



**US Army Corps
of Engineers**
Portland District

Initial Public Notice

Nationwide Permit Re-issuance Request for Comments

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Expiration Date: April 11, 2011

On February 16, 2011, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue 48 of its existing Nationwide Permits (NWP) and issue two new NWPs.

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWPs require notification to the district engineer before commencing the work to ensure the activities authorized by those NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

National Issues Concerning the Proposed NWPs: The Federal Register notice is the public's opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2010-0035 at www.regulations.gov, by email to NWP2012@usace.army.mil, or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the February 16, 2011, Federal Register notice. Comments on the proposed NWPs are due by April 18, 2011.

Regional Issues Concerning the Proposed NWPs, 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 impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. An enclosure for this public notice (Enclosure 1) lists the proposed regional conditions currently under consideration by the Portland District for the State of Oregon. The Portland District is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure impacts authorized by the proposed NWPs are minimal. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in Oregon.

Comments on regional issues relating to the proposed NWP's and regional conditions are to be sent to Portland District, Eugene Field Office, 1600 Executive Parkway, Suite 210, Eugene, Oregon 97401-2156. Comments may also be provided by email to Ms. Shelly Hanson at Michele.e.hanson@usace.army.mil. Comments relating to regional conditions are due by April 11, 2011. 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 following approval by the Division Commander. Appropriate state agencies and Tribal governments will also make their Clean Water Act Section 401 (401) water quality certification and 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 or before March 19, 2012.

Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWP's with the requirements for issuance under general permit authority. These documents, as well as the proposed NWP's, are available for viewing on the internet at www.regulations.gov, docket number COE-2010-0035. Final decision documents will be prepared for those NWP's issued. In addition, the national NWP decision documents will be supplemented by division engineers to address their decisions concerning regional conditions for the NWP's.

Enclosed (Enclosure 2) is an index of the proposed NWP's and conditions. 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/CECW/Pages/nnpi.aspx>, www.regulations.gov, docket number COE-2010-0035, or the Federal Register address listed below: <http://www.gpo.gov/fdsys/pkg/FR-2011-02-16/pdf/2011-3371.pdf>.

2012 Nationwide Permit (NWP) Draft Regional Conditions Portland District

The following Nationwide Permit (NWP) regional conditions are for the Portland District Regulatory Branch boundary. Regional conditions are placed on NWPs to ensure projects result in less than minimal adverse impacts to the aquatic environment and to address local resource concerns.

ALL NWPs –

1. High Value Aquatic Resources: Except for NWPs 3, 20, 27, 32, 38, and 48, any activity that would result in a loss of waters of the United States (U.S.) in a high value aquatic resource is not authorized by NWP. High value aquatic resources in Oregon include bogs, fens, wetlands in dunal systems along the Oregon coast, native eel grass (*Zostera marina*) beds, rocky substrate in coastal waters, vernal pools, aspen-dominated wetlands, alkali wetlands, and Willamette Valley wet prairie wetlands.

2. In-water Work: In order to minimize potential impacts to water quality, aquatic species and habitat, in-water work will be limited by the following timing considerations:

a. Permittee shall complete all in-water work within the preferred work-window specified in Oregon Department of Fish and Wildlife's "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources," June 2008, or most current version, available at: http://www.dfw.state.or.us/lands/inwater/Oregon_Guidelines_for_Timing_of_%20InWater_Work2008.pdf; and

b. Permittee shall submit a request to work out side of the preferred window to the Corps in writing. Permittee shall not begin any in-water work outside of the preferred window until they have received written approval from the Corps.

3. Cultural Resources and Human Burials-Inadvertent Discovery Plan: Permittee shall immediately cease all ground disturbing activities and notify the Portland District Regulatory Branch if at any time during the course of the work authorized, human burials, cultural items, or historic properties, as identified by the National Historic Preservation Act and Native American Graves and Repatriation Act, are discovered and/or may be affected. The permittee shall follow the procedures outlined below:

a. Immediately cease all ground disturbing activities;

b. Project Located in Oregon: Notify the Oregon State Historic Preservation Office (503-986-0674);

c. Project Located in Washington: Notify the Washington Department of Archaeology and Historic Preservation (360-586-3077); and

d. Notify the Portland District Regulatory Branch. Notification shall be made by fax (503-808-4375) as soon as possible following discovery but in no case later than 24 hours. The fax shall clearly specify the purpose is to report a cultural resource discovery. Follow up the fax notification by contacting the Corps representative (by email and telephone) identified in the permit letter.

Failure to stop work immediately and until such time as the Corps has coordinated with all appropriate agencies and complied with the provisions of 33 CFR 325, Appendix C, the National Historic Preservation Act, Native American Graves and Repatriation Act and other pertinent regulations, could result in violation of state and federal laws. Violators are subject to civil and criminal penalties.

4. Erosion Control: During construction and until the site is stabilized, the permittee shall ensure all practicable measures are implemented and maintained to prevent discharge of materials carried by precipitation, snow melt, wind, or any other conveyance to waters and wetlands. For proper erosion control measure selection and implementation, the permittee is referred to Oregon Department of Environmental Quality's "Oregon Sediment and Erosion Control Manual," April 2005, available at: <http://www.deq.state.or.us/wq/stormwater/escmanual.htm>. Appropriate control measures and maintenance include, but are not limited to the following:

a. Permittee shall inspect control measures at least daily, and more frequently during rain or wind events. Permittee shall repair or replace any damages such as rips, broken stakes that result in loss of intended function. Remove and properly dispose of collected material when it reaches one-third the height of the control measure. Install additional control measures and reseed or replant as necessary to achieve stabilization of the site;

b. Examples of erosion control measures include filter bags, sediment traps, catch basins, vegetative strips, berms, Jersey barriers, fiber blankets and mats, bonded fiber matrices, geotextiles, mulches, wattles, staked-in straw bales, and staked-in sediment fences with the bottom edge buried at least six (6) inches from the ground surface; and

c. Once soils or slopes have been stabilized, permittee shall completely remove and properly dispose of or re-use all components of installed control measures.

5. Mechanized Equipment: In addition to the requirements in NWP General Condition 11, permittee shall implement the following to prevent or limit aquatic impacts from mechanized equipment:

a. In all events permittee shall utilize the type of equipment that minimizes aquatic impacts spatially and temporally;

b. Use existing roads, paths, and drilling pads and placing and removing mats or pads for access through wetlands or onto tidal flats;

c. Operate equipment from the top of a streambank and work outside of the active stream channel;

d. Isolate storage, staging, and fueling areas, and operate and maintain equipment in isolation from waters, wetlands, and riparian areas; and

e. Permittee shall maintain spill prevention and containment materials with ready access at vehicle staging areas. Permittee and staff shall be trained to effectively deploy the measures. Spill response materials include straw matting/bales, geotextiles, booms, diapers, and other absorbent materials, shovels, brooms, and containment bags. In the event of a spill of petroleum products or other chemicals with potential to affect waters or wetlands, permittee shall immediately report the spill to the Oregon Emergency Response Service (OERS) at 1-800-452-0311 and shall implement containment and cleanup measures, as directed.

6. Deleterious Waste: In addition to the requirements in NWP General Condition 6, permittee shall not dispose of biologically harmful or waste materials into waters or wetlands. These materials include but are not limited to the following:

a. Petroleum products, chemicals, cement cured less than 24 hours, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint, tires, wire, steel posts, asphalt and waste concrete; and

b. Discharge water created during construction activities, such as concrete wash out, pumping for work area isolation, vehicle wash water, drilling fluids, dredging return flows, sediment laden runoff, etc. shall be treated to remove debris, sediment, petroleum products, metals, and other pollutants and discharged in a controlled fashion to avoid erosion. A separate Department of the Army permit and/or a National Pollutant Discharge Elimination System (NPDES) permit from Oregon Department of Environmental Quality may be required prior to discharge. Permittee is directed to contact the nearest DEQ office (<http://www.deq.state.or.us/about/locations.htm>) for more information about the NPDES program.

7. Chemically Treated Wood: Permittee shall not allow wood products treated with biologically harmful leachable chemical components (e.g. copper, arsenic, zinc, creosote, chromium, chloride, fluoride, pentachlorophenol) to come in contact with waters or wetlands.

a. Acceptable alternatives to chemically treated wood include steel (painted, unpainted or coated with epoxy-petroleum compound or plastic), concrete, plastic lumber, and wood permanently or temporarily sealed with non-toxic products such as water-based silica or soy-based water repellants or sealers.

b. Permittee shall prevent chemically treated wood debris from entering any waters or wetlands. In the event chemically treated wood debris inadvertently enters a water or wetland, permittee shall remove the material as soon as practicable and disposed of the material at an approved upland facility.

c. Permittee shall make every practicable effort to remove chemically treated wood piles in their entirety using a vibratory hammer.

i) In uncontaminated sediment, piling that breaks off during extraction shall be cut off at least three (3) feet below the surface of the sediment.

ii) In contaminated sediment, piling that breaks off above the surface shall be cut off at the sediment line. If the break occurs within contaminated sediment, no further effort shall be made to remove the pile. Any resulting hole shall be filled with clean, native substrate.

8. Fish and Aquatic Life passage: In addition to the requirements of NWP General Conditions 2 and 9, all activities authorized by a Nationwide Permit shall not restrict passage of aquatic life. Aquatic Life shall be interpreted to include amphibians, reptiles, and mammals whose natural habitat includes waters of the U.S. and which are generally present in and/or around waters of the U.S.

a. Activities such as the installation of culvert, intake structures, diversion structures, or other modifications to channel morphology must conform to fish passage standards developed by the Oregon Department of Fish and Wildlife (ODFW) and the National Marine Fisheries Service (NMFS). ODFW's standards can be found at OAR 635-412-0035; ODFW provides an overview at <http://www.dfw.state.or.us/fish/passage/> and NMFS provides an overview at http://www.nwr.noaa.gov/Salmon-Hydropower/FERC/upload/Fish_Passage_Design.pdf

9. Fish Screening: The permittee shall ensure that all intake pipes utilize fish screening that complies with standards developed by NMFS ("Anadromous Salmonid Passage Facility Design", February 2008). http://www.nwr.noaa.gov/Salmon-Hydropower/FERC/upload/Fish_Passage_Design.pdf

10. 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 Corps of Engineers. Point source discharges associated with the use of NWP 3, NWP 16, NWP 19, NWP 35 may require a National Pollutant Discharge Elimination System (NPDES) permit under Section 402 of the Clean Water Act. The DEQ issues NPDES permit in the State of Oregon.

11. Inspection of the Project Site: The permittee shall allow representatives of the Corps and/or DEQ to inspect the authorized activity to confirm compliance with nationwide permit terms and conditions. A request for access to the site will normally be made sufficiently in advance to allow a property owner or representative to be on site with the agency representative making the inspection.

12. Sale of Property/Transfer of Permit: Permittee shall obtain the signature(s) of the new owner(s) and transfer this permit in the event the permittee sells the property associated with this permit. To validate the transfer of this permit authorization, a copy of this permit with the new owner(s) signature shall be sent to the Portland District office at the following address: U.S. Army Corps of Engineers, CENWP-OD-G, P.O. Box 2946, Portland, Oregon, 97208-2946.

13. Work Area Isolation and Dewatering:

a. All in-water work shall be isolated from the active channel or conducted during low seasonal stream flows.

b. Cofferdams shall be constructed of non-erosive material, such as concrete jersey barriers, sand and gravel bag dams, or water bladders. Constructing a cofferdam by pushing material from the streambed or sloughing material from the streambanks is not authorized.

c. Sand and gravel bag dams shall be lined with a plastic liner or geotextile fabric to reduce permeability and prevent sediments and/or construction materials from entering the active stream channel.

d. Downstream flows shall be maintained by routing flows around the construction site with a pump, bypass pipe, or diversion channel.

e. A sediment basin shall be used to settle sediments in return water prior to release back into the waterbody. Settled water shall be returned to the waterbody in such a manner as to avoid erosion of the streambank.

14. Restoration of Temporary Impacts:

a. To minimize temporal losses of waters of the U.S., construction activities within areas identified as temporary impacts shall not exceed two construction seasons. For all temporary impacts, permittee shall provide the Corps with a description, photos, and any other documentation which demonstrates pre-project conditions.

b. Site restoration of temporarily disturbed areas shall include returning the area to pre-project ground contours. Permittee shall revegetate temporarily disturbed areas with native, noninvasive herbs, shrubs, and tree species sufficient in number, spacing, and diversity to replace affected aquatic functions.

c. Site restoration shall be completed within 24 months of the initiation of impacts (unless otherwise required by the specific nationwide permit). However, if the temporary impact requires only one construction season, site restoration shall be completed within that same construction season before the onset of seasonal rains.

15. Permittee-responsible Compensatory Mitigation: When permittee-responsible compensatory mitigation is required by the Portland District to replace lost or impacted aquatic functions, the permittee shall provide long-term protection for the mitigation site through real estate instruments (e.g., deed restriction or conservation easement) or other available mechanisms. The appropriate long-term protection mechanism will be determined based on project-specific review and must be in place prior to initiating the permitted activity.

NATIONWIDE SPECIFIC CONDITIONS-

1. NWP 3 – Maintenance
 - a. Permittee shall implement measures necessary to prevent streambed gradient alterations and streambank erosion.
2. NWP 5 – Scientific Measurement Devices
 - a. Permittee shall remove all scientific measurement devices including all associated structures and fills including anchoring devices, buoys, and cable within 30 days after research is completed.
3. NWP 6 – Survey Activities
 - a. Use of in-water explosives is not authorized.
 - b. Permittee shall isolate all in-stream exploratory trenching from the active channel.
4. NWP 12 – Utility Line Activities
 - a. Permittee shall install trench-blockers of a type and design sufficient to prevent the drainage of the wetland areas (e.g. bentonite clay plugs, compacted sand bags, etc.) where utility lines are buried within or immediately adjacent to wetlands and other waters.
 - b. Permittee shall remove and separately reserve the topsoil from the subsurface soils during trenching. Permittee shall place the reserved topsoil as the final surface layer in backfilling the trench.
5. NWP 13 – Bank Stabilization
 - a. Permittee shall include the use of bioengineering techniques and natural products (e.g. vegetation and organic material such as root wads) in the project design to the maximum extent practicable and shall minimize the use of rock, except when it is anchoring large woody debris. Non-biodegradable materials, such as plastic netting, that may entrap wildlife or pose a safety concern shall not be used for soil stabilization. Riparian plantings shall be included in all project designs unless the permittee can demonstrate that such plantings are not practicable.
 - b. Riprap shall be clean (i.e. free of toxic contaminants and invasive species), durable, angular rock.
6. NWP 23 – Approved Categorical Exclusions
 - a. Impacts associated with this Nationwide Permit shall not exceed 1.5 acres.
 - b. Pre-Construction Notification is required for all 23 CFR 771.117 activities which require a permit from the Corps.
 - c. For Emergency Repairs under 23 U.S.C. 125, the Corps may choose to provide verbal authorization with a follow-up written verification.
7. NWP 29 – Residential Developments
 - a. Wetland impacts associated with the construction or expansion of a single residence including attendant features (utility lines, roads, yards, etc) shall not exceed one-fourth (1/4) acre.

8. NWP 40 – Agricultural Activities

a. Acreage impacts authorized by this NWP are cumulative for contiguous farm tracts under the same ownership. When impacts to contiguous farm tracts under the same ownership reach one-half (½) acre, no further discharges to waters of the U. S. may be authorized under NWP 40.

9. NWP 41 – Reshaping Existing Drainage Ditches

a. All in-water work shall be isolated from the active stream channel or conducted during low seasonal stream flows.

10. NWP 43- Stormwater Management Facilities

a. All in-water work shall be isolated from the active stream channel or conducted during low seasonal stream flows.

b. This NWP does not authorize the retention of water in excess of that required to meet stormwater management requirements for purposes such as recreational lakes, reflecting pools, irrigation, etc.

11. NWP 44 - Mining Activities

a. Reclamation, when required, must be achieved within 24 months of completing the mining activity.

b. In-stream mining including bar scalping is not authorized by this NWP.

c. Permittee shall ensure site includes appropriate grade controls to prevent headcutting of streams or bank erosion.

d. The use of in-water explosives is prohibited under this nationwide.

e. Excavated materials may be temporarily stockpiled within the channel above the plane of the water surface for up to seven (7) days. Excavated materials shall not be stockpiled in wetlands or flowing water.

Index of Proposed Nationwide Permits, Conditions, and Definitions

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