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JOINT OUTREACH EVENT FLEMING TRAINING CENTER, MURFREESBORO, TN 19 APRIL 2017

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US Army Corps
of Engineers



U.S. ARMY

REGULATORY MISSION

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- Provide strong protection of the Nation's aquatic resources and navigation capacity while allowing reasonable development
- Enhance the efficiency of the regulatory program
- Ensure fair and balanced decisions



REGULATORY EFFICIENCIES

Regulatory Mission Focus Area: We efficiently and effectively provide permit decisions so the regulated public can proceed with their projects in an environmentally protective manner

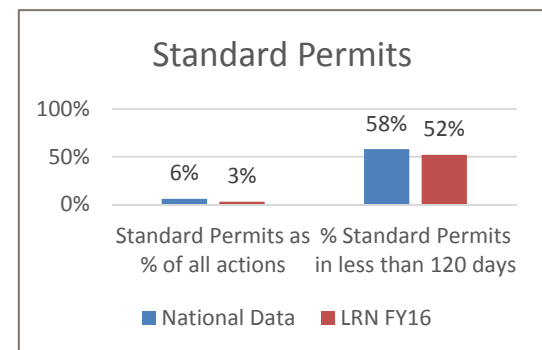
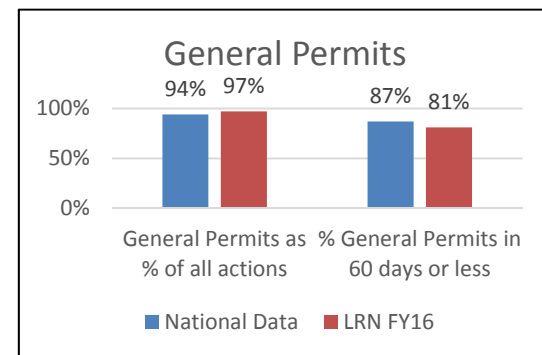
General Permits

- 94 % of all permitting actions are General Permits
 - LRN: 97%
- 87% of General Permits verified < 60 days
 - LRN: 81%
- Average General Permit Processing Time: 40 days
 - LRN: 58 days (national goal 80% in 60 days)

30,000 actions are authorized by non-reporting General Permits (no touch by Corps)

Standard Permits

- 6 % of all permitting actions were Standard Permits
 - LRN: 3%
- 58% of Standard Permits issued < than 120 days
 - LRN: 52%



WATERS OF THE U.S. JURISDICTION UNDER CLEAN WATER ACT (33 CFR 328) (1986 REGULATIONS)

1. Waters currently used, used in past, or susceptible for use in interstate or foreign commerce, including waters subject to ebb and flow of the tide
2. Interstate waters and wetlands
3. Intrastate waters where destruction or degradation could affect interstate or foreign commerce (HQ approval required)
 - Waters used for recreation or other purposes
 - Waters with fish or shellfish sold in interstate or foreign commerce
 - Waters used for industrial purposes
4. Impoundments of waters of the U.S.
5. Tributaries to waters in categories 1 – 4
6. Territorial seas (3 miles from shore)
7. Wetlands adjacent to waters of the U.S.



COURT DECISIONS

- **Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers**, involved statutory and constitutional challenges to the assertion of CWA jurisdiction over isolated, non-navigable, intrastate waters used as habitat by migratory birds.
- **Rapanos v. U.S. & Carabell v. U.S.** – Decision provided two standards for determining whether water bodies that are not TNWs including wetlands adjacent to those non-TNWs, are subject to CWA jurisdiction:
 1. If the water body is relatively permanent, or if the water body is a wetland that directly abuts a RPW
 2. If a water body, in combination with all wetlands adjacent to that water body, has a significant nexus with TNWs



WATERS OF THE UNITED STATES 328.3 (a)



CURRENT PRACTICE FOR JURISDICTIONAL DETERMINATIONS

March 2000 Regulation (Final Rule for Appeal Process): Definitions for JD, PJD, and AJD appear in regulation. Introduces concept of AJD determination (presence/absence) and AJD delineation (defines boundaries).

RGL 05-05: Guidance on Ordinary High water mark Identification

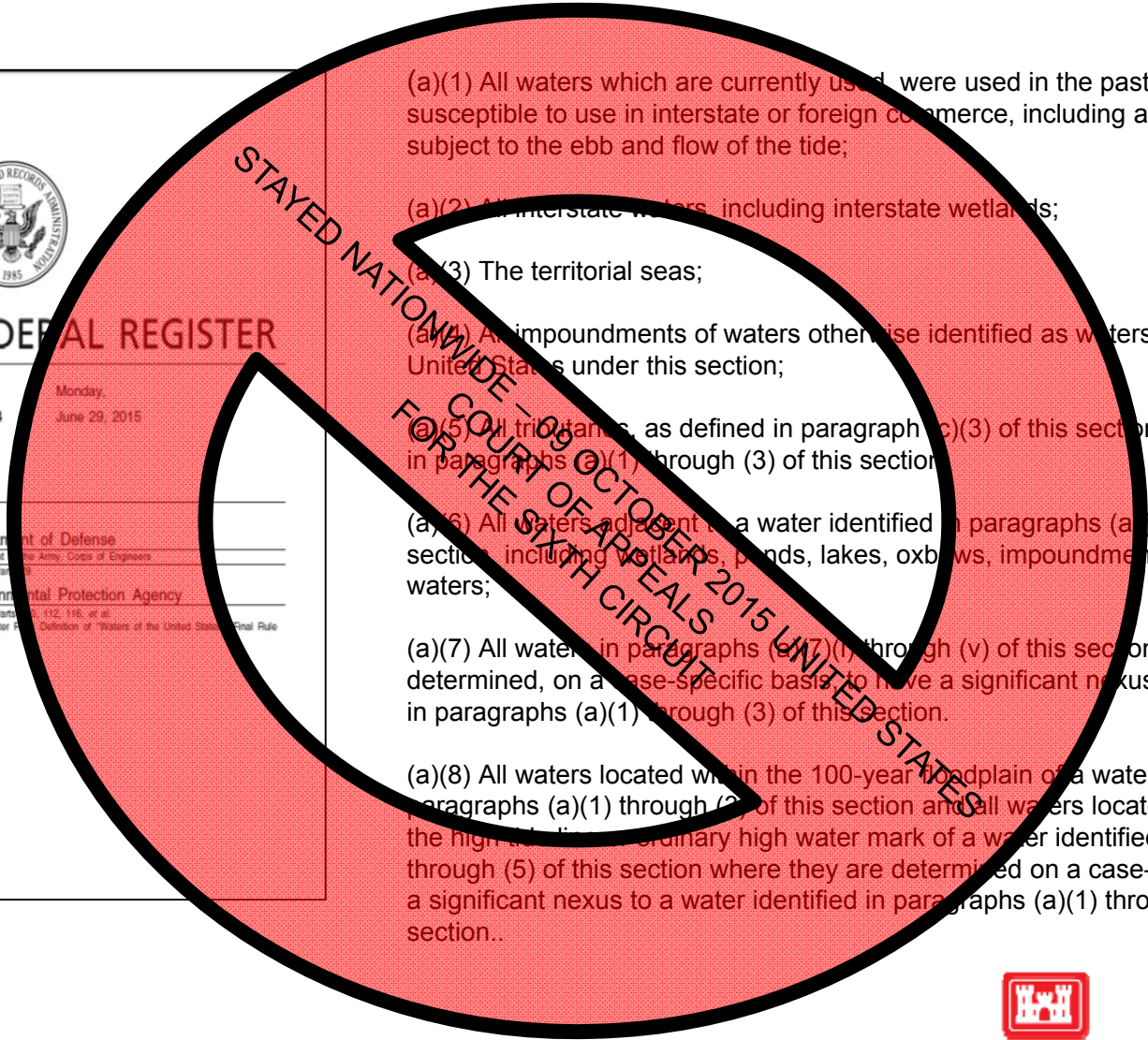
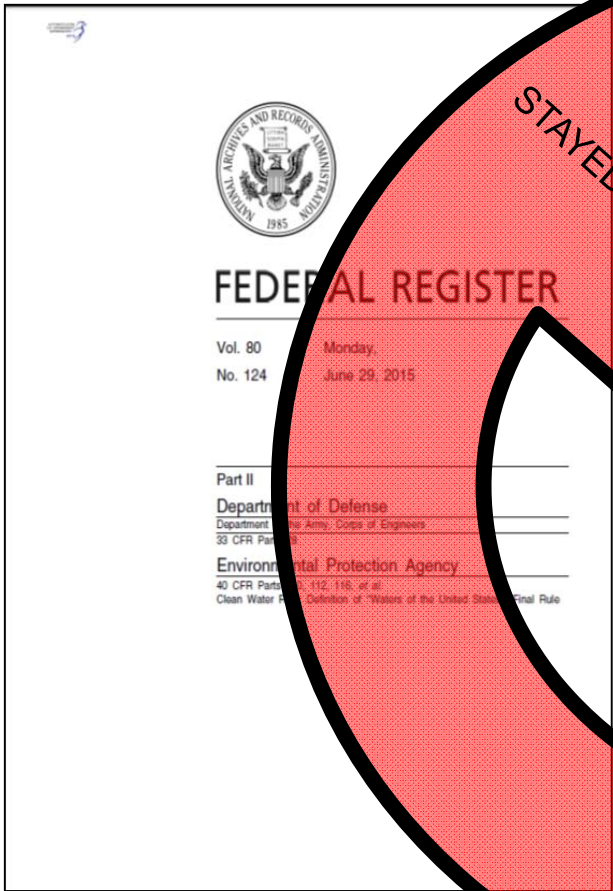
Rapanos Guidance; 2007/2008 Coordination Memos: Introduced new AJD form and further standardized the JD process (including coordination).

- Included 9 month public comment period.
- 66,047 Comments received; revised guidance (2008).
- DOJ, DOT, CEQ, OMB, and DOI reviewed 2007/2008 Guidance.

RGL 08-02: Further defined difference between PJD and AJD and introduced PJD form.



NEW CLEAN WATER RULE – EFFECTIVE 28 AUGUST 2015



- (a)(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (a)(2) All interstate waters, including interstate wetlands;
- (a)(3) The territorial seas;
- (a)(4) All impoundments of waters otherwise identified as waters of the United States under this section;
- (a)(5) All tributaries, as defined in paragraph (c)(3) of this section, of waters identified in paragraphs (a)(1) through (3) of this section;
- (a)(6) All waters adjacent to a water identified in paragraphs (a)(1) through (5) of this section, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;
- (a)(7) All waters in paragraphs (a)(1) through (v) of this section where they are determined, on a case-specific basis, to have a significant nexus to a water identified in paragraphs (a)(1) through (3) of this section.
- (a)(8) All waters located within the 100-year floodplain of a water identified in paragraphs (a)(1) through (3) of this section and all waters located within 4,000 feet of the high water line or ordinary high water mark of a water identified in paragraphs (a)(1) through (5) of this section where they are determined on a case-specific basis to have a significant nexus to a water identified in paragraphs (a)(1) through (3) of this section..



JURISDICTIONAL DETERMINATIONS – RGL 16-01 (OCT 2016)



Components of a Complete Waters of the U.S. Delineation Report

In Nashville District, wetland delineations are conducted in accordance with the 1987 Corps supplement for the project site, either the *Reg Manual: Eastern Mountains and Piedmont Region of Engineers Wetland Delineation Manual: A*. The applicable Regional Supplements for the

<http://www.usace.army.mil/Mission>

Please submit a complete Nashville District R with the delineation report.

A complete waters of the U.S. delineation

- Current property owner contact information(s) who conducted the delineation.
- The purpose of the delineation was conducted.
- Date of the site visit(s) with information.
- Recent weather conditions and conditions.
- A vicinity map showing the project section/township/range (A 7.5-mmm).
- Wetland Determination Data Forms: appropriate Regional Supplement should be prepared for each.
 - At least one paired sampling should be prepared for each.
 - If the study area does not cover the lowest topographic area conditions.
 - Use binomial names of plants.
- A site map (both on USGS Quadrant locations of all sampling plots (5 with overlays displaying site property names).
 - North arrow, title block with names.
 - Survey area boundary and a map.
 - Each separate water labeled.
 - Streams should be labeled and latitude in decimal degrees.
 - Clearly show location and including special aquatic sites, shallows, and riffle and pool ordinary high water mark (annotated and/or symbolize).
- A completed waters table (see Appendix OHWMs), and acres, wetland acreage center point for wetlands and streams, and special aquatic sites. T and names of receiving streams are

Components of a Complete Waters of the U.S. De



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Appendix 1 - REQUEST FOR CORPS JURISDICTIONAL DETERMINATION

To: U.S. Army Corps of Engineers, Nashville District, Regulatory Division

I am requesting a JD on property located at: _____ (Street Address)

City/Township/Parish: _____ County: _____ State: _____

Acreage of Parcel/Review Area for JD: _____

Section: _____ Township: _____ Range: _____

Latitude (decimal degrees): _____ Longitude (decimal degrees): _____

(For linear projects, please include the center point of the proposed alignment.)

Please attach a survey/plot map and vicinity map identifying location and review area for:
 I currently own this property.
 I plan to purchase this property.
 I am an agent/consultant acting on behalf of the requestor.
 Other (please explain): _____

Reason for request: (check as many as applicable)

I intend to construct/develop a project or perform activities on this parcel which would affect aquatic resources.

I intend to construct/develop a project or perform activities on this parcel which would affect aquatic resources under Corps authority.

I intend to construct/develop a project or perform activities on this parcel which may require a permit and the JD would be used to avoid and minimize impacts to jurisdictional aquatic resources during the permitting process.

I intend to construct/develop a project or perform activities on this parcel which requires a request is accompanied by my permit application and the JD is to be used in the permit application.

I intend to construct/develop a project or perform activities in a navigable water of the United States.

Section 10 list and/or is subject to the ebb and flow of the tide.

A Corps JD is required in order to obtain my local/state authority to construct/develop a project or perform activities on this parcel.

I intend to contest jurisdiction over a particular aquatic resource and request the Corps to determine jurisdiction.

I believe that the site may be comprised entirely of wetland.

Other: _____

Type of determination being requested:

I am requesting an approved JD

I am requesting a preliminary JD

I am requesting a "no permit required" letter as I believe my proposed activity is not regulated by the Corps.

I am unclear as to which JD I would like to request and request additional information.

By signing below, you are indicating that you have the authority, or are acting as the duly authorized agent, to and do hereby grant Corps personnel right of entry to legally access the site if needed to conduct a site inspection and to verify the information provided in this request for a JD on the subject property.

*Signature: _____ Date: _____

Typed or printed name: _____

Company name: _____

Address: _____

Address: _____

Address: _____

Daytime phone no.: _____

Email address: _____

*Authorities: Rivers and Harbors Act, Section 10, 33 USC 403; Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research, and Stewardship Act, Section 103, 33 USC 1413; Regulatory Program of the U.S. Army Corps of Engineers, Final Rule for 33 CFR, Parts 320-332.

Principal Purpose: The information that you provide will be used in evaluating your request to determine whether there are any aquatic resources within the project area subject to federal jurisdiction under the regulatory authorities referenced above.

Routine Use: This information may be shared with the Department of Justice and other federal, state, and local government agencies, and the public, and may be made available as part of a public notice as required by federal law. Your name and property location where federal jurisdiction is to be determined will be included in the approved jurisdictional determination (AJD), which will be made available to the public on the District's website and on the Headquarters USACE website.

Disclosure: Submission of requested information is voluntary; however, if information is not provided, the request for an AJD cannot be evaluated nor can an AJD be issued.

Appendix 1 - Nashville District Request for a Jurisdictional Determination Worksheet

NASHVILLE DISTRICT

US Army Corps of Engineers

Search Nashville District

HOME > MISSIONS > REGULATORY > FORMS AND PUBLICATIONS

Regulatory Resources

- Regulatory Home ...
- Forms and Publications ...
- Consultant Lists ...
- Contact Us ...
- Customer Service ...
- District Boundaries ...
- Coordination with Agencies ...
- Final Jurisdictionals ...
- General Information ...
- Mining Information ...
- Mitigation ...
- Nationwide Permits ...
- Navigable Waters List ...
- Obtain a Permit ...
- Organization ...
- Public Notices ...
- Latest News ...
- Laws and Regulations ...
- USACE Regulatory Program ...

Forms and Publications

Regulatory Guidance Letter (RGL) No. 16-01

- Appendix 1 - Request for Corps JD
- Appendix 2 - Preliminary JD Forms
- Questions and Answers for RGL 16-01
- Quick Reference Chart for RGL 16-01
- Sample Questions for RGL 16-01

Jurisdictional Determinations

- Approved Jurisdictional Determination Data Form
- Jurisdictional Determination Guidebook
- Limits of Jurisdiction Illustrations
- Preliminary Jurisdictional Determination Data Form

Request a Jurisdictional Determination

- Request a Jurisdictional Determination Form
- Components of a Complete Waters of the U.S. Delineation Report
- Required Permit Drawings

Permit Application Information

Activities within the Cumberland River Basin, use ENG FORM 4345.

- ENG 4345 Application Form for a Permit (Fillable)
- ENG 4345 Application Form Instructions

Please continue to use ENG Form 4345, dated Dec 2014 (Expires on 30 Sep 2015) until further notice. When the expiration date is extended, this form will be updated with a new expiration date.

Activities within the Tennessee River Basin, use Joint Corps of Engineers/TVA Application Form.

- Joint Corps/TVA Application Form (Fillable)
- Joint Corps/TVA Application Form

Further assistance in filling out an application can be found here: Let us help you fill out a permit application



DRY LAND APPROVED JURISDICTIONAL DETERMINATION FORM

- Dry Land Form extracts the relevant elements of the longer approved JD form in use since 2007 for aquatic areas
- No aquatic resources or potential aquatic resource on the site that would warrant the application of a wetland delineation, delineation of OHWM, significant nexus analysis, navigability determination and/or delineation of the ebb and flow of the tides.



MARCH 6, 2017 – FEDERAL REGISTER



- U.S. Environmental Protection Agency (EPA) and the Department of the Army (Army) announce intention to review and rescind or revise the Clean Water Rule.
- Through new rulemaking, the EPA and the Army seek to provide greater clarity and regulatory certainty concerning the definition of “waters of the United States,” consistent with the principles outlined in the Executive Order and the agencies' legal authority.



2017 NATIONWIDE PERMITS: THE FINAL RULE

Joint Outreach Event

Fleming Training Center, Murfreesboro, TN

19 April 2017

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TOPICS

- What are the Nationwide Permits?
- Summary of the final rule published on January 6, 2017
- What's in the 2017 Nationwide Permit final rule?
 - What changes were made?
- Conditions for the 2017 Nationwide Permits
- 2017 NWP Tools
 - NWP Guide for Tennessee
 - PCN Worksheet



NWPS - EFFICIENT AND EFFECTIVE PROGRAM

- **Streamlines the authorization process** for activities that will result in no more than minimal individual and cumulative adverse environmental effects.
- Reduces the amount of time necessary to obtain the required authorization.
 - FY 2016: 94% of national permit workload processed by General Permits (GPs).
 - 87% of GPs were verified in 60 days or less.
 - Many routine activities are authorized with no notification requirements.
- Provides incentive for avoidance and minimization, by offering a streamlined permitting process; facilitates projects, while protecting the environment.
- Allows the U.S. Army Corps of Engineers (USACE) to focus limited resources on regulated activities that have the potential for substantial adverse environmental effects and require more rigorous review.



NATIONWIDE PERMITS

- Congressional intent (Clean Water Act Section 404(e))
 - Streamlined authorization process for small activities with no more than minimal adverse environmental effects
 - Issued for no more than 5 years
- Authorize ~35,000 activities per year (reported) plus ~30,000 non-reporting activities
- First issued in 1977
 - 15 nationwide permits
 - 14 general conditions
- 2012 nationwide permits expired on March 18, 2017
 - 50 nationwide permits
 - 31 general conditions



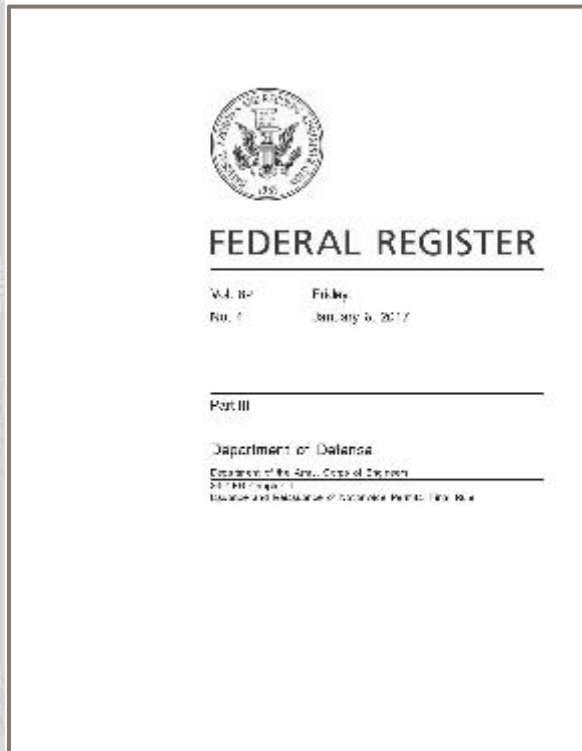
2017 NWP UPDATE

NWPs are issued by HQUSACE on a national basis every five years for activities that are similar in nature and will have no more than minimal adverse environmental effects, individually or cumulatively.

- The process for the reauthorization of the NWPs, which involves agency coordination and public comment, began in FY 2015.
- NWPs published in the Federal Register with an **effective date of 19 March 2017**.
 - TDEC issued Water Quality Certification (WQC) for certain NWPs on 03 March 2017.
 - Nashville District is working with TDEC to ensure WQCs provide a streamlined authorization process for the public.
- Nashville and Memphis Districts have developed regional conditions for Tennessee to ensure the NWPs will have no more than minimal adverse effects in their geographic area of responsibility.



SUMMARY OF JANUARY 6, 2017 FINAL RULE



- Reissued all 50 existing NWP's
- Issued two new NWP's
 - Removal of low-head dams
 - Construction and maintenance of living shorelines
- Issued one new general condition
 - Activities affecting structures or works built by the United States (federal water resources projects)
- Effective date: March 19, 2017
- Expiration date: March 18, 2022



SUMMARY OF 2017 FINAL RULE

- **Nationwide permits**
 - 26 NWP's reissued with changes
 - 24 NWP's reissued with no changes
 - 2 new NWP's issued
- **General conditions**
 - Reissued 12 general conditions with changes
 - Reissued 19 general conditions without changes
 - Issued 1 new general condition
- **Definitions**
 - Added 5 new definitions



SUMMARY OF THE 2017 NWPS

- What has stayed the same:
 - Acreage limits
 - Linear foot limits
 - Cubic yard limits
 - Most pre-construction notification (PCN) thresholds
- Vast majority of the changes are clarifications
- Little or no change to process



PRE-CONSTRUCTION NOTIFICATION REQUIREMENTS

- 19 NWPs – no pre-construction notification (PCN) required
- 14 NWPs – some activities require PCN
- 19 NWPs – all activities require PCN
- For any NWP, PCN is required for:
 - Activities that might affect ESA-listed species or designated critical habitat
 - Activities that might have the potential to cause effects to historic properties
 - Activities that also require 408 permissions
 - Activities in Wild and Scenic Rivers



PRE-CONSTRUCTION NOTIFICATIONS

- Opportunity for district to review proposed NWP activity to determine eligibility for authorization
 - Will the proposed activity result in only minimal adverse environmental effects?
 - Does proposed activity comply with all applicable general and regional conditions?
 - Is compensatory mitigation or other mitigation required to ensure no more than minimal adverse environmental effects?
 - Are any consultations required?
 - Endangered Species Act Section 7
 - National Historic Preservation Act Section 106



REQUIRED CERTIFICATIONS



- Water quality certification
 - For an NWP that authorizes a discharge into waters of the United States
 - TDEC denied WQC for NWPs, with certain exceptions



ENDANGERED SPECIES ACT COMPLIANCE

- General condition 18, endangered species
 - For non-federal permittees, PCNs are required for proposed activities that might affect listed species or designated critical habitat
 - 33 CFR 330.4(f)
- Compliance with requirements of ESA section 7(a)(2)
 - PCN requirements for the NWP's – evaluate activity
 - Activity-specific ESA section 7 consultations
 - District programmatic ESA section 7 consultations



NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE

- General condition 20, historic properties
 - For non-federal permittees, PCNs are required for proposed activities that might have the potential to cause effects to historic properties
 - 33 CFR 330.4(g)
- Compliance with requirements of NHPA section 106
 - PCN requirements for the NHPs – evaluate proposal
 - Activity-specific NHPA section 106 consultations



CHANGES IN 2017 NATIONWIDE PERMITS AND GENERAL CONDITIONS

*changes for commonly used NWP's in Tennessee



NWP 3 – MAINTENANCE

- (a) Authorizes the repair, rehabilitation, or replacement of previously authorized structures or fills
- (b) Authorizes the removal of accumulated sediments in vicinity of existing structures and associated canals
- Limits:
 - Minor changes to conform to current construction practices, materials, current construction codes, and regulatory requirements (paragraph (a))
 - Removal of accumulated sediment within 200 feet of existing structures (paragraph (b))



NWP 3 – MAINTENANCE

- Changes:
 - Clarified that NWP authorizes removal of previously authorized structures or fills
 - Removal of accumulated sediment within or in immediate vicinity of structure or fill – No PCN required (paragraph (a))
 - Removal of accumulated sediment not in immediate vicinity of structure or fill – PCN required (paragraph (b))
 - Authorize use of timber mats, if Corps authorization required
 - Removed provision in paragraph (b) authorizing riprap to protect the structure
 - Riprap can be authorized by NWP 13, with or without PCN



NWP 12 – UTILITY LINE ACTIVITIES

- Authorizes crossings of jurisdictional waters and wetlands for utility lines
- Also authorizes utility line substations, foundations for overhead utility lines, and access roads
- Limits:
 - 1/2-acre limit for each separate and distant waterbody crossing
 - 1/2-acre of non-tidal waters for utility line substations
 - 1/2-acre of non-tidal waters for access road crossings



NWP 12 – UTILITY LINE ACTIVITIES

- Changes:
 - Clarified that for utility lines, the Corps is only authorizing regulated crossings of waters of the United States
 - Authorize regulated activities associated with remediation of inadvertent returns of drilling fluids if subsurface fracture during horizontal directional drilling activities
 - District Engineers may add conditions to NWP authorization concerning remediation plans
 - Authorize use of timber mats, if Corps authorization required
 - Added reference to Corps regulations for minimum clearance for overhead electric power lines over navigable waters



NWP 12 – UTILITY LINE ACTIVITIES

Nationwide Permit Specific Regional Conditions for the State of Tennessee

12. Utility Line Activities.

- a. PCN in accordance with NWP General Condition 32 for all proposed blasting within waters of the U.S.



NASHVILLE CRAYFISH PROGRAMMATIC BIOLOGICAL OPINION

- In 2015, Regulatory and the USFWS completed formal consultation on the Nashville Crayfish for 16 Nationwide Permits (NWP) Including NWP 12.
- All instream work activities, including construction and pre-construction activities (e.g., collection and relocation of crayfish), are restricted to a 01 June through 30 September work period.
- 2 Year permitting cycle for formal consultation



- Programmatic Biological Opinion



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NWP 13 – BANK STABILIZATION

- Authorizes bank stabilization activities
- Limits:
 - 500 linear feet along bank
 - 1 cubic yard per running foot
 - No fills in special aquatic sites (e.g., wetlands)
- Above limits can be waived by district engineer
- Changes:
 - Clarified that this NWP authorizes a variety of bank stabilization activities, including bulkheads, revetments, riprap, bioengineering, vegetative stabilization, and stream barbs



NWP 13 – BANK STABILIZATION

- Changes:
 - Cubic yard limit to be measured along bank, and includes in-stream techniques (e.g., barbs)
 - Authorize maintenance of bank stabilization activities
 - Native plants appropriate for site conditions must be used for bioengineering or vegetative stabilization
 - Limited waivers for bulkheads to 1,000 linear feet
 - Authorize use of timber mats, if Corps authorization required



NWP 13 – BANK STABILIZATION

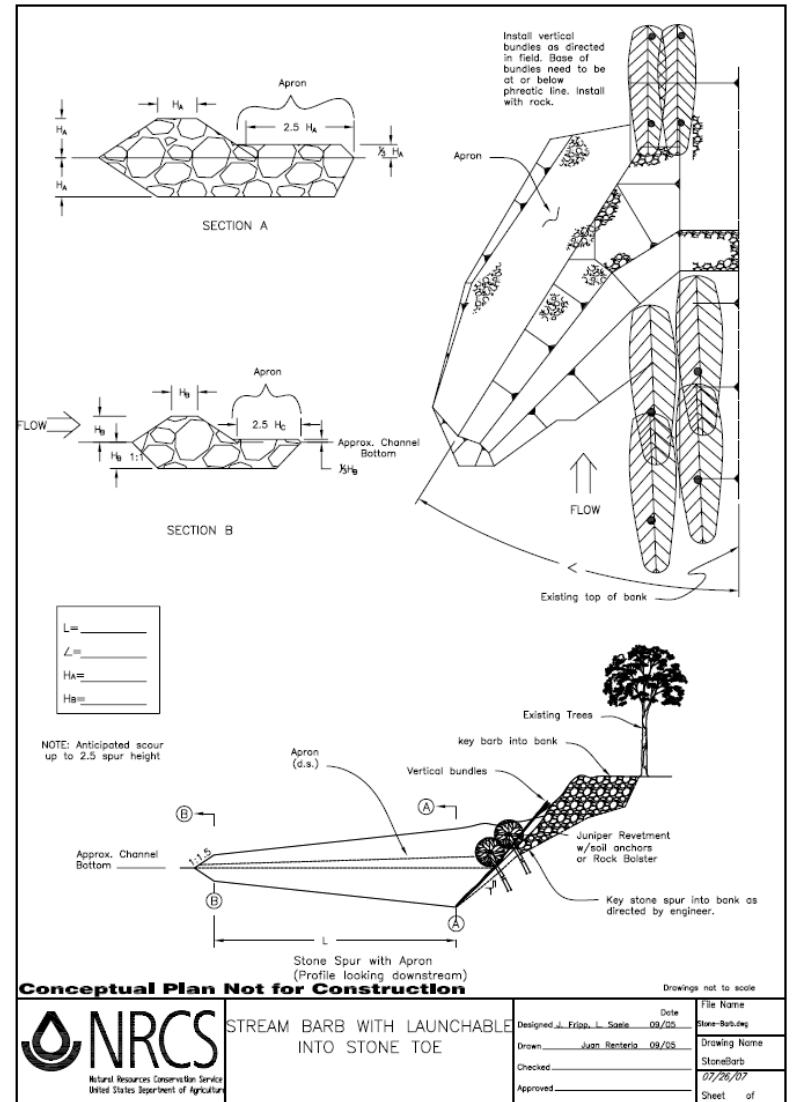
Nationwide Permit Specific Regional Conditions for the State of Tennessee

13. *Bank Stabilization.*

- a. PCN in accordance with NWP General Condition 32 for the construction of vertical walls (i.e. concrete/timber/steel/gabion retaining walls).



STREAM BARBS



NWP 14 – LINEAR TRANSPORTATION PROJECTS

- Authorizes crossings of jurisdictional waters and wetlands for construction, expansion, modification, or improvement of linear transportation projects (e.g., roads, highways, railways, trails, airport runways, and taxiways)
- This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project.
- Limits:
 - 1/2-acre limit for each separate and distant waterbody crossing
 - 1/2-acre of non-tidal waters for utility line substations
 - 1/2-acre of non-tidal waters for access road crossings



NWP 14 – LINEAR TRANSPORTATION PROJECTS

- Change - Note 3: For NWP 14 activities that require pre-construction notification, the PCN must include 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, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, “District Engineer's Decision.” The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).



NWP 18 – MINOR DISCHARGES

Nationwide Permit Specific Regional Conditions for the State of Tennessee

18. *Minor Discharges.*

- a. This NWP does not authorize stream relocations, channelization, or impoundments.

- a. PCN in accordance with NWP General Condition 32 for the loss of waters of the U.S. (ephemeral, intermittent, and/or perennial) exceeding 300 linear feet of stream bed.



NWP 21 – SURFACE COAL MINING ACTIVITIES

- Authorizes discharges of dredged or fill material into waters of the United States for surface coal mining activities
- Limits:
 - ½-acre of non-tidal waters; 300 linear feet of stream bed (can be waived for intermittent and ephemeral streams with a written determination by the District Engineer that the discharge will result in no more than minimal individual and cumulative adverse environmental effects) - Sum of these losses cannot exceed 1/2-acre
- Changes:
 - Removed provision allowing re-authorization of activities authorized by 2007 NWP 21
 - All activities will be subject to ½-acre limit and 300 linear foot limit for losses of stream bed, and to the prohibition against construction of valley fills



NWP 27 – AQUATIC HABITAT RESTORATION, ENHANCEMENT, AND ESTABLISHMENT ACTIVITIES

- Authorizes restoration, enhancement, and establishment of aquatic habitat
 - Must be net gain in aquatic resource functions and services
- Changes:
 - Includes the removal of stream barriers (e.g., undersized culverts, fords, and grade control structures)
 - Requires use of ecological reference to plan, design, and implement the NWP 27 activity



ECOLOGICAL REFERENCE

- Intent is to limit to NWP 27 activities to those that will result in aquatic habitats that resemble natural ecosystems in the region
- Two approaches:
 - Use existing examples of target aquatic resource type in the region
 - Use a conceptual model for the target aquatic resource type in the region
- Take into account range of variability in the region



NWP 29 – RESIDENTIAL DEVELOPMENTS

NWP 39 – COMMERCIAL AND INSTITUTIONAL DEVELOPMENTS

- Authorizes fills in non-tidal waters to construct or expand these developments and their features
- Limits:
 - 1/2-acre of non-tidal waters
 - Loss of 300 linear feet of stream bed
 - District Engineer may waive for intermittent and ephemeral streams

(Sum of these losses cannot exceed 1/2-acre)



NWP 33 – TEMPORARY CONSTRUCTION, ACCESS, AND DEWATERING

- Authorizes temporary structures or work and discharges of dredged or fill material, including cofferdams, for construction activities or access fills
- Changes:
 - Pre-construction notification required only for those activities in waters subject to section 10 of the Rivers and Harbors Act of 1899



NWP 35 – MAINTENANCE DREDGING OF EXISTING BASINS

Nationwide Permit Specific Regional Conditions for the State of Tennessee

35. Maintenance Dredging of Existing Basins.

- a. PCN in accordance with NWP General Condition 32 is required for use of this NWP.



NWP 36– BOAT RAMPS

Nationwide Permit Specific Regional Conditions for the State of Tennessee

36. Boat Ramps

- a. PCN in accordance with NWP General Condition 32 is required for any boat ramp proposed to be located within the area between the upstream and downstream arrival points of any Corps of Engineers lock and dam, or within 1,500 feet of any emergency-mooring cell at any lock.



NWP 43 – STORMWATER MANAGEMENT FACILITIES

- Authorizes the construction and maintenance of stormwater management facilities and low-impact development integrated management features
- Limits:
 - 1/2-acre of non-tidal waters; 300 linear feet of stream bed(Sum of these losses cannot exceed 1/2-acre)
- Changes:
 - Add construction and maintenance of pollutant-reduction green infrastructure features to reduce inputs of sediments, nutrients, and other pollutants to meet Total Daily Maximum Loads



NWP 51 – LAND-BASED RENEWABLE ENERGY GENERATION FACILITIES

- Authorizes the construction, expansion, or modification of these facilities in non-tidal waters
- Limits:
 - 1/2-acre of non-tidal waters; 300 linear feet of stream bed
 - (300 If limit can be waived for intermittent and ephemeral streams with a written determination by the District Engineer that the discharge will result in no more than minimal individual and cumulative adverse environmental effects)(Sum of these losses cannot exceed 1/2-acre)
- Changes:
 - PCN threshold increased to 1/10-acre



NWP 53 – REMOVAL OF LOW-HEAD DAMS

- New NWP
- Authorizes the removal of low-head dam for stream restoration and public safety
- Limits:
 - Low-head dams, which are defined as: “dams built across a stream to pass flows from upstream over all, or nearly all, of the width of the dam crest on a continual and uncontrolled basis”
 - PCN for all activities



NWP 53 – REMOVAL OF LOW-HEAD DAMS

- Removed dam structure must be deposited in area that has no waters of the United States unless another Corps permit authorizes placement of material in waters
- As a general rule, compensatory mitigation is not required for these activities because low-head dam removal restores stream ecological functions and services
- Associated stream restoration activities may be authorized by NWP 27
- Associated bank stabilization activities may be authorized by NWP 13



NWP 53 – REMOVAL OF LOW-HEAD DAMS

Nationwide Permit Specific Regional Conditions for the State of Tennessee

53. *Removal of Low-Head Dams.*

- a. PCN in accordance with NWP General Condition 32 is required.
- b. The PCN for NWP 53 shall also include:
 - i. The length of the stream/river that the low-head dam currently impounds;
 - ii. A sediment characterization and estimated volume of sediment/material collected behind the low-head dam;
 - iii. A description of the positive and adverse environmental effects associated with the release of sediment/materials collected behind the low-head dam once the low-head dam is removed; and
 - iv. A discussion of the steps taken to minimize the potential adverse effects on the aquatic environment.





GENERAL CONDITIONS

- Applies to all NWP's
- Activities which do not comply with General Conditions must be evaluated as a Standard Individual Permit



GENERAL CONDITION (GC) 2 – AQUATIC LIFE MOVEMENTS

- NWP activity must not substantially disrupt the necessary life cycle movements of aquatic species indigenous to the waterbody unless the activity's primary purpose is to impound water
- Change:
 - ▶ Added provision stating that if a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements



GC 16 – WILD AND SCENIC RIVERS

- Activities in National Wild and Scenic River, or study river designated by Congress, require PCNs to district engineers
- District engineer will coordinate with federal agency with direct management responsibility for that river
- Activity not authorized by NWP unless the federal agency with direct management responsibility determines the proposed NWP activity will not adversely affect the Wild and Scenic River designation or its study status



GC 17 – TRIBAL RIGHTS

- Revise general condition to be consistent with 1998 Department of Defense American Indian and Alaska Native Policy

<http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/DoDPolicy.pdf>

- Explicitly cover the suite of tribal rights addressed in 1998 policy: treaty rights, protected tribal resources, and tribal lands
 - “No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.”
- Changes:
 - Removed “operation”
 - Changed “No activity...may impair” to the “no more than minimal adverse effects” threshold for general permits



GC 18 – ENDANGERED SPECIES

- Define “direct effects” and “indirect effects” to assist in Endangered Species Act compliance
 - Direct effects are immediate effects on listed species and critical habitat caused by NWP activity
 - Indirect effects are effects on listed species and critical habitat caused by NWP activity that occur later in time, and are reasonably certain to occur
- Clarified that other federal agencies are responsible for their own compliance with the Endangered Species Act
- District engineer may add permit conditions for Endangered Species Act compliance
- May use ESA section 10(a)(1)(B) incidental take permit to fulfill requirements of this general condition and the ESA



GC 19 – MIGRATORY BIRDS AND BALD AND GOLDEN EAGLES

- Clarified that the permittee is responsible for ensuring his/her activity complies with Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act
- Permittee is responsible for contacting local office of U.S. Fish and Wildlife Service to determine if “take” permits are needed



GC 20 – HISTORIC PROPERTIES

- Revised text of general condition to be more consistent with threshold for National Historic Preservation Act section 106 consultation:
 - “May have the potential to cause effects to historic properties”
- Added designated tribal representative to list of sources for assistance for obtaining information on the potential presence of historic properties
- Clarified when section 106 consultation is conducted:
 - NWP activities where there are “no historic properties affected,” or that have “no adverse effects” or “adverse effects” on historic properties



GC 23 – MITIGATION

- Reorganized text to clarify mitigation requirements for NWP's and their relationship to the Corps' 2008 mitigation rule
- Preference for use of mitigation bank or in-lieu fee program credits to fulfill compensatory mitigation requirements imposed by district engineers
 - Does not preclude the use of permittee-responsible mitigation, where appropriate (or where credits are not available)



GC 23 – MITIGATION

- Added provision stating that if compensatory mitigation is required, then the amount must be sufficient to ensure the NWP activity causes no more than minimal individual and cumulative adverse environmental effects
- Clarified that compensatory mitigation may be required to ensure no more than minimal adverse environmental effects if a regulated activity results in the loss of certain aquatic resource functions and services (e.g., the conversion of forested wetlands to emergent wetlands)



GC 31 – ACTIVITIES AFFECTING STRUCTURES OR WORKS BUILT BY THE UNITED STATES

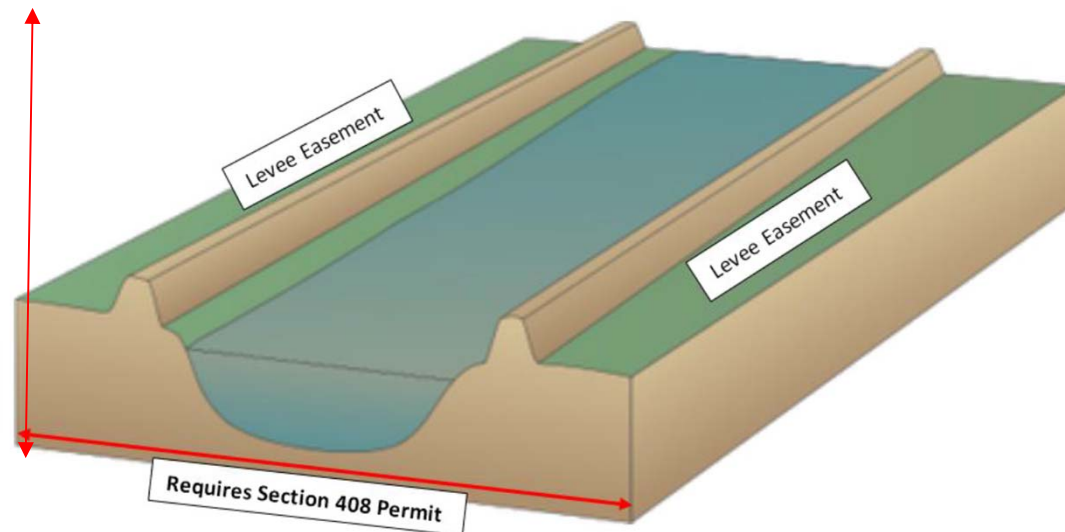
- New general condition
- Any NWP activity that also requires a Section 408 permission from the Corps requires notification to the Corps district
- Activity is not authorized by NWP until after the Corps issues the 408 permission, and the district issues the NWP verification



GC 31 - SECTION 408

Authorized in Section 14 of the River and Harbors Appropriation Act of 1899 (33 USC 408).

Provides that the Secretary of the Army may, on recommendation of the Chief of Engineers, ***grant permission for the alteration of a public work so long as that alteration is not injurious to the public interest and will not impair the usefulness of the work.***



GC 31- SECTION 408

USACE Policy -Engineering Circular 1165-2-216:

Updated as of 30 September 2015 –Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408

- Defines what USACE considers an Alteration:
 - Alterations or alter refers to any action by any entity other than USACE that builds upon, alters, improves, moves, occupies, or otherwise affects the usefulness, or the structural or ecological integrity, of a USACE project. Alterations also include actions approved as “**encroachments**” pursuant to 33 CFR 208.10.



GC 32 – PRE-CONSTRUCTION NOTIFICATION

- No changes to the Corps' review process
 - Retained 30-day completeness review period
 - Retained 45-day verification decision period
- Changes to content of pre-construction notification:
 - Specify the NWP(s) the project proponent wants to use
 - Describe mitigation measures intended to reduce adverse environmental effects
 - For linear projects, clarify that notification must identify other crossings of waters of the United States that require Corps authorization, including those authorized by general permit that do not require pre-construction notification
 - For linear projects, the notification must also include the quantity of losses of aquatic resources for each single and complete crossing of those waters and wetlands



AGENCY COORDINATION

- Required for the following NWP activities:
 - Activities that will result in the loss of greater than 1/2-acre
 - Waiver Considerations - Activities authorized by NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 that require PCNs and will result in loss of greater than 300 linear feet of intermittent and ephemeral stream bed
 - NWP 13 and 54 activities, where waivers are requested
- Copies of PCN to federal and state resource agencies
 - Change – removed SHPO/THPO
- 10 calendar day review period, may be extended by 15 days
- Consider agency comments on actions to ensure no more than minimal adverse environmental effects



DISTRICT ENGINEER'S DECISION (SECTION D)

- Criteria for determining whether a proposed NWP activity will result in no more than minimal individual or cumulative adverse environmental effects or any public interest review factor
 - For waiver requests, written determination of no more than minimal adverse environmental effects
 - Consider the direct and indirect effects caused by the NWP activity
 - Consider cumulative effects of NWP use on a regional basis
 - Regions may be watersheds, ecoregions, county, or other types of geographic areas
 - Non-linear projects – single watershed or region
 - Linear projects that cross multiple watersheds or regions – consider cumulative effects in each watershed or region



DISTRICT ENGINEER'S DECISION (SECTION D)

- Is mitigation, including compensatory mitigation, required to ensure no more than minimal effects?
 - ▶ Add activity-specific conditions requiring avoidance and minimization measures, such as:
 - Construction or management practices that reduce effects on aquatic environment
 - Time-of-year restrictions
 - ▶ If compensatory mitigation required, add activity-specific conditions
 - Use of mitigation bank or in-lieu fee program credits
 - Permittee-responsible mitigation, including approval of mitigation plan
 - ▷ Conceptual or detailed plan to issue NWP verification



MINIMAL EFFECTS DETERMINATIONS

- Factors considered by district engineers:
 - Environmental setting in the vicinity of the NWP activity
 - Type of resource that will be affected
 - Functions provided by the affected aquatic resources
 - Degree or magnitude to which the aquatic resources perform those functions
 - Extent that aquatic resource functions will be lost (e.g., partial or complete loss)
 - Duration of the adverse effects (temporary or permanent)
 - Importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and
 - Mitigation required by the district engineer



NEW DEFINITIONS

- Ecological reference
- Navigable waters
- Protected tribal resources*
- Tribal lands*
- Tribal rights*



* From 1998 Department of Defense American Indian and Alaska Native Policy



TENNESSEE REGIONAL CONDITIONS FOR THE NATIONWIDE PERMITS



REGIONAL TAILORING OF NATIONWIDE PERMIT PROGRAM

- Division engineers have the authority to modify, suspend, or revoke Nationwide Permits within a region
 - Corps district, state, county, or other geographic area
 - Regional conditions to further restrict use of Nationwide Permits
 - Prohibit use of one or more Nationwide Permits in a region
- District engineers have the authority to modify, suspend or revoke Nationwide Permits on a activity-specific basis
 - Regional conditions restricting use of Nationwide Permit
 - Prohibit the use of a Nationwide Permit to authorize a specific activity
- LRN Regional Condition Workshop – June 2016
 - TDEC, TVA, Nashville and Memphis Districts, TWRA, USFWS



TENNESSEE REGIONAL CONDITIONS

- 1. A PCN is required for all proposed activities in Exceptional Tennessee Waters and/or Outstanding National Resource Waters. A list of known Exceptional Tennessee Waters and Outstanding National Resource Waters can be obtained from the Tennessee Department of Environment and Conservation's website: <https://tn.gov/environment/article/wr-water-resources-data-viewer>. A map of known Exceptional Tennessee Waters and Outstanding National Resource Waters can be obtained from the Tennessee Department of Environment and Conservation's website: <http://tdeconline.tn.gov/dwr/> .



TENNESSEE REGIONAL CONDITIONS

- 2. All impacts to wetlands/open waters shall be calculated and reported in acres. Stream impacts shall be calculated separately and reported in both linear feet and acres.



NATIONWIDE PERMIT SPECIFIC REGIONAL CONDITIONS FOR THE STATE OF TENNESSEE

12. *Utility Line Activities.*

a. PCN in accordance with NWP General Condition 32 is required for all proposed blasting within waters of the U.S.

13. *Bank Stabilization.*

a. PCN in accordance with NWP General Condition 32 is required for the construction of vertical walls (i.e. concrete/timber/steel/gabion retaining walls).

18. *Minor Discharges.*

a. This NWP does not authorize stream relocations, channelization, or impoundments.

b. PCN in accordance with NWP General Condition 32 is required for the loss of waters of the U.S. (ephemeral, intermittent, and/or perennial) exceeding 300 linear feet of stream bed.

35. *Maintenance Dredging of Existing Basins.*

a. PCN in accordance with NWP General Condition 32 is required is required for regulated activities in Section 10 waters.



NATIONWIDE PERMIT SPECIFIC REGIONAL CONDITIONS FOR THE STATE OF TENNESSEE

36. *Boat Ramps.*

a. PCN in accordance with NWP General Condition 32 is required for any boat ramp proposed to be located within the area between the upstream and downstream arrival points of any Corps of Engineers lock and dam, or within 1,500 feet of any emergency-mooring cell at any lock.

53. *Removal of Low-Head Dams.*

a. The PCN for NWP 53 shall also include:

- i. The length of the stream/river that the low-head dam currently impounds;
- ii. A sediment characterization and estimated volume of sediment/material collected behind the low-head dam;
- iii. A description of the positive and adverse environmental effects associated with the release of sediment/materials collected behind the low-head dam once the low-head dam is removed; and
- iv. A discussion of the steps taken to minimize the potential adverse effects on the aquatic environment.



TRANSITION FROM 2012 NWP's TO 2017 NWP's



PROCESSING REQUESTS FOR MODIFICATIONS OF GRANDFATHERED ACTIVITIES

- If activity authorized (e.g., verified) under 2012 NWP and NWP activity has commenced or is under contract to commence prior to March 18, 2017
- One year to complete NWP activity (33 CFR 330.6(b))
- Permittee wants to modify the grandfathered NWP activity
 - If it still qualifies for the 2012 NWP, do not add a 2017 NWP action in ORM2
 - Re-open the 2012 NWP action, change any impacts, and explain in comments field section what was modified
- If permittee unsure whether modified NWP activity will be completed in one year, can process re-verification under 2017 NWP (if it qualifies)



TENNESSEE 2017 NWP TOOLS



2017 NWP USERS GUIDE

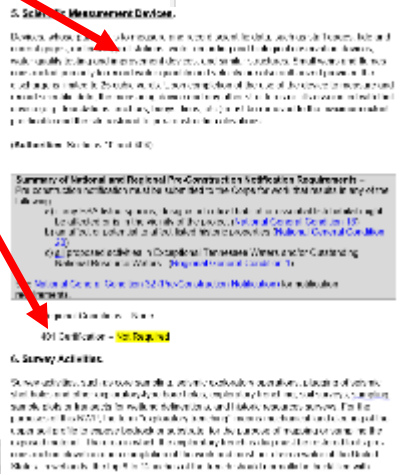
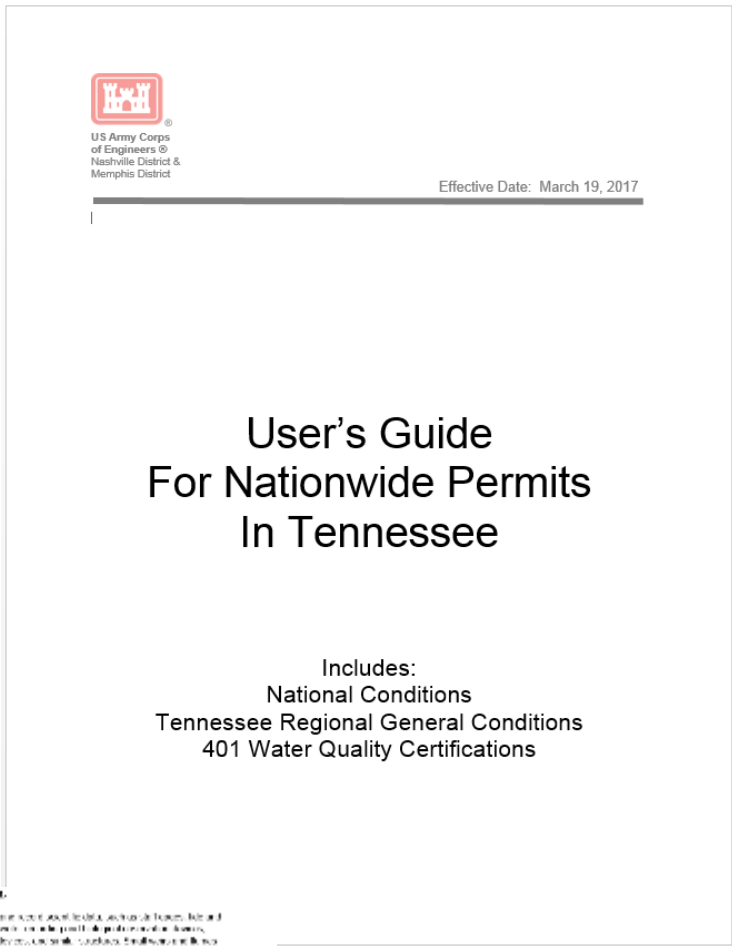
➤ New Product for LRN & MVM

Tool for:

- Public to utilize when preparing applications
- USACE to utilize when reviewing PCNs

Provides:

- **Text of NWPs**
- General Conditions
- Regional General Conditions
- **Regional NWP Specific Conditions**
- Notification Summary
- Links to LRN & MVM information
 - ESA & 106
 - Mitigation
 - Section 10 Waters
 - Exception Tennessee Waters
 - Water Quality Certification Information



2017 NWP USERS GUIDE

Provides:

- Text of NWPs
- General Conditions
- Regional General Conditions
- Regional NWP Specific Conditions
- **Notification Summary**
- Links to LRN & MVM information
 - ESA & 106
 - Mitigation
 - Section 10 Waters
 - Exception Tennessee Waters
 - Water Quality Certification Information**

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Summary of National and Regional Pre-Construction Notification Requirements –
Pre-construction notification must be submitted to the Corps for work that results in any of the following:

- a) will occur in a component of the National Wild and Scenic River System, or a river officially designated by Congress as a "study river" for possible inclusion in the system ([National General Condition 18](#))
- b) if any ESA-listed species, designated critical habitat or essential fish habitat might be affected or is in the vicinity of the project ([National General Condition 18](#))
- c) an affect or potential to affect listed historic properties ([National General Condition 20](#))
- d) requires Section 408 permission ([National General Condition 31](#))
- e) all proposed activities in Exceptional Tennessee Waters and/or Outstanding National Resource Waters. ([Regional General Condition 1](#))
- f) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way;
- g) a section 10 permit is required;
- h) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet;
- i) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to or along a stream bed that is within that jurisdictional area;
- j) discharges that result in the loss of greater than 1/10- acre of waters of the United States;
- k) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or
- l) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 32.) (f – l are required by [NWP 12 Notification Conditions](#))
- m) all proposed blasting within waters of the U.S. (See [NWP 12 Regional Condition 3](#))

See [National General Condition 32 \(Pre-Construction Notification\)](#) for notification requirements.

Regional Conditions –

- a. PCN in accordance with NWP General Condition 32 for all proposed blasting within waters of the U.S.

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401 Certification – Denied without prejudice, subject to following exceptions:

- Certified for waters of the U.S. that have formally determined by the state to be a wet weather conveyance, per Rule 0400-40-03-05. This certification is approved provided any § 404 activity is performed in accordance with the terms and conditions listed in the [General Aquatic Resource Alteration Permit for the Alteration of Wet Weather Conveyances](#).
- Certified for activities that are performed in accordance with the terms and conditions listed in the [General Aquatic Resource Alteration Permit for Utility Line Crossing](#).
 - o The construction, maintenance, repair, rehabilitation or replacement of utility line crossings is covered for a) activities utilizing non-invasive technologies, b) up to 3 borehole crossings utilizing HDD, where no Federal or State-listed species are located within 1-mile of the project, c) utility lines suspended from culvert, bridge or similar structure.

Note 1: Where the utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Utility line activities must comply with 33 CFR 330.6(d).

Note 3: Utility lines consisting of aerial electric power transmission lines crossing navigable waters of the United States (which are defined at 33 CFR part 329) must comply with the applicable minimum clearances specified in 33 CFR 322.5(i).

Note 4: 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, in accordance with the requirements for temporary fills.

Note 5: Pipes or pipelines used to transport gaseous, liquid, liquefied, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and are subject to the U.S. Coast Guard jurisdiction under the U.S. Coast Guard and the U.S. Army Corps of Engineers.

PCN WORKSHEET

2017 NWP's PCN Requirements:

1. Contact info
2. Location of proposed activity
3. Description of Activity
4. **NWP prospective permittee wants to use**
5. Delineation of waters
6. Mitigation statement
7. Names of ESA species which might be affected
8. Names of Historic Properties which might be affected
9. **Identify Wild and Scenic River which might be affected**
10. **Statement confirming project has been submitted for Section 408 Permission, if required**

- Assists applicants in submitting complete applications; should reduce number of incomplete applications.
- Will allow for streamlined and efficient review by USACE.
- Goals: improved, complete applications and faster processing.
- FY16: 224 requests for additional information



Nationwide Permit Pre-Construction Notification Worksheet



April 2017

This worksheet may be used instead of Form ENG 4345 to request verification under a Nationwide Permit (NWP)

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)			
1. APPLICATION NUMBER	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE PCN COMPLETE
(ITEMS BELOW TO BE FILLED BY APPLICANT)			
Box 5, 6, & 7 Applicant Name asdgbtdg		Applicant Title qwertyuiop	
Applicant Company, Agency, etc.		Applicant's Internal tracking number (if any)	
Mailing Address			
Work Phone with area code	Mobile Phone with area code	Home Phone with area code	Fax # with area code
E-mail Address		Relationship of applicant to property: <input type="checkbox"/> Owner <input type="checkbox"/> Purchaser <input type="checkbox"/> Lessee <input type="checkbox"/> Other	
Box 8, 9, & 10 Authorized Agent		Agent Title	
Agent/ Agency, etc.		E-mail Address	
Mailing Address			
Work Phone with area code	Mobile Phone with area code	Home Phone with area code	Fax # with area code
STATEMENT OF AUTHORIZATION			
11. I hereby authorize, _____ to act in my behalf as my agent in the processing of this nationwide permit pre-construction notification and to furnish, upon request, supplemental information in support of this nationwide permit pre-construction notification.			
SIGNATURE OF APPLICANT		DATE	
12. PROJECT NAME or TITLE (see Instructions)			
13. NAME OF WATERBODY, IF KNOWN (if applicable)			
14. NATIONWIDE PERMIT ACTIVITY STREET ADDRESS (if applicable)			
15. LOCATION OF NATIONWIDE PERMIT ACTIVITY (see Instructions)			
Latitude: _____ °N Longitude: _____ °W			



Nationwide Permit Pre-Construction Notification Worksheet - April 2017

REQUEST INFORMATION



US Army Corps of Engineers



QUESTIONS?

