



**US Army Corps  
of Engineers**  
Louisville District ®

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# Public Notice

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Public Notice No.  
LRL-2016-00006

Open Date:  
15 Jun 2016

Close Date:  
1 Aug 2016

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Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Louisville District  
ATTN: Ms. Meagan Knuckles, CELRL-OPF-S, Rm 752  
P.O. Box 59  
Louisville, Kentucky 40201-0059

Phone: (502) 315-6709

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## INITIAL PUBLIC NOTICE

### NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

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

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

National Issues Concerning the Proposed NWP: The Federal Register notice is the public's opportunity to comment on the proposed NWP, general conditions, and definitions. Comments on national issues relating to these NWP should be submitted to docket number COE-2015-0017 at [www.regulations.gov](http://www.regulations.gov), or by email to [NWP2017@usace.army.mil](mailto:NWP2017@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 June 1, 2016 Federal Register notice. Comments on the proposed NWP are due by August 1, 2016.

Regional Issues Concerning the Proposed NWP, Including Regional Conditioning: Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that the adverse environmental effects of activities authorized by the NWP are no more than minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWP in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where the adverse environmental effects caused by activities authorized by those NWP may be more than minimal. Enclosure 2 of 2 of this public notice lists the proposed regional conditions currently under consideration by the Louisville District for the Commonwealth of Kentucky. The Louisville District is seeking comments on the proposed

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regional conditions and seeking comments on the need for additional regional conditions to help ensure that the adverse environmental effects of activities authorized by the proposed NWPs are no more than minimal, individually and cumulatively. Unless otherwise noted, all proposed regional conditions listed on these enclosures are applicable for activities in Kentucky.

Comments on regional issues relating to the proposed NWPs and proposed regional conditions should be sent to the Louisville District, CELRL-OPF-S, Rm 752, P.O. Box 59, Louisville, Kentucky 40201 (telephone number (502) 315-6709). Comments relating to regional conditions are due by **August 1, 2016**. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices. If you desire to submit your comments on the proposed regional conditions by email, you must comply with the following:

a) In the subject line of your email, type in **ONLY** the Public Notice ID No. LRL-2016-00006.

Example:

Subject: LRL-2016-00006

b) Provide your physical mailing address and telephone number.

c) Send your email to: [lrl.regulatorypubliccomment@usace.army.mil](mailto:lrl.regulatorypubliccomment@usace.army.mil).

d) If you are sending attachments greater than 1 Mb in size with your email, you must send a hard copy (CD or paper) to the Corps' physical address as well.

After the final NWPs are issued, the final regional conditions will be issued after they are approved by the Division Commander. After the final NWP are issued, States will make their Clean Water Act Section 401 (401) water quality certification decision. The 401 decision must be made within 90 days of the Federal Register notice announcing the issuance of the NWPs. The final NWPs will go into effect on March 19, 2017.

Draft decision documents for each of the proposed NWPs, which include environmental documentation prepared for the purposes of the National Environmental Policy Act, have been written by Corps Headquarters. The decision documents will address compliance of the NWPs with the requirements for issuance under the Corps general permit authority. These documents, as well as the proposed NWPs, are available for viewing at [www.regulations.gov](http://www.regulations.gov), docket number COE-2015-0017. Final decision documents will be prepared for the NWPs that are issued. In addition, the final national NWP decision documents will be supplemented by division engineers to address their decisions concerning regional conditions for the NWPs.

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Enclosed 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/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx> , at [www.regulations.gov](http://www.regulations.gov) in docket number COE-2015-0017, or at the Federal Register address listed below.

**Index of Proposed Nationwide Permits, Conditions, and Definitions**

**Nationwide Permits**

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities

45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
  - A. Removal of Low-Head Dams
  - B. Living Shorelines

***Nationwide Permit General Conditions***

1. Navigation
2. Aquatic Life Movements
3. Spawning Areas
4. Migratory Bird Breeding Areas
5. Shellfish Beds
6. Suitable Material
7. Water Supply Intakes
8. Adverse Effects from Impoundments
9. Management of Water Flows
10. Fills Within 100-Year Floodplains
11. Equipment
12. Soil Erosion and Sediment Controls
13. Removal of Temporary Fills
14. Proper Maintenance
15. Single and Complete Project
16. Wild and Scenic Rivers
17. Tribal Rights
18. Endangered Species
19. Migratory Bird and Bald and Golden Eagle Permits
20. Historic Properties
21. Discovery of Previously Unknown Remains and Artifacts
22. Designated Critical Resource Waters
23. Mitigation
24. Safety of Impoundment Structures
25. Water Quality
26. Coastal Zone Management
27. Regional and Case-by-Case Conditions
28. Use of Multiple Nationwide Permits
29. Transfer of Nationwide Permit Verifications
30. Compliance Certification
31. Activities Affecting Structures or Works Built by the United States
32. Pre-Construction Notification

***District Engineer's Decision***

***Further Information***

**Definitions**

Best management practices (BMPs)  
Compensatory mitigation  
Currently serviceable  
Direct effects  
Discharge  
Enhancement  
Ephemeral stream  
Establishment (creation)  
High Tide Line  
Historic property  
Independent utility  
Indirect effects  
Intermittent stream  
Loss of waters of the United States  
Non-tidal wetland  
Open water  
Ordinary high water mark  
Perennial stream  
Practicable  
Pre-construction notification  
Preservation  
Re-establishment  
Rehabilitation  
Restoration  
Riffle and pool complex  
Riparian areas  
Shellfish seeding  
Single and complete linear project  
Single and complete non-linear project  
Stormwater management  
Stormwater management facilities  
Stream bed  
Stream channelization  
Structure  
Tidal wetland  
Vegetated shallows  
Waterbody

## **KENTUCKY REGIONAL GENERAL CONDITIONS**

These regional conditions are in addition to, but do not supersede, the requirements in the Federal Register (Volume 81, No. 105 of June 1, 2017, pp 35211).

Notifications for all Nationwide Permits (NWP) shall be in accordance with General Condition No. 32.

1. For activities that would result in a loss of Outstanding State or National Resource Waters (OSNRWs), Exceptional Waters (EWs), Coldwater Aquatic Habitat Waters (CAHs) and waters with Designated Critical Habitat (DCH) under the Endangered Species Act for the NWP listed below, a Pre-Construction Notification (PCN) will be required to the Corps. The Corps will coordinate with the appropriate resource agencies (see attached list) on these NWP for impacts to these waters.

NWP 3 (Maintenance)  
NWP 7 (Outfall Structures and Associated Intake Structures)  
NWP 12 (Utility Line Activities)  
NWP 14 (Linear Transportation Projects)  
NWP 29 (Residential Developments)  
NWP 39 (Commercial and Institutional Developments)  
NWP 40 (Agricultural Activities)  
NWP 41 (Reshaping Existing Drainage Ditches)  
NWP 42 (Recreational Facilities)  
NWP 43 (Stormwater Management Facilities)  
NWP 44 (Mining Activities)  
NWP 51 (Land-Based Renewable Energy Generation Facilities)  
NWP 52 (Water-Based Renewable Energy Generation Pilot Projects)

2. In addition to the notification and agency coordination requirements in the NWP, for impacts greater than 0.25 acres in all “waters of the U.S.” for the NWP listed below, a PCN will be required to the Corps. The Corps will coordinate with the appropriate resource agencies (see attached list) on these NWP:

NWP 3 (Maintenance)  
NWP 7 (Outfall Structures and Associated Intake Structures)  
NWP 12 (Utility Line Activities)  
NWP 14 (Linear Transportation Projects)  
NWP 29 (Residential Developments)  
NWP 39 (Commercial and Institutional Developments)  
NWP 40 (Agricultural Activities)  
NWP 41 (Reshaping Existing Drainage Ditches)  
NWP 42 (Recreational Facilities)  
NWP 43 (Stormwater Management Facilities)  
NWP 44 (Mining Activities)  
NWP 51 (Land-Based Renewable Energy Generation Facilities)  
NWP 52 (Water-Based Renewable Energy Generation Pilot Projects)

3. For activities in all “waters of the U.S.” for the NWP’s listed below, a PCN will be required to the Corps. The Corps will coordinate with the appropriate resource agencies (see attached list) on these NWP’s:

NWP 21 (Surface Coal Mining Activities)

NWP 27 (Aquatic Habitat Restoration, Establishment & Enhancement Activities)

NWP 49 (Coal Remining Activities)

NWP 50 (Underground Coal Mining Activities)

4. Nationwide Permit No. 14 – Linear Transportation Projects.

- (a) Activities in Section 10 navigable waters will require a PCN to the Corps.
- (b) New public road alignments or realignments are limited to a permanent loss of 500 linear feet of intermittent or perennial stream length at each crossing. Public road crossings with permanent losses greater than 500 linear feet of intermittent or perennial stream associated with new alignments or realignments will be evaluated as an individual permit i.e., a Letter of Permission or as a Standard Individual Permit.
- (c) All linear transportation project crossings resulting in the permanent loss of greater than 300 linear feet of intermittent or perennial stream will require mitigation to compensate for impacts to the “waters of the U.S.” The permanent loss of “waters of the U.S.” includes the linear feet of water that is permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity and not restored to pre-construction contours and elevations after construction. In addition to the notification requirements contained in NWP 14, the permittee must submit a PCN to the district engineer prior to commencing the activity for the permanent loss of greater than 300 feet of intermittent and perennial stream of all “waters of the U.S.”. (See General Condition 31 and the definition of "loss of waters of the United States" in the Nationwide Permits for further information.)

5. Notification in accordance with Condition 32 is required to the Corps for all activities which are subject to jurisdiction under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

6. All applications are required as both a paper copy and in an electronic media format, including electronic mail or compact disc.



Further information:

Outstanding State or National Resource Water (OSNRWs), Exceptional Waters (EWs), and Coldwater Aquatic Habitat Waters (CAHs) are waters designated by the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet. The list can be found at the following link: <http://eppcapp.ky.gov/spwaters/>

Designated Critical Habitat (DCH) under the Endangered Species Act is determined within the Commonwealth of Kentucky by the U.S. Fish and Wildlife Service. The current list of Kentucky's Threatened, Endangered, and Federal Candidate Species can be found at the following link: <http://www.fws.gov/frankfort/EndangeredSpecies.html>

Information on Pre-Construction Notification (PCN) can be found at NWP General Condition No. 32 in the Federal Register (Volume 81, No. 105 of June 1, 2017, pp 35211).

Mitigation includes activities that avoid, minimize, and compensate for impacts.

### **COORDINATING RESOURCE AGENCIES**

Chief, Wetlands Regulatory Section  
U.S. Environmental Protection Agency  
Region IV  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Supervisor  
U.S. Fish & Wildlife Service  
JC Watts Federal Building, Room 265  
330 West Broadway  
Frankfort, Kentucky 40601

Supervisor  
401 Water Quality Certification  
Kentucky Division of Water  
200 Fair Oaks Lane, 4<sup>th</sup> Floor  
Frankfort, Kentucky 40601

Commissioner  
Department of Fish and Wildlife Resources  
#1 Game Farm Road  
Frankfort, Kentucky 40601

Executive Director and State Historic Preservation Officer  
Kentucky Heritage Council  
300 Washington Street  
Frankfort, Kentucky 40601

**ADDITIONAL COORDINATING RESOURCE AGENCY**  
**FOR NWPS 21, 49, AND 50**

Kentucky Department of Natural Resources  
Division of Mine Permits  
#2 Hudson Hollow  
Frankfort, Kentucky 40601