

Summary of the Proposed 2012 Nationwide Permits (revised)¹

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Proposed Changes in Feb 2011 Federal Register	Other Information
NWP 1 – Aids to Navigation	10	none	PCN not required	no	navigable waters of the U.S.	none	
NWP 2 – Structures in Artificial Canals	10	none	PCN not required	no	navigable waters of the U.S.	none	
NWP 3 – Maintenance	10/404						
(a) Repair, rehabilitation, or replacement of previously authorized, currently serviceable structures or fills		authorizes only minor deviations for maintenance	PCN not required	no	all waters of the U.S.	added "any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications must be immediately adjacent to the project"	does not authorize maintenance dredging for the primary purpose of navigation or beach restoration; does not authorize new stream channelization or stream relocation projects
(b) Discharges associated with removal of accumulated sediments and debris in the vicinity of existing structures, including intake and outfall structures and associated canals		200 feet from structure; minimum necessary to restore capacity intake or outfall or associated canal	all activities	yes	all waters of the U.S.	clarifies that the activity can include the placement of new or additional riprap in order to qualify for the NWP	
(c) Temporary structures, fills, and work necessary to conduct maintenance activity			PCN not required	no	all waters of the U.S.	none	temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations
NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities	10/404	none	PCN not required	no	all waters of the U.S.	none	does not authorize impoundments or artificial reefs; does not authorize covered oyster trays or clam racks
NWP 5 – Scientific Measurement Devices	10/404	25 cubic yards for weirs and flumes	PCN not required	no	all waters of the U.S.	added meteorological stations, current gages, and biological observation devices to the list of examples; added requirement that devices and any associated structures or fills be removed upon completion of the study.	

¹ This table is intended to provide **general** information on the proposed 2012 nationwide permits published in the February 16, 2011, *Federal Register*.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Proposed Changes in Feb 2011 Federal Register	Other Information
NWP 6 – Survey Activities	10/404	25 cubic yards for temporary pads	PCN not required	no	all waters of the U.S.	added language stating the backfilling of exploratory trenches must not drain a water of the U.S.; replaced the 25 cubic yard limit for temporary work pads with 1/10 acre limit.	does not authorize fills for roads; does not authorize permanent structures
NWP 7 – Outfall Structures and Associated Intake Structures	10/404	none	all activities	yes	all waters of the U.S.	none	activity must comply with National Pollutant Discharge Elimination System Program
NWP 8 – Oil and Gas Structures on the Outer Continental Shelf	10	none	all activities	no	navigable waters of the U.S.	Changed MMS to BOEMRE	limited to facilities in areas leased by the Bureau of Ocean Energy Management, Regulation and Enforcement (formerly the Minerals Management Service) of the Department of the Interior
NWP 9 – Structures in Fleeting and Anchorage Areas	10	none	PCN not required	no	navigable waters of the U.S.	none	applies to structures, buoys, and other devices placed in anchorage or fleeting areas established by the U.S. Coast Guard
NWP 10 – Mooring Buoys	10	none	PCN not required	no	navigable waters of the U.S.	none	
NWP 11 – Temporary Recreational Structures	10	none	PCN not required	no	navigable waters of the U.S.	none	structures must be removed within 30 days after use discontinued
NWP 12 – Utility Line Activities	10/404	1/2 acre	<ul style="list-style-type: none"> a section 10 permit is required mechanized land clearing in forested wetlands for the right-of-way discharges that result in the loss of >1/10 acre 	yes, if PCN required	see text of NWP		temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations
utility lines			<ul style="list-style-type: none"> utility line exceeds 500 linear feet in waters of the U.S. utility line runs parallel to a stream bed within jurisdictional area 		all waters of the U.S.		must restore area to pre-construction contours
utility line substations					non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters		
foundations for overhead utility line towers, poles, and anchors					all waters of the U.S.		separate footings for each tower leg should be used where feasible

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Proposed Changes in Feb 2011 Federal Register	Other Information
access roads			<ul style="list-style-type: none"> above-grade permanent access roads exceeding 500 feet; permanent access roads constructed with impervious materials 		non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	minor change to clarify how the calculation of loss of waters of the U.S. for a single and complete project with multiple components is made. This now matches the language currently used in the utility line substation paragraph	access roads must be constructed to minimize adverse effects to waters of the U.S.
NWP 13 – Bank Stabilization	10/404	<ul style="list-style-type: none"> 500 feet along the bank (unless waived by DE) 1 cubic yard per running foot (unless waived by DE) 	<ul style="list-style-type: none"> >500 linear feet in length >1 cubic yard per running foot along bank below OHWM or HTL discharges into special aquatic sites 	yes, if PCN required	all waters of the U.S.	prohibits the discharge of more than an average of 1cy per linear foot unless a bioengineered technique is used; added language allowing temporary structures, fills and work necessary to construct the activity	activity cannot impair surface water flow into or out of waters of the U.S.; activities that harden the bank with material such as sheet pile, riprap, concrete, etc. must have a discharge of no more than an average of 1 cy per linear foot; temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations
NWP 14 – Linear Transportation Projects	10/404	<ul style="list-style-type: none"> 1/2 acre in non-tidal waters 1/3 acre in tidal waters 	<ul style="list-style-type: none"> >1/10 acre discharges into special aquatic sites 	yes, if PCN required	all waters of the U.S.	none	temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations; does not authorize storage buildings, parking lots, train stations, aircraft hangars, or other non-linear transportation features
NWP 15 – U.S. Coast Guard Approved Bridges	10/404	none	PCN not required	no	navigable waters of the U.S.	Removed the reference to the U.S. Coast Guard authorizing the discharge of dredged or fill material into waters of the U.S. as a part of their bridge permit; Corps would authorize the fill under our Section 10 authority	causeways and approach fills for bridges are not authorized by this NWP; those activities require separate section 404 authorization
NWP 16 – Return Water From Upland Contained Disposal Areas	404	none	PCN not required	no	all waters of the U.S.	none	water quality issues addressed through section 401 certification process
NWP 17 – Hydropower Projects	404	none	all activities	yes	all waters of the U.S., except section 10 waters	none	applies to activities licensed by the Federal Energy Regulatory Commission or activities exempt from licensing requirements
NWP 18 – Minor Discharges	10/404	<ul style="list-style-type: none"> 25 cubic yards discharged below plane of OHWM/HTL 1/10 acre of waters of the U.S. 	<ul style="list-style-type: none"> >10 cubic yards discharged below plane of OHWM/HTL discharges into special aquatic sites 	yes, if PCN required	all waters of the U.S.	none	does not authorize discharges for stream diversions

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Proposed Changes in Feb 2011 Federal Register	Other Information
NWP 19 – Minor Dredging	10/404	25 cubic yards below plane of OHWM/ MHW	PCN not required	no	navigable waters of the U.S.	none	does not authorize dredging or degradation through siltation of coral reefs, submerged aquatic vegetation beds, anadromous fish spawning areas, or wetlands
NWP 20 – Response Operations for Oil and Hazardous Substances	10/404	none	PCN not required	no	all waters of the U.S.	changed title; includes a wider set of activities, specifically containment and mitigation associated with activity; includes a wider range of approved response plans or work approved by the Federal on-scene coordinator; includes spill response training exercises.	authorizes activities subject to the National Oil and Hazardous Substances Pollution Contingency Plan.
NWP 21 – Surface Coal Mining Activities	10/404	Option 1 • Not issued. Option 2 • 1/2 acre • 300 linear feet of stream bed, but DE can waive for intermittent and ephemeral • No valley fills Option 3 • 1/2 acre • 300 linear feet of stream bed, but DE can waive for intermittent and ephemeral	Option 2 • All activities Option 3 • All activities	Options 2 and 3, yes	Options 2 and 3, all waters of the U.S.	changed title; proposing three options: option 1 - Not reissue the NWP; option 2 - Place a 1/2 acre limit for non-tidal waters, limit losses of stream beds to 300 linear feet unless waived for intermittent and ephemeral streams, and prohibit valley fills; and , option 3 - Same as option 2 but without the prohibition on valley fills	Options 2 and 3, prospective permittee must receive written authorization prior to commencing the activity
NWP 22 – Removal of Vessels	10/404	none	• if vessel listed or eligible for National Register of Historic Places • activities in special aquatic sites	yes, if PCN required	all waters of the U.S.	none	does not authorize maintenance dredging, shoal removal, or river bank snagging; disposal of removed vessel in waters of the U.S. may require separate authorizations from EPA and Corps
NWP 23 – Approved Categorical Exclusions	10/404	none	PCN not required, except for certain activities stated in RGL 05-07	yes, if PCN required	all waters of the U.S.	none	categorical exclusions must be approved by the Office of the Chief of Engineers; See RGL 05-07 for list of agencies and their activities that are eligible for NWP 23.
NWP 24 – Indian Tribe or State Administered Section 404 Program	10	none	PCN not required	no	navigable waters of the U.S.	none	does not authorize activities in navigable waters that require only a section 10 permit

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Proposed Changes in Feb 2011 Federal Register	Other Information
NWP 25 – Structural Discharges	404	none	PCN not required	no	waters of the U.S.	none	structure may require section 10 permit if located in navigable waters of the U.S.; does not authorize structures that support buildings or similar structures
NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities	10/404	none	all activities, except for those that require reporting (e.g., activities under a binding agreement between the landowner and an agency)	yes, if PCN required	all waters of the U.S.	Added the removal of small dams to the list of examples of activities that could be authorized; in the reversion provision removed “that has not been abandoned” after “prior converted cropland”; added binding stream enhancement or restoration agreements and voluntary stream enhancement or restoration action to the reporting provision; added United States Forest Service to the list of agencies in the Notification provision.	does not authorize stream channelization, relocation or conversion of tidal waters, or conversion of natural wetlands or streams (except for relocation activities); notification required for reversion activities
NWP 28 – Modifications of Existing Marinas	10	activities limited to authorized marina area	PCN not required	no	navigable waters of the U.S.	none	does not authorize dredging, additional slips, dock spaces, or expansion in waters of the U.S.
NWP 29 – Residential Developments	10/404	<ul style="list-style-type: none"> 1/2 acre 300 linear feet of stream bed, but DE can waive for intermittent and ephemeral 	all activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	modified waiver provision to clarify the waiver will only be issued when a project-specific determination is made that the activity will result in minimal adverse impacts	
NWP 30 – Moist Soil Management for Wildlife	404	none	PCN not required	no	non-tidal waters of the U.S.	none	authorizes only on-going activities; does not authorize construction of new dikes, roads, water control structures, etc.; does not authorize conversion of wetlands to uplands; does not authorize impoundments
NWP 31 – Maintenance of Existing Flood Control Facilities	10/404	maintenance baseline approved by district engineer	all activities	yes	all waters of the U.S.	added language, in those cases where a permit, is required, the NWP authorizes the removal of vegetation from levees associated with a flood control project	PCN must indicate location of dredged material disposal sites and baseline information
NWP 32 – Completed Enforcement Actions	10/404	<ul style="list-style-type: none"> 5 acres of non-tidal waters 1 acre of tidal waters also see text of NWP 	PCN not required	no	all waters of the U.S.	none	

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Proposed Changes in Feb 2011 Federal Register	Other Information
NWP 33 – Temporary Construction, Access, and Dewatering	10/404	none	all activities	yes	all waters of the U.S.	none	associated primary activity must be authorized by Corps or U.S. Coast Guard, or be exempt from permit requirements; PCN must include restoration plan
NWP 34 – Cranberry Production Activities	404	10 acres, but activity cannot result in net loss of wetland acreage	all activities	yes	section 404 waters only	none	does not authorize discharges in waters of the U.S. for attendant features, such as warehouses, processing facilities, or parking areas
NWP 35 – Maintenance Dredging of Existing Basins	10	dredging to previously authorized depths or controlling depths, whichever are less	PCN not required	no	navigable waters of the U.S.	none	dredged material must be deposited at upland site
NWP 36 – Boat Ramps	10/404	<ul style="list-style-type: none"> 50 cubic yards, unless waived by DE 20 foot width, unless waived by DE 	<ul style="list-style-type: none"> >50 cubic yards >20 feet wide 	yes, if PCN required	all waters of the U.S., except special aquatic sites	none	section 10 permit required if dredging navigable waters is necessary for access to boat ramp
NWP 37 – Emergency Watershed Protection and Rehabilitation	10/404	none	all activities	yes	all waters of the U.S.	none	in general, permittee should wait until district engineer issues verification, but may proceed immediately if there is an unacceptable hazard to life or significant loss of property or economic hardship will occur
NWP 38 – Cleanup of Hazardous and Toxic Waste	10/404	none	all activities	yes	all waters of the U.S.	none	does not authorize the establishment of new disposal sites or the expansion of existing disposal sites
NWP 39 – Commercial and Institutional Developments	10/404	<ul style="list-style-type: none"> 1/2 acre 300 linear feet of stream bed but DE can waive for intermittent and ephemeral 	all activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	modified waiver provision to clarify the waiver will only be issued when a project-specific determination is made that the activity will result in minimal adverse impacts	does not authorize construction of new golf courses, new ski areas, or oil and gas wells
NWP 40 – Agricultural Activities	404	<ul style="list-style-type: none"> 1/2 acre 300 linear feet of stream bed, but DE can waive for intermittent and ephemeral I 	all activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	Modified 300 linear foot limit so that it applies to all streams, not just drainage ditches constructed in streams; waiver for intermittent and ephemeral stream can only be issued when a project-specific determination is made that the activity will result in minimal adverse impacts	NWP can be used for agricultural activities, regardless of whether applicant is USDA participant; does not authorize aquaculture ponds
NWP 41 – Reshaping Existing Drainage Ditches	404	none	reshape greater than 500 linear feet of drainage ditch	yes, if PCN required	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	none	reshaping drainage ditch cannot increase capacity of ditch or drain additional waters of the U.S.; does not authorize relocation of drainage ditches constructed in waters of the U.S.

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Proposed Changes in Feb 2011 Federal Register	Other Information
NWP 42 – Recreational Facilities	404	<ul style="list-style-type: none"> 1/2 acre 300 linear feet of stream bed but DE can waive for intermittent and ephemeral 	all activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	modified waiver provision to clarify the waiver will only be issued when a project-specific determination is made that the activity will result in minimal adverse impacts	authorizes variety of recreational facilities, except for hotels, restaurants, racetracks, stadiums, arenas, or similar facilities (these may be authorized by NWP 39)
NWP 43 – Stormwater Management Facilities	404	<ul style="list-style-type: none"> 1/2 acre 300 linear feet of stream bed but DE can waive for intermittent and ephemeral 	all activities involving expansion or construction of SWM facilities	yes, if PCN required	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	added low impact development stormwater features to the examples of facilities authorized; modified waiver provision to clarify the waiver will only be issued when a project-specific determination is made that the activity will result in minimal adverse impacts	does not authorize construction of new SWM facilities in perennial streams; maintenance does not require PCN if limited to restoring original design capacities
NWP 44 – Mining Activities	10/404	<ul style="list-style-type: none"> 1/2 acre 300 linear feet of stream bed but DE can waive for intermittent and ephemeral 	all activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	added 300 linear foot limit for any activity causing the loss of stream bed; stream waiver for intermittent and ephemeral stream can only be issued when a project-specific determination is made that the activity will result in minimal adverse impacts	PCN must include reclamation plan if reclamation is required by other statutes
NWP 45 – Repair of Uplands Damaged by Discrete Events	10/404	Restore uplands to pre-event ordinary high water mark	all activities	yes	all waters of the U.S.	clarified beach restoration is not authorized	PCN must be submitted to district engineer within one year of date of damage; work must start or be under contract within two years of date of damage
NWP 46 – Discharges in Ditches	404	1 acre	all activities	yes	certain types of non-tidal ditches constructed in uplands and determined to be waters of the U.S.	none	NWP does not authorize discharges into ditches constructed in streams or other waters of the U.S., or in streams that have been relocated in uplands.
NWP 47 – Pipeline Safety Program Designated Time-Sensitive Inspections and Repairs						not proposed for reauthorization	

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Proposed Changes in Feb 2011 Federal Register	Other Information
NWP 48 – Existing Commercial Shellfish Aquaculture Activities	10/404	none	<ul style="list-style-type: none"> project area > 100 acres reconfiguration of the activity change in culture methods dredge harvesting, tilling, or harrowing in submerged aquatic vegetation expansion projects beyond the existing project area 	yes, if PCN required	navigable waters of the U.S.	would authorize expansion of existing commercial shellfish aquaculture operations; removed reporting requirement; information required in report now needed in PCN;	<p>molluscan species only; project area usually defined as area for which state or local agency has issued a lease or permit for aquaculture activities; does not authorize species not previously cultivated in the waterbody, aquatic nuisance species, attendant features or deposition of shell material back into waters of the U.S. as waste.</p> <p>seeking comments on modifying the NWP to authorize new commercial shellfish aquaculture activities or alternatively, issuing a new NWP; soliciting comments and suggestions regarding appropriate limits or other terms and conditions for these new activities</p>
NWP 49 – Coal Remining Activities	10/404	limited to sites that were previously mined for coal, but new mining may be conducted in adjacent areas if the newly mined area is less than 40 percent of the area being remined plus any unmined area needed for reclamation	all activities	yes	non-tidal waters of the U.S.	clarified how the 40% of newly mined area is determined; Corps will review the SMCRA agency's determination regarding the amount of previously unmined area necessary for the reclamation and make an independent determination of the amount needed; information regarding how the overall mine plan will result in a net increase in aquatic resource functions needed with the PCN	permittee must demonstrate net increase in aquatic resource functions through reclamation; activities must be authorized by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title IV and V of the Surface Mining Control and Reclamation Act of 1977 or are currently being processed as part of an integrated permit processing procedure; prospective permittee must receive written authorization prior to commencing the activity
NWP 50 – Underground Coal Mining Activities	10/404	<ul style="list-style-type: none"> 1/2 acre 300 linear feet of stream bed but DE can waive for intermittent and ephemeral 	all activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	added 1/2 acre limit; added 300 linear foot limit for any activity causing the loss of stream bed; stream waiver for intermittent and ephemeral stream can only be issued when a project-specific determination is made that the activity will result in minimal adverse impacts	activities must be authorized by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 or are currently being processed as part of an integrated permit processing procedure; if reclamation required, a copy of the plan must be submitted with PCN; does not authorize coal preparation and processing activities outside of the mine site (these may be authorized by NWP 21); prospective permittee must receive written authorization prior to commencing the activity
NWP A – Land-Based Renewable Energy Generation Facilities	10/404	<ul style="list-style-type: none"> 1/2 acre 300 linear feet of stream bed but DE can waive for intermittent and ephemeral 	all activities	yes	non-tidal waters of the U.S., except non-tidal wetlands adjacent to tidal waters	new NWP	Construction, expansion or modification for infrastructure to collect solar, wind, biomass, or geothermal energy; authorizes utility lines to transfer energy to land-based distribution facilities; attendant features also authorized

Nationwide Permit	Statutory Authority	Limits	Pre-Construction Notification (PCN) Threshold	Delineation Required?	Applicable Waters	Proposed Changes in Feb 2011 Federal Register	Other Information
NWP B – Water-Based Renewable Energy Generation Pilot Projects	10/404	<ul style="list-style-type: none"> • 1/2 acre • 300 linear feet of stream bed but DE can waive for intermittent and ephemeral • No more than 10 generation units 	all activities	Yes	all waters of the U.S. except coral reefs	new NWP	Structures and work in navigable waters of the U.S. and discharges of dredged or fill material into waters of the U.S. for the construction, expansion or modification for infrastructure to water-based wind or hydrokinetic renewable energy generation pilot projects; attendant features also authorized; structures in anchorage areas must comply with U.S. Coast Guard requirements; does not authorize structures in established danger zones, restricted areas, shipping safety fairways, shipping separation schemes or EPA or Corps designated open water dredge disposal areas; Section 408 approval by Chief of Engineers needed for activities in existing locally or federally maintained USACE projects; Copies the verification sent by Corps to NOAA for charting purposes.



U.S. Army Corps of Engineers- Nationwide Permits Expiration Nears

The current Nationwide Permits (NWP) will expire March 18, 2012 and the new final NWP are scheduled to go into effect on March 19, 2012. Projects with an NWP(s) that are already under construction or under contract prior to the expiration date will qualify for an extension prior to March 18, 2012 and can be extended as-is until March 18, 2013. However, projects with an NWP(s) that are not under construction or under contract can file for coverage under a 2012 NWP and will have to comply with any revisions to the permit and/or conditions. The Corps is proposing revisions associated with all NWP to definitions, administrative requirements, and regional and general conditions, as well as revisions to required coordination with other federal and state agencies regarding the Endangered Species Act and the Historic Preservation Act.

Minor and mostly beneficial language modifications are proposed for commonly-used NWP (3, 12, 13, 27, and 43). These changes are not expected to have significant effects to our clientele. A complete listing of the NWP and proposed changes can be found by clicking [here](#).

You can learn more about NWP by speaking with a WEG Regulatory Specialist. WEG's Regulatory Specialists are well-versed in the Corps requirements



and new NWP protocol. Based on our experience and a complete understanding of the regulatory permitting process, we are able to provide predictable and cost-effective solutions to complex environmental issues with realistic expectations and planning assistance to avoid costly delays. WEG has experience assisting both public- and private-sector clients

in obtaining NWP for various development, enhancement, or improvement projects.

Contact WEG to learn more at 757.220.6869 or respond to this email.

WEG is dedicated to keeping our clients informed on the ever-changing landscape of environmental regulations. This eNewsflash provides a brief summary of recent U.S. Army Corps of Engineers news that may be of importance to you. If you have any questions or would like any additional information, please do not hesitate to contact WEG at any of our office locations listed below or by email at info@wegnet.com.

For More Information:

Website: www.wegnet.com / Email: info@wegnet.com

Williamsburg (757) 220-6869
Richmond (804) 267-3474
Fredericksburg (540) 785-5544