



U.S. Army Corps
of Engineers
Baltimore District

Public Notice

In Reply Refer to
Special Public Notice # 07-37

Date: September 11, 2007

Subject: Final Regional Conditions and Suspension for the 2007 Nationwide Permits

The purpose of this special public notice is to inform the general public of the issuance of final regional conditions applicable for Nationwide Permit (NWP) activities in the State of Maryland, the Commonwealth of Pennsylvania, the District of Columbia, and military installations of northern Virginia. Furthermore, this special public notice announces the suspension of various NWPs in the State of Maryland and the Commonwealth of Pennsylvania.

On March 12, 2007, in Part II of the *Federal Register* (72 FR 11092), the U.S. Army Corps of Engineers announced the national reissuance of 43 existing NWPs, general conditions, and definitions with some modifications. The Corps also issued six new NWPs, two general conditions, and 13 new definitions. The NWPs became effective on March 19, 2007.

After the publication of this *Federal register* notice, Corps districts began finalizing their regional conditions for the reissued NWPs. Regional conditions provide additional protection for the aquatic environment, by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions will also help ensure protection of high value waters within the District. The Baltimore District has the lead responsibility for the development of regional conditions that would be applicable in the State of Maryland, the Commonwealth of Pennsylvania, the District of Columbia, and military installations of northern Virginia. The regional conditions and suspension of some of the NWPs was approved on May 31, 2007 by the District Engineer, Baltimore District, for those States, the District of Columbia, and military installations of northern Virginia and are effective as of the date of this public notice. The Baltimore District initiated the development of these regional conditions in a public notice dated October 16, 2006. The regional conditions reflect a finalization of that effort in conjunction with the NWPs published in the *Federal Register* on March 12, 2007. An enclosure for this special public notice ([Enclosure A](#)) lists the final regional conditions for the Baltimore District. These final regional conditions are also posted on the Baltimore District Internet home page. The URL address for these regional conditions is: http://www.nab.usace.army.mil/Regulatory/public_notices.htm Unless otherwise noted, these regional conditions are applicable for NWP activities in the State of Maryland, the Commonwealth of Pennsylvania, the District of Columbia and military installations of northern Virginia.

The 2007 Nationwide Permits, the March 12, 2007 *Federal Register* notice, and the notice of corrections are available on the Corps home page at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>.

Publication of the *Federal Register* notice also began a 60-day process for States and Tribes to make their Section 401 water quality certification and Coastal Zone Management Act (CZMA) consistency determination decisions. The enclosed table ([Enclosure B](#)) describes the decisions by the State of Maryland, the Commonwealth of Pennsylvania, and the District of Columbia with regards to Section 401 water quality certification and coastal zone management consistency.

There are two types of regional conditions: Corps regional conditions and 401/CZM regional conditions. The 401/CZM regional conditions are developed by the State under Section 401 of the CWA and Section 307 of the Coastal Zone Management Act and become regional conditions to the NWPs. That is, the 401/CZM regional conditions are conditions of issued NWPs authorizations.

The District of Columbia Department of the Environment denied Water Quality Certification (WQC) for all NWPs to ensure that any NWP authorized projects comply with District of Columbia Water Quality Standards and water pollution regulations, and also to ensure that they would be able to keep track of those NWPs that would result in a discharge in the District of Columbia. There are no Coastal Zone Management Program (CZMP) requirements in the District of Columbia.

The State of Maryland has certified that the following NWPs are consistent with the State's CZMP and are issued WQC: 1, 2, 4, 6, 8, 9, 10, 11, 18, 19, 20, 22, 23, 24, 25, 28, 30, 31, 32, 34, 35, 36, 37, and 38. For the remaining NWPs, Maryland certified CZMP consistency and issued WQC, subject to the condition that the applicant obtains all necessary

permits and approvals from the Maryland Department of the Environment. This condition provides assurance that the activities authorized by these NWP's will comply with applicable State water quality standards and will be carried out in a manner consistent with the Maryland CZMP.

The Commonwealth of Pennsylvania, Department of Environmental Protection (PADEP), certified that all NWP's are consistent with the State's CZMP and are issued WQC, subject to the following conditions:

1. As of May 11, 2007, the Corps has not issued the final regional conditions applicable to NWP's. Therefore, Pennsylvania reserves the right to modify or revoke this 401 Water Quality Certification for any and all NWP's and the related final regional conditions, for up to 90 days, following the Corps notice of final regional conditions.
2. Prior to commencing any activity covered by a Nationwide Permit, the applicant must obtain all necessary permits or approvals from the Department of Environmental Protection, including, but not limited to, those required by the Pennsylvania Clean Streams Law (35 P.S. §691.1 et seq.), the Dam Safety and Encroachments Act (32 P.S. §693.1 et seq.), the Solid Waste Management Act (35 P.S. §6018.101 et seq.), the Hazardous Sites Cleanup Act (35 P.S. §6020.101 et seq.), and the regulations promulgated thereunder including but not limited to 25 Pa. Code Chapters 75, 91, 92, 93, 101, 102, 105, and 260-299. All environmental assessments required under these regulations, in addition to other regulatory requirements, must be complied with as a condition of Section 401 Water Quality Certification and Coastal Zone Management consistency for the NWP's.
3. Fill material cannot contain wastes as defined in the Pennsylvania Solid Waste Management Act (35 P.S. § 6018.101 et seq.).
4. For activities which impact on wetlands, a delineation shall be conducted in accordance with Pennsylvania Department of Environmental Protection's procedures for wetland delineation. The present procedure is published at 25 Pa. Code Chapter 105.451.
5. The Department retains the right, on an individual activity basis, to withdraw or modify 401 Water Quality Certification for an activity subject to a NWP which it determines may adversely impact water quality.

The Baltimore District has implemented State Programmatic General Permits (SPGPs) in the State of Maryland and in the Commonwealth of Pennsylvania, known as the MDSPGP-3 and the PASPGP-3, respectively. These SPGPs are designed to continue to authorize certain activities previously covered by the NWP program and institute a streamlined Corps regulatory process that has been integrated with state processes. Suspension of various NWP's will avoid confusion over SPGP use and eliminate redundancy since State and Federal regulatory programs are administered jointly in these states. If the SPGPs become void, enjoined, suspended, revoked, or removed from effect for any reason, the Corps will consider reissuance of some or all of the suspended NWP's for the purpose of efficiency and effectively protecting the aquatic environment, while maintaining an acceptable level of responsiveness to the regulated public.

I. Commonwealth of Pennsylvania

A. The following NWP's **are not** suspended anywhere in the Commonwealth of Pennsylvania:

- NWP 2: Structures in Artificial Canals
- NWP 3: Maintenance
- NWP 6: Survey Activities
- NWP 8: Oil and Gas Structures
- NWP 9: Structures in Fleeting and Anchorage Areas
- NWP 16: Return Water from Upland Contained Disposal Areas
- NWP 17: Hydropower Projects
- NWP 21: Surface Coal Mining Activities
- NWP 22: Removal of Vessels
- NWP 23: Approved Categorical Exclusions
- NWP 24: Indian Tribe or State Administered Section 404 Program
- NWP 27: Stream & Wetlands Restoration Activities
- NWP 28: Modifications to Existing Marinas
- NWP 30: Moist Soil Management for Wildlife
- NWP 31: Maintenance of Existing Flood Control Facilities

- NWP 32: Completed Enforcement Activities
- NWP 34: Cranberry Production Activities
- NWP 35: Maintenance Dredging of Existing Basins
- NWP 38: Cleanup of Hazardous and Toxic Waste
- NWP 44: Mining Activities
- NWP 47: Pipeline Safety Program Designated Time-Sensitive Inspections & Repairs
- NWP 48: Existing Commercial Shellfish Aquaculture Activities
- NWP 49: Coal Remining Activities
- NWP 50: Underground Coal Mining Activities

B. This suspension of the NWPs listed in Part I.C of this Special Public Notice is **not applicable** within the Commonwealth of Pennsylvania for the following:

1. Part II.B.6 of the PASPGP-3 lists certain ineligible waterways for which SPGP authorization is not available. Therefore, consistent with the processes outlined in Part IV.A.2 of the PASPGP-3 (or its successor) and the NWPs, NWP authorization may be available for activities that include activities located channelward of the ordinary high water line (OHWL) on non-tidal waters and/or the mean high water line (MHWL) on tidal waters on the following water bodies in Pennsylvania):

- a. All of the Delaware River;
- b. The Schuylkill River downstream of the confluence with Mill Creek at Port Carbon, Pennsylvania;
- c. The Lehigh River downstream from the State Route 940 Bridge;
- d. All of the Ohio River;
- e. All of the Beaver River;
- f. All of the Little Beaver River;
- g. All of the Manoning River;
- h. All of the Monongahela River;
- i. The Youghiogheny River from its mouth at McKeesport, Pennsylvania to river mile 31.2 at West Newton, Pennsylvania;
- j. The Allegheny River, from its mouth in Pittsburgh, Pennsylvania to river mile 197.4 at Kinzua Dam, north of Warren, Pennsylvania;
- k. The Kiskiminetas River from its mouth near Freeport, Pennsylvania to river mile 26.8 at Saltsburg, Pennsylvania;
- l. Tenmile Creek from its mouth at Millsboro, Pennsylvania to river mile 2.7; and
- m. Activities within Lake Erie which require submittal of a Joint Permit Application or Environmental Assessment to the PADEP.

2. Activities within federally regulated waters and wetlands that are not regulated as waters of the Commonwealth of Pennsylvania may be eligible for verification under NWPs.

3. Activities performed by federal agencies that do not require authorization by the Commonwealth of Pennsylvania pursuant to 25 PA 105 et seq. may be eligible for verification under NWPs.

C. The following NWPs **are** suspended in the Commonwealth of Pennsylvania, except in those areas and activities enumerated in Section I.B. of this Special Public Notice.

- NWP 1: Aids to Navigation
- NWP 4: Fish and Wildlife Harvesting, Enhancement, & Attraction Devices and Activities
- NWP 5: Scientific Measurement Devices
- NWP 7: Outfall Structures and Associated Intake Structures
- NWP 10: Mooring Buoys
- NWP 11: Temporary Recreational Structures
- NWP 12: Utility Line Activities
- NWP 13: Bank Stabilization
- NWP 14: Linear Transportation Projects
- NWP 15: U.S. Coast Guard Approved Bridges
- NWP 18: Minor Discharges
- NWP 19: Minor Dredging
- NWP 20: Oil Spill Cleanup

- NWP 25: Structural Discharges
- NWP 26: [Reserved]
- NWP 29: Residential Developments
- NWP 33: Temporary Construction, Access, & Dewatering
- NWP 36: Boat Ramps
- NWP 37: Emergency Watershed Protection & Rehabilitation
- NWP 39: Commercial & Institutional Developments
- NWP 40: Agricultural Activities
- NWP 41: Reshaping Existing Drainage Ditches
- NWP 42: Recreational Facilities
- NWP 43: Stormwater Management Facilities
- NWP 45: Repair of Uplands Damaged by Discrete Events
- NWP 46: Discharges in Ditches

II. State of Maryland

A. The following NWPs **are not** suspended anywhere in the State of Maryland:

- NWP 3: That portion of NWP 3 that authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire, or other discrete events
- NWP 4: Fish & Wildlife Harvesting, Enhancement & Attraction Devices and Activities
- NWP 20: Oil Spill Cleanup
- NWP 22: Removal of Vessels
- NWP 23: Approved Categorical Exclusions
- NWP 25: Structural Discharges
- NWP 27: Stream & Wetlands Restoration Activities
- NWP 30: Moist Soil Management for Wildlife
- NWP 31: Maintenance of Existing Flood Control Facilities
- NWP 32: Completed Enforcement Actions
- NWP 37: Emergency Watershed Protection & Rehabilitation
- NWP 38: Cleanup of Hazardous & Toxic Waste
- NWP 47: Pipeline Safety Program Designated Time-Sensitive Inspection and Repairs
- NWP 48: Existing Commercial Shellfish Aquaculture Activities

B. The suspension of the NWPs listed in section II.C of this notice is **not applicable** within the State of Maryland in certain wetlands and other waters of the United States near the Chesapeake and Delaware Canal. These areas include Back Creek (of the Chesapeake and Delaware Canal), east of a line extending from Welch Point to Courthouse Point to the Delaware line and to the Second Street Bridge to the south; Herring Creek east of the line extending from Welch Point to Courthouse Point to the dam that crosses Herring Creek; and Long Branch to the Boat Yard Road Bridge to the north, including adjacent and contiguous jurisdictional wetlands to these tidal waterways.

C. The following NWPs **are** suspended in the State of Maryland except in those areas identified in Section II.B of this Special Public Notice:

- NWP 1: Aids to Navigation
- NWP 2: Structures in Artificial Canals
- NWP 3: Maintenance (except for repair, rehabilitation, or replacement of structures or fills destroyed or damaged by storms, floods, fire, or other discrete events)
- NWP 5: Scientific Measurement Devices
- NWP 6: Survey Activities
- NWP 7: Outfall Structures and Maintenance
- NWP 8: Oil and Gas Structures
- NWP 9: Structures in Fleeting & Anchorage Areas
- NWP 10: Mooring Buoys
- NWP 11: Temporary Recreational Structures
- NWP 12: Utility Line Activities
- NWP 13: Bank Stabilization
- NWP 14: Linear Transportation Projects
- NWP 15: U.S. Coast Guard Approved Bridges
- NWP 16: Return Water from Upland Contained Disposal Areas

NWP 17: Hydropower Projects
NWP 18: Minor Discharges
NWP 19: Minor Dredging
NWP 21: Surface Coal Mining Activities
NWP 24: Indian Tribe or State Administered Section 404 Program
NWP 26: [Reserved]
NWP 28: Modifications of Existing Marinas
NWP 29: Residential Developments
NWP 33: Temporary Construction, Access & Dewatering
NWP 34: Cranberry Production Activities
NWP 35: Maintenance Dredging of Existing Basins
NWP 36: Boat Ramps
NWP 39: Commercial & 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 45: Repair of Uplands Damaged by Discrete Events
NWP 46: Discharges in Ditches
NWP 49: Coal Remining Activities
NWP 50: Underground Coal Mining Activities

III. The NWPs **are not** suspended in the District of Columbia.

IV. This suspension terminates the Corps' ability to verify any new projects under one of the suspended NWPs unless and until the Chief of Engineers or the appropriate District or Division Engineer makes a determination to the contrary pursuant to 33 C.F.R. § 330.4 or § 330.5. Activities that have commenced or been under contract to commence construction between March 19, 2007 and the date of this public notice and that meet the terms and conditions of the NWP activities are authorized provided the activity has received an individual water quality certification (WQC) or a case-specific WQC waiver and/or an individual Coastal Zone Management Act (CZMA) consistency determination or a case-specific presumption of CZMA concurrence. This authorized work must be completed within twelve months of the date of this public notice under the terms and conditions of the appropriate NWP(s). Activities completed under the authorization of a NWP which was in effect at the time the activity was completed continue to be authorized by that NWP.

For more information regarding the final regional conditions and the suspension of Nationwide Permits, contact Ms. Beth E. Bachur, CENAB-OP-R, at (410) 962-4336, or email at Beth.Bachur@usace.army.mil.

Enclosures