021 apply to the 41 NWP's



# DECEMBER 2021 FINAL RULE – 41 NWP's

- NWP 1** – Aids to Navigation
- NWP 2** – Structures in Artificial Canals
- NWP 3** – Maintenance
- NWP 4** – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5** – Scientific Measurement Devices
- NWP 6** – Survey Activities
- NWP 7** – Outfall Structures and Associated Intake Structures
- NWP 8** – Oil and Gas Structures on the Outer Continental Shelf
- NWP 9** – Structures in Fleeting and Anchorage Areas
- NWP 10** – Mooring Buoys
- NWP 11** – Temporary Recreational Structures
- NWP 13** – Bank Stabilization
- NWP 14** – Linear Transportation Projects
- NWP 15** – U.S. Coast Guard Approved Bridges
- NWP 16** – Return Water From Upland Contained Disposal Areas
- NWP 17** – Hydropower Projects
- NWP 18** – Minor Discharges
- NWP 19** – Minor Dredging
- NWP 20** – Response Operations for Oil or Hazardous Substances
- NWP 22** – Removal of Vessels
- NWP 23** – Approved Categorical Exclusions
- NWP 24** – Indian Tribe or State Administered Section 404 Programs
- NWP 25** – Structural Discharges
- NWP 27** – Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- NWP 28** – Modifications of Existing Marinas
- NWP 30** – Moist Soil Management for Wildlife
- NWP 31** – Maintenance of Existing Flood Control Facilities
- NWP 32** – Completed Enforcement Actions
- NWP 33** – Temporary Construction, Access, and Dewatering
- NWP 34** – Cranberry Production Activities
- NWP 35** – Maintenance Dredging of Existing Basins
- NWP 36** – Boat Ramps
- NWP 37** – Emergency Watershed Protection and Rehabilitation
- NWP 38** – Cleanup of Hazardous and Toxic Waste
- NWP 41** – Reshaping Existing Drainage Ditches
- NWP 45** – Repair of Uplands Damaged by Discrete Events
- NWP 46** – Discharges in Ditches
- NWP 49** – Coal Remining Activities
- NWP 53** – Removal of Low-Head Dams
- NWP 54** – Living Shorelines
- NWP 59** – Water Reclamation and Reuse Facilities (new NWP)



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# CHANGES TO THE 40 EXISTING NATIONWIDE PERMITS

## NWP 13 – Bank stabilization

- Added “note” informing of availability of NWP 54 to authorize living shorelines

## NWP 14 – Linear transportation projects

- Added “driveways” as example of authorized activity

## NWP 17 – Hydropower projects

- Increased maximum generating capacity from 5,000 kW to 10,000 kW

## NWP 22 – Removal of vessels

- Clarified requirements for disposal of vessels in ocean waters





# CHANGES TO THE 40 EXISTING NATIONWIDE PERMITS

## NWP 24 – Indian Tribe or State Administered Section 404 Programs

- Added Florida to list of states that have assumed the Clean Water Act Section 404 permitting program

## NWP 27 – Aquatic Habitat Restoration, Enhancement, and Establishment Activities

- To list of examples of permitted activities, added:
  - Restoration and relocation of corals
  - Sediment releases from reservoirs to restore downstream habitats



## NWP 41 – Reshaping existing drainage ditches (to improve water quality)

- Added “irrigation ditches”

# CHANGES TO THE 40 EXISTING NATIONWIDE PERMITS

## NWP 36 – Boat ramps

- Clarified that NWP authorizes repair or replacement of boat ramps (not just construction)

## NWP 49 – Coal remining activities

- Removed reference to “integrated permit processing procedures”
- Retained requirement for permittee to receive written authorization before proceeding with authorized activity



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# CHANGES TO THE 40 EXISTING NATIONWIDE PERMITS

## NWP 53 – Removal of low-head dams

- Modified definition of “low-head dam” for increased clarity regarding which low-head dams that can be removed

## NWP 54 – Living shorelines

- Modified to state that native plants used for living shoreline must be appropriate for shore elevation



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# NEW NWP FOR WATER RECLAMATION AND REUSE FACILITIES

- Issued as NWP 59
- Authorizes discharges of dredged or fill material into waters of the U.S. to construct, expand, or maintain water reclamation and reuse facilities
- 1/2-acre limit for losses of non-tidal waters of the United States
- Pre-construction notification required for all activities



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# WATER QUALITY CERTIFICATION FOR FINAL RULE FOR 41 NATIONWIDE PERMITS

- October/November 2020 – Original certification requests from Corps districts to certifying authorities for September 2020 proposed rule
- 19 August 2021 – Joint memorandum from Army and EPA
  - For the 41 NWP's, Army directed the Corps to provide certifying authorities one year to make their certification decisions
- 21 October 2021 – U.S. District Court for the Northern District of California vacated EPA's 2020 water quality certification regulation
- After the one-year period ended, Corps districts reviewed water quality certifications issued by certifying authorities under EPA's 1971 water quality certification regulation and the Corps' Regulatory Guidance Letter 92-4
- April 6, 2022 – U.S. Supreme Court reinstates EPA's 2020 final rule
- 2021 water quality certification decisions remain in place until the Corps does rulemaking to reissue or modify the NWP's



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## 2021 NATIONWIDE PERMITS

- The 57 NWPs issued in January and December 2021 will support implementation of the Infrastructure Investment and Jobs Act by providing USACE authorization for activities associated with infrastructure
- Consistent with E.O. 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, the Army is also considering whether additional steps should be taken to ensure the Nationwide Permit Program aligns with this Administration's policies and priorities moving forward



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# REVIEW OF NATIONWIDE PERMIT 12 – OIL AND NATURAL GAS PIPELINE ACTIVITIES

- Directed by the Assistant Secretary of the Army (Civil Works)
- Federal Register notice published on March 28, 2022
  - Seek input to inform future potential decision-making related to NWP 12
  - Four virtual public meetings, two tribal meetings
  - Comment period ends on May 27, 2022
- In the Federal Register notice, the Army poses 9 questions to facilitate stakeholder input
  - The Army welcomes input on all aspects of NWP 12
- Comments can be submitted to [www.regulations.gov](https://www.regulations.gov) in docket number COE-2022-0003
- Rulemaking would be required to make changes to NWP 12

<https://www.federalregister.gov/documents/2022/03/28/2022-06458/notice-of-virtual-public-and-tribal-meetings-regarding-the-review-of-nationwide-permit-12>



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# IF YOU HAVE MORE QUESTIONS AFTER THE SEMINAR

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