

## ENCLOSURE 3

### **Proposed 2017 Nationwide Permit Regional Conditions for Pennsylvania**

#### **I. Nationwide Permit Specific Regional Conditions:**

Note: see “Section II. Nationwide Permit General Regional Conditions” for additional regional conditions that are applicable to multiple and/or all NWP. Unless otherwise noted, all regional conditions listed in this enclosure are applicable for activities in Pennsylvania.

#### **Nationwide Permit #3 Maintenance**

Permit Specific Regional Conditions –

1. Prior to doing the work, the permittee must submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 32 and regional general condition 32a) for this Nationwide Permit (NWP), as specified below. A PCN to the District Engineer is required for:
  - a. For NWP 3(a), any regulated discharge of dredged and/or fill material which involves the proposed use of equipment to remove material from or move material across a stream channel as part of the proposed activity for repair, rehabilitation, or replacement. The PCN must clearly describe any activity proposing the use of equipment to move material from or across a stream channel;
  - b. For NWP 3(a), proposed construction and modification of docks, piers, and other structures that will occur along and/or within 150 feet of the horizontal limits of a federally authorized channel within the Baltimore District Civil Works Boundary <http://www.nab.usace.army.mil/Navigation/DepthRpts.htm#017>;
  - c. For work associated with NWP 3(a), regarding the repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire or other discrete events, that occurs along federally authorized channels. All proposed work shall comply with the most current version of the Baltimore District’s setback guidance on the Baltimore District Regulatory website at: <http://www.nab.usace.army.mil/Portals/63/docs/Regulatory/Pubs/spn11-17.pdf> ; or
2. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**
  - a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin

Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

### **Nationwide Permit #5 Scientific Measurement Devices**

Permit Specific Regional Conditions –

1. For the Delaware River in Pennsylvania, the construction or installation of subaqueous turbines or similar facilities is not authorized by this NWP.
2. Prior to doing the work, the permittee must submit a pre-construction notification to the District Engineer for any activity, proposing the discharge of greater than 10 cubic yards of dredged and/or fill material for the construction of small weirs and flumes, in accordance with the current Corps permit application procedures (See general condition 32 and regional general conditions 32a).

### **Nationwide Permit #6 Survey Activities**

Permit Specific Regional Conditions –

1. Use of in-water explosives is not authorized under this NWP.
2. The permittee shall ensure that all in-stream exploratory trenching is conducted under dry conditions.

### **Nationwide Permit #7 Outfall Structures and Associated Intake Structures**

Permit Specific Regional Conditions –

1. **Essential Fish Habitat Regional Conditions (Applicable to the Delaware River in Pennsylvania):**
  - a. Screening over the mouth of associated intake structures shall have a mesh size no larger than 2 mm;
  - b. Intake structure velocities shall not exceed 0.5 feet per second; and
  - c. The intake structure shall be positioned to minimize impingement/entrainment of sensitive life stages of aquatic species (e.g., recessed away from the waterway, positioned perpendicular to the predominant direction of flow).

### **Nationwide Permit #10 Mooring Buoys**

Permit Specific Regional Conditions –

1. Water depths in the mooring area must be sufficient that any moored vessels float at all stages of the tide.
2. Mooring buoys are prohibited in areas mapped as submerged aquatic vegetation (SAV) habitat. The applicant should refer to reliable SAV mapping sources to comply with this condition.

**Nationwide Permit #11 Temporary Recreational Structures**

Permit Specific Regional Conditions –

1. Water depths in the mooring area must be sufficient that any moored vessels float at all stages of the tide.
2. For the **Delaware River in Pennsylvania**, this NWP is applicable only to structures associated with discrete or specific events.
3. This NWP does not authorize the placement of any temporary structures in any areas mapped with submerged aquatic vegetation (SAV). The applicant should refer to reliable SAV mapping sources to comply with this condition.
4. Prior to doing the work, the permittee must submit a pre-construction notification to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 32 and regional general condition 32a).

**Nationwide Permit #12 Utility Line Activities**

Permit Specific Regional Conditions –

1. This nationwide permit does not authorize the following activities:
  - a. Any work on the Delaware River downstream of the U.S. Route 202 Bridge at New Hope, Pennsylvania, or the Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania;
  - b. The stockpiling or side-casting of excavated material in wetlands in excess of 30 days, unless a longer period of time is specifically reviewed and approved by the District Engineer. Further, all excess or suitable dredged and/or excavated material not used as backfill over any cable or pipeline shall be disposed of in an upland area and shall be stabilized with straw bales, silt fence, or other acceptable methods to prevent reentry into any waterway or wetland;

- c. The permanent loss of more than 300 linear feet of stream bed at a single crossing, unless for intermittent and ephemeral stream beds the District Engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects;
  - d. The placement of manholes in wetlands unless demonstrated to the satisfaction of the Corps that the placement is unavoidable; and
  - e. The permanent discharge of any drilling muds that may be generated through such methods as directional boring or drilling.
2. For the installation of utility lines, the following applies:
- a. Utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the District Engineer to be impracticable;
  - b. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling is the preferred method of installation when possible, especially in tidal waters;
  - c. Where a utility line is constructed parallel to a stream corridor, an undisturbed buffer shall be established between the utility line and the waterway to avoid or minimize potential future impacts to Waters of the United States. These potential impacts would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the District Engineer;
  - d. The top of any buried cable, encasement, or pipeline shall be located a minimum of three feet below the existing bottom elevation of the streambed and shall be backfilled with suitable heavy material to the preconstruction bottom elevation. Where the cable, encasement, or pipeline is placed on bedrock, a minimum depth of one foot from the lowest point in the natural contour of the streambed shall be maintained. When crossing a maintained navigation channel, the requirements are a minimum of ten feet between the top of the cable, encasement, or pipeline and the authorized depth of the navigation channel, except in the Delaware River, where the minimum vertical clearance shall be six feet. For Federal navigational channels, where the utility line is placed on bedrock, a minimum depth of two feet from the authorized depth of the navigation channel shall be maintained; and
  - e. Clay plugs, impervious membranes, or other state of the art methods shall be placed in trenches to ensure that the trench does not drain the water and/or

wetland through which the utility line was installed. Photo-documentation of clay plugs or impervious material at each crossing must be included with the submitted “self-certification form.”

3. Prior to doing the work, the permittee shall submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 32 and regional general condition 32a).

The PCN shall include the following additional information:

- a. For all submerged utility lines across navigable waters of the United States, the PCN shall include a location map and cross-sectional view drawing showing the utility line crossing from bank to bank in relationship to the waterway bottom. In addition, the location and depth of any Federal navigation channel shall be shown in relation to the proposed utility line;
  - b. The PCN shall include a map of the entire project corridor/overall project area including a delineation of all wetlands and waters of the United States within the corridor and overall project area;
  - c. The PCN shall include information regarding how the selection of the alignment avoids and minimizes impacts to aquatic resources to the maximum extent practicable;
  - d. Where water or sewer line installation is proposed in an existing subdivision and the purpose is to extend service to new or expanded commercial, institutional, and residential lots containing waterways and wetlands which would be filled for construction, the PCN shall include information regarding the waterways/wetlands within those lots and potential impacts to those aquatic resources;
  - e. Any PCN to the District Engineer that proposes construction of a permanent access road must also justify, to the satisfaction of the District Engineer, that any such permanent fills are necessary, and that temporary access roads are not practicable;
4. Within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline across a navigable water of the United States (i.e., Section 10 waters), the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, Maryland, 20910 with professional, certified as-built drawings, to scale, with control (i.e., latitude/longitude, state plane coordinates), depicting the alignment and minimum clearance of the aerial wires above the mean high water line

at the time of survey or depicting the elevations and alignment of the buried cable or pipeline across the navigable waterway.

**5. Essential Fish Habitat Regional Conditions (Applicable to the Delaware River in Pennsylvania):**

- a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable; and
- b. If a proposed activity would involve impacts to submerged aquatic vegetation (SAV) in the Delaware River, the applicant shall clearly document all efforts to avoid and minimize the impacts and to achieve restoration of these areas. At a minimum, this shall include pre-construction surveys along the entire right-of-way to map all existing SAV, construction schedules, and long term monitoring to assess restoration of SAV areas.

**Nationwide Permit #13 Bank Stabilization**

Permit Specific Regional Conditions –

**1. Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

- a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

**Nationwide Permit #14 Linear Transportation Projects**

Permit specific Regional Conditions –

1. Prior to doing the work, the permittee shall submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 32 and regional general condition 32a) if a Section 10 permit is required.

**2. Essential Fish Habitat Regional Conditions (Applicable to the Delaware River in Pennsylvania):**

- a. For any activity in the Delaware River, a complete copy of any required PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder

Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act; and

- b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

### **Nationwide Permit #18 Minor Discharges**

Permit Specific Regional Conditions –

1. In all Section 10 waters, prior to doing the work, the permittee shall submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 32 and regional general condition 32a).
2. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**
  - a. Any activity in the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.
  - b. For any activity in the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

### **Nationwide Permit #19 Minor Dredging**

Permit Specific Regional Conditions –

1. For all Section 10 waters, prior to doing the work, the permittee shall submit a pre-construction notification to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 32 and regional condition 32a).

**2. Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

- a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.
- b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

**Nationwide Permit #21 Surface Coal Mining Operations**

Permit Specific Regional Conditions –

**1. NWP 21 (b)-Other Surface Coal Mining Activities:**

- a. This nationwide permit does not authorize activities that would result in the loss of more than of 1000 linear feet of stream bed.

**Nationwide Permit #22 Removal of Vessels**

Permit Specific Regional Conditions -

**1. Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

- a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.
- b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

### **Nationwide Permit #23 Approved Categorical Exclusions**

Permit Specific Regional Conditions –

1. Prior to doing the work, the permittee shall submit a pre-construction notification to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 32 and regional condition 32a).

### **Nationwide Permit #25 Structural Discharges**

Permit Specific Regional Conditions –

1. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**
  - a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.
  - b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

### **Nationwide Permit #27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities**

Permit Specific Regional Conditions –

1. Any activity involving shellfish seeding, such as the placement of shell material or any other habitat development or enhancement, is restricted to shellfish species that are native to that waterbody.
2. Prior to doing the work, the permittee shall submit a pre-construction notification to the District Engineer, in accordance with the current Corps of Engineers permit application procedures (See general condition 32 and regional condition 32a).
3. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

- a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

### **Nationwide Permit #28 Modifications of Existing Marinas**

Permit Specific Regional Conditions –

1. Prior to doing the work, the permittee shall submit a pre-construction notification to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 32 and regional general condition 32a). The application must also include plans showing the configuration of existing structures. For projects located on a waterway containing an authorized Federal Navigation Channel, the permittee must also include the distance of the project from the edge of the authorized channel. The District Engineer will add special conditions, where necessary, to ensure those adverse navigation impacts are minimal.
2. **Applicable to the Delaware River in Pennsylvania:** This NWP is only applicable to those projects, which have been previously reviewed and approved by the District Engineer through the Individual Permit process.
3. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**
  - a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.
  - b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

### **Nationwide Permit #30 Moist Soil Management for Wildlife**

Permit Specific Regional Conditions –

1. Prior to doing the work, the permittee must submit a pre-construction notification to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 32 and regional general conditions 32a).

**Nationwide Permit #33 Temporary Construction, Access and Dewatering**

Permit specific Regional Conditions –

1. **Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**
  - a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

**Nationwide Permit #35 Maintenance Dredging of Existing Basins**

Permit Specific Regional Conditions –

1. In Section 10 waters, prior to doing the work, the permittee must submit a pre-construction notification (PCN) to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 32 and regional general condition 32a). The application must also include a drawing indicating existing depths for the project site and nearby channel, and a survey of submerged aquatic vegetation in the vicinity of the dredge site, and plans indicating the dimensions (width and depth) and the approximate date of previous dredging, and identifying the location of the upland disposal site(s).
2. This nationwide permit does not authorize activities on the Delaware River downstream of the U.S. Route 202 Bridge at New Hope, Pennsylvania, or the Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania.
3. Maintenance dredging authorized by this nationwide permit shall be limited to the dimensions (width and depth) of previously authorized dredging.

**Nationwide Permit #36 Boat Ramps**

Permit Specific Regional Conditions –

This nationwide permit does not authorize activities on the Delaware River downstream of the U.S. Route 202 Bridge at New Hope, Pennsylvania.

**Nationwide Permit #38 Cleanup of Hazardous and Toxic Waste**

Permit Specific Regional Conditions –

**1. Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

- a. For any activity on the Delaware River, a complete copy of any PCN submitted to the Corps of Engineers shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division, 74 Magruder Road, Sandy Hook, Highlands, New Jersey 07732. The applicant must provide evidence that this has been accomplished. The Corps of Engineers will coordinate review of the PCN with the National Marine Fisheries Service pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.
- b. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

**Nationwide Permit #45 Repair of Uplands Damaged by Discrete Events**

Permit Specific Regional Conditions –

**1. Essential Fish Habitat Regional Condition (Applicable to the Delaware River in Pennsylvania):**

- a. Any activity on the Delaware River associated with this NWP shall comply with the time-of-year restrictions developed in conjunction with the Delaware Basin Fish and Wildlife Management Cooperative and accepted by the Corps of Engineers, as applicable.

**Nationwide Permit #48 Commercial Shellfish Aquaculture Activities**

Permit Specific Regional Conditions –

1. This NWP does not authorize the following activities:
  - a. Activities located in any areas mapped as submerged aquatic vegetation. The applicant should refer to reliable SAV mapping sources to comply with this condition;

- b. Activities associated with the cultivation and/or introduction into tidal waters of shellfish species that are not indigenous to the Chesapeake Bay and its tributaries, the Maryland coastal bays, and the Delaware River; or
2. All structures associated with the aquaculture activity must be removed from waters of the United States when/if the activity is abandoned.
3. Any introduced shellfish introduced to the Delaware River and its tributaries must be certified under Delaware standards as being disease and parasite free.
4. **Essential Fish Habitat Regional Conditions (Applicable to the Delaware River in Pennsylvania):**
  - a. A PCN must be submitted to the Corps for all activities in waters of the United States.
  - b. A complete copy of any PCN to the Corps shall be forwarded directly to NMFS, Habitat Conservation District, 74 Magruder Road, Sandy Hook, Highlands, New Jersey, 07732. The applicant must provide evidence that this has been accomplished. The Corps will coordinate review of the PCN with the NMFS pursuant to MSA.

#### **Nationwide Permit 52 Water-Based Renewable Energy Generation Pilot Projects**

##### Permit Specific Regional Conditions –

1. This NWP does not authorize work or discharges associated with wind generation projects within Lake Erie.
2. The PCN shall include the following:
  - a. For all submerged utility lines across navigable waters of the United States, the PCN shall include a location map and cross-sectional view showing the utility line crossing from bank to bank. In addition, the location and depth of the Federal Project Channel shall be shown in relation to the proposed utility line.
  - b. The PCN shall include a map of the entire project corridor/overall project area including a delineation of all wetlands and waters of the United States within the corridor and overall project area.
  - c. The PCN for aerial transmission lines over navigable waters must include the nominal system voltage and the additional clearance above low steel for bridges, if available, or above maximum high water elevation.

3. For activities in the Delaware River, the Corps shall provide a copy of the required PCN to NMFS for individual EFH consultation and coordination pursuant to the Magnuson Stevens Act.

## **II. Nationwide Permit General Regional Conditions**

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following regional general conditions, as applicable, in addition to any nationwide permit specific regional conditions identified above in Section I, the general conditions found in the proposed 2017 NWPs published in the *Federal Register* on June 1, 2016 (81 FR 35186), and any case-specific conditions imposed by the Corps.

### **Nationwide Permit General Condition #2 Aquatic Life Movement**

**Regional General Condition 2a** - The permittee shall apply any appropriate time-of -year restrictions to protect the aquatic resources present within the project area and downstream of the project site.

### **Nationwide Permit General Condition #17 Tribal Rights**

Within the Baltimore District's geographic area of review, no application reviewed by the District is considered complete until completion of tribal coordination. The prospective permittee of an application reviewed by the Baltimore District shall not begin the activity until notified in writing by the District Engineer that the activity may proceed under the nationwide permit with any special conditions imposed, if applicable.

### **Nationwide Permit General Condition #18 Endangered Species**

**Regional Condition 18a** – For all work in Pennsylvania associated with any of the NWPs, the applicant is required to complete a Pennsylvania Natural Diversity Inventory (PNDI) project screening for federally listed threatened and endangered species. The PNDI Environmental Review Tool is located at: <http://www.naturalheritage.state.pa.us>. The prospective permittee must submit a PCN to the District Engineer, in accordance with the current Corps permit application procedures (See general condition 32 and regional general condition 32a), prior to doing the work, if the PNDI receipt identifies a “Potential Impact”, or “Avoidance Measures”, in association with the U.S. Fish and Wildlife Service.

### **Nationwide Permit General Condition #32 Pre-Construction Notification**

The following regional general conditions are incorporated as part of the terms and conditions of NWP General Condition 32, *Pre-Construction Notification*. These regional general conditions are applicable to all NWPs where a PCN is submitted to the district engineer. This

includes the following: (a) those NWP's requiring notification to the district engineer pursuant to the NWP general conditions 18, 22 and 32, (b) those NWP's requiring notification to the district engineer pursuant to a regional condition, and (c) any other pre-constriction notifications to the district engineer where an applicant has requested verification of an NWP authorization. Those NWP's that require a PCN include NWP's 1\*, 2\*, 3\*, 4\*, 5\*, 6\*, 7, 8, 9\*, 10\*, 11, 12, 13\*, 14\*, 15\*, 16\*, 17, 18, 19, 20\*, 21, 22\*, 23, 24\*, 25\*, 27, 28, 29, 30, 31, 32\*, 33, 34, 35, 36\*, 37\*, 38, 39, 40, 41, 42, 43\*, 44, 45, 46, 48\*, 49, 50, 51, 52, A, and B.

*\*These NWP activities require notification under certain circumstances. Review the NWP authorization, general conditions 18, 22 & 32, and the regional conditions to identify these circumstances.*

### **Regional General Conditions 32a**

1. A PCN shall be submitted to the District Engineer for any proposed activity, which would result in impacts, temporary or permanent, to jurisdictional wetlands in the following Counties in Pennsylvania: Adams, Berks, Bucks, Carbon (Aquashicola Creek Watershed), Chester, Cumberland, Delaware, Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton, Schuylkill (Swatara Creek Watershed), and York.
2. For a PCN required in Pennsylvania under Regional Nationwide Permit General Condition 18a, a copy of the PCN must also be concurrently forwarded to the U.S. Fish and Wildlife Service if the PNDI receipt identifies a "Potential Impact" related to the U.S. Fish and Wildlife Service, or if the applicant cannot implement, or does not agree to implement one or more U. S. Fish and Wildlife Service issued "Avoidance Measures" detailed on the PNDI receipt.
3. A PCN shall be submitted the Baltimore District Corps of Engineers for proposed construction and modification of docks, piers, and other structures that will occur along and/or within 150 feet of the horizontal limits of a federally authorized channel within the Baltimore District Civil Works Boundary <http://www.nab.usace.army.mil/Navigation/DepthRpts.htm#017>. In addition, a PCN is required for the replacement of previously authorized, currently serviceable structures located along federally authorized channels that are destroyed by an act of nature or sudden event. All proposed work shall comply with the most current version of the Baltimore District's setback guidance on the Baltimore District Regulatory website at: <http://www.nab.usace.army.mil/Portals/63/docs/Regulatory/Pubs/spn11-17.pdf>
4. All pre-construction notifications (PCNs) to the District Engineer shall be completed using the established Corps of Engineers permit application procedures for that locality (see <http://www.nab.usace.army.mil/Missions/Regulatory/PermitTypesandProcess.aspx>). The PCN shall include all activities that the applicant plans to undertake that are reasonably related to the same project. All PCNs to the District Engineer shall include the following information, where applicable, in addition to the information specified in the nationwide permit conditions, including General Condition 32:

- a) Plan(s) of the proposed work on 8-1/2 by 11 inch paper which includes a location map; longitude and latitude; and plan view drawings clearly depicting the location, size, and dimensions of the proposed activity as well as the location of the delineated waters and wetlands, for the entire project area. The drawings shall contain the amount (in cubic yards) and the area (square feet) of dredged and/or fill material to be discharged in Corps jurisdiction, including both permanent and temporary structures. Plans should depict all proposed work, including areas proposed for filling, grading, excavation, drainage, and/or inundation. All drawings shall include the ordinary high water mark, or if in tidal waters, the mean high water mark and high tide line; existing water depths; cross-sectional plan; depth of any structure(s) below mean low water; height of any structure(s) above mean high water; the maximum distance that the structure(s) or fill will extend channelward of the existing shoreline; the width of the waterway at the project site; the location of any dredged material disposal area; the distance from the edge of any federal navigation channel and the location of any temporary work; structures, vessels, or fills required for construction; a copy of any previous Federal or State approvals; and the location and nature of any submerged aquatic vegetation (e.g., eel grass, *Zostera marina*). In the Baltimore District, the applicant may refer to the Virginia Institute of Marine Science aerial surveys for obtaining such information. <http://web.vims.edu/bio/sav/index.html> The applicant should also refer to other reliable sources to comply with this condition.
- b) The PCN shall include a wetland and stream delineation for the entire project area, including latitude and longitude, identified on a scaled plan of the project site. All existing or proposed work in aquatic resources shall be identified on the same-scaled plan. Further, at the discretion of the District Engineer, the Corps may determine that a PCN is incomplete if it is determined that field verification of the wetland and/or stream delineation is required.
- c) Numbered and dated pre-project color photographs showing all aquatic resources proposed to be impacted on the project site. The compass angle and position of each photograph shall be documented on the plan view drawing.
- d) Evidence that the prospective permittee has already contacted and received a response from the National Marine Fisheries Service and/or the U.S. Fish and Wildlife Service concerning any Federally listed Threatened and Endangered Species that may be affected by the proposed activity

In Pennsylvania, a PNDI receipt or U.S. Fish and Wildlife Service letter (issued pursuant to the ESA) serves as evidence that the prospective permittee has contacted and received a response from the U.S. Fish and Wildlife Service.

- e) Evidence that the prospective permittee has already contacted and received a response from the State Historic Preservation Office concerning historic properties that may be affected by the proposed activity.
  - f) Documentation from the appropriate State agency indicating whether the proposed project is located within a State Natural Heritage site, Outstanding National Resource Water, or National Estuarine Research Reserve. For further information, reference NWP general condition 22.
  - g) A written statement describing the following:
    - i. what measures have been taken to avoid impacts to aquatic resources;
    - ii. what measures have been taken to minimize unavoidable impacts to aquatic resources;
    - iii. what measures have been developed to compensate for the loss of aquatic resources. Where compensatory mitigation is required, approval of a mitigation plan (complete with the 12 fundamental components of a compensatory mitigation plan, as identified in 33 CFR 332.4/40 CFR 230.92.4 (c)) is required prior to initiating any authorized work.
5. When a PCN is required, the Corps review period shall commence with the receipt of a complete permit application at the Corps District Office. The prospective permittee shall not begin the activity until notified in writing by the District Engineer (normally within 60 days) that the activity may proceed under the nationwide permit with any special conditions imposed, if applicable.
6. Any requests to waive the 300 linear foot limitation for the intermittent and ephemeral streams for NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, and B or to waive the 500 linear foot limitation along the bank for NWP 13, or to waive the 20 foot width limitation for NWP 36, must include:
- a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characteristics observed associated with the Ordinary High Water Mark (e.g., bed and bank, wrack line, or scour marks); a description of the adjacent vegetation community, including a statement as to if the area is upland or wetland; surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information.
  - b. An analysis of the proposed impacts to the waterbody in accordance with General Condition 32.

- c. Measures taken to avoid and minimize losses, including other methods of constructing the proposed project; and
  - d. A mitigation plan describing how the unavoidable losses are proposed to be compensated (complete with the 12 fundamental components of a compensatory mitigation plan, as identified in 33 CFR 332.4/40 CFR 230.92.4 (c)).
7. Any compensatory mitigation required by special conditions of the NWP verification shall be completed before or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. When compensatory mitigation involves use of a mitigation bank or in-lieu-fee program, the special conditions of the permit must identify the specific mitigation bank or in-lieu-fee program used to provide the required compensatory mitigation and the number and resource type of credits the permittee is required to secure. Proof of payment to the approved mitigation bank or in-lieu-fee program shall be submitted to the appropriate Corps district prior to commencement of construction of the authorized activity. The amount of required compensatory mitigation must be, to the extent practicable, sufficient to replace lost aquatic resource functions and services. A watershed approach to compensatory mitigation that considers the importance of landscape position and resource type of compensatory mitigation projects for the sustainability of aquatic resource functions within the watershed should be used.

**Nationwide Permit General Condition for Aerial Transmission Lines Across Navigable Waters**

- 1. The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the United States Coast Guard for new fixed bridges, in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code:

<b>Nominal System Voltage (kV)</b>	<b>Minimum additional clearance (ft.) above clearance required for bridges</b>
115 and below	20
138	22
161	24
230	26
350	30
500	35

700	42
750-765	45

- a. The PCN for aerial transmission lines over navigable waters must include the nominal system voltage and the additional clearance above low steel for bridges, if available, or above maximum high water elevation;
  - b. Corps of Engineer regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over Corps lake projects. In instances where both this regional condition and ER 1110-2-4401 apply, the greater minimum clearance is required; and
  - c. Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.
2. Within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline across a navigable water of the United States (i.e., Section 10 waters), the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, Maryland, 20910 with professional, certified as-built drawings, to scale, with control (i.e., latitude/longitude, state plane coordinates), depicting the alignment and minimum clearance of the aerial wires above the mean high water line at the time of survey or depicting the elevations and alignment of the buried cable or pipeline across the navigable waterway.

**SPECIAL NOTES:**

1. Where the Commonwealth, State or the District of Columbia (District) has denied 401 WQC and/or not concurred with the Corps' CZM consistency determination for a NWP authorization, the prospective permittee should contact the Commonwealth/State/District to obtain an activity specific review and approval by the Commonwealth/State/District prior to submitting any required pre-construction notification (PCN) to the Corps of Engineers.