



U.S. Army Corps
of Engineers

Public Notice

Date: February 4, 2022
Special Public Notice # 22-02

Baltimore District

Philadelphia District

Pittsburgh District

ANNOUNCING THE FINAL REGIONAL CONDITIONS FOR THE REMAINING 41 NATIONWIDE PERMITS

The purpose of this special public notice is to inform the public of the issuance of the final regional conditions applicable to 41 Nationwide Permit (NWP) activities in the State of Maryland, the Commonwealth of Pennsylvania, and the District of Columbia. Furthermore, this special public notice announces the suspension of various NWPs in the State of Maryland, the Commonwealth of Pennsylvania, and the District of Columbia.

In the September 15, 2020, issue of the Federal Register (85 FR 57298), the U.S. Army Corps of Engineers (Corps) published its proposal to reissue 52 existing Nationwide Permits (NWPs) and issue five new NWPs. To solicit comments on proposed regional conditions for these NWPs, the Baltimore, Philadelphia, and Pittsburgh Districts (“Districts”) jointly issued Special Public Notice (SPN) #20-62 on September 30, 2020. In addition, the Districts proposed suspension of certain NWPs because the current State Programmatic General Permits (SPGPs) in Maryland and Pennsylvania provide comparable authorization for these NWPs.

In a final rule published in the Federal Register on January 13, 2021 (86 FR 2744), the Corps reissued 12 existing NWPs and issued four new NWPs. In that final rule, the Corps also reissued the NWP general conditions and definitions. Those 16 NWPs and the NWP general conditions and definitions went into effect on March 15, 2021. The 16 NWPs will expire on March 14, 2026.

On December 27, 2021, the Corps published a final rule in the Federal Register (86 FR 73522) announcing the reissuance of the remaining 40 existing Nationwide Permits (NWPs) and the issuance of one new NWP. Those 41 NWPs will go into effect on February 25, 2022, and will expire on March 14, 2026. The NWP general conditions and definitions published in the January 13, 2021, issue of the Federal Register apply to the 41 NWP’s reissued or issued in this final rule published in the December 27, 2021, issue of the Federal Register. This SPN announces the final regional conditions and suspensions for the 41 new and reissued NWPs approved by the North Atlantic and Great Lakes and Ohio River Divisions. The regional conditions ensure that the NWPs authorize only those activities that individually and cumulatively result in no more than minimal adverse environmental effects in Maryland, Pennsylvania, and the District of Columbia. More information on these NWPs and the December 27, 2021 Federal Register (86 FR 73522) notice is available on the Corps Headquarters website at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>.

Regional Conditions and Suspensions:

The Baltimore District has posted the final regional conditions and suspensions for these 41 final NWP (86 FR 73522) on the Regulatory webpage at: <https://www.nab.usace.army.mil/Missions/Regulatory/Permit-Types-and-Process/>. In addition, the following enclosures to this SPN provide the final regional conditions and suspensions by State for the remaining 41 final NWPs:

Enclosure 1 - Suspensions of the 2021 NWPs for the State of Maryland, the Commonwealth of Pennsylvania, and the District of Columbia

Enclosure 2 - Regional Conditions to the 2021 NWPs for the State of Maryland

Enclosure 3 - Regional Conditions to the 2021 NWPs for the Commonwealth of Pennsylvania

Enclosure 4 - Regional Conditions to the 2021 NWPs for the District of Columbia

The Baltimore District's area of responsibility includes the Northern Virginia Military Installations (Fort Belvoir, Fort Myer, and the Pentagon). The Regional Conditions for these military installations are covered by the Norfolk District Regional Conditions for Virginia and can be found at <https://www.nao.usace.army.mil/Missions/Regulatory/>.

Section 401 Water Quality Certifications and Coastal Zone Management Act Consistency Concurrences:

The Baltimore, Philadelphia, and Pittsburgh Districts received the following water quality certifications (WQC) and coastal zone management act consistency concurrences (CZMA) for these 41 NWPs issued by the Maryland Department of the Environment (MDE), the Pennsylvania Department of Environmental Protection (PADEP), and the District Department of the Environment (DDOE).

Maryland: On October 12, 2021, Maryland provided its conditional WQC and CZMA decisions to the Corps for these 41 NWPs. All WQC and CZMA conditions for these 41 NWPs were incorporated into these regional conditions for the 41 NWPs in Maryland.

Pennsylvania: On December 15, 2020, Pennsylvania provided its conditional WQC and CZMA decisions to the Corps for all NWPs, including these 41 NWPs and the previously finalized 16 NWPs. All WQC and CZMA conditions were incorporated into the NWP regional conditions for Pennsylvania.

District of Columbia: On October 12, 2021, the District of Columbia provided its WQC decision to the Corps for these 41 NWPs. Of the 41 final NWPs announced in the December 27, 2021 issue of the Federal Register (86 FR 73522), the District of Columbia has denied WQC for NWPs 2, 3, 4, 5, 6, 7, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 25, 27, 28, 30, 31, 32, 33, 35, 36, 37, 38, 41, 45, 46, 53, 54, and 59. In accordance with the Corps' regulations at 33 CFR 330.4(c), the Corps has denied authorization for those activities without prejudice until the certifying authority issues an individual 401 WQC or waives the right to do so. Anyone wanting to perform activities under these NWPs in the District of Columbia must first obtain an activity-specific 401

WQC or waiver. See DOEE's website at: <https://doee.dc.gov/service/wetland-and-stream-permits-water-quality-certifications>. Denial of 401 WQC for any specific NWP affects only those activities which may result in a discharge. Of these 41 NWPs, NWP 34 and 49 were suspended in the District of Columbia. The District of Columbia does not participate in the Coastal Zone Management Act.

Virginia: The 401 Certification and CZMA regional conditions applicable for the military installations in the Commonwealth of Virginia within the Baltimore District's area of responsibility (i.e., Fort Belvoir, Fort Myer, and the Pentagon) can be found at: <https://www.nao.usace.army.mil/Missions/Regulatory/>.

Status of Existing Permits:

For permittees holding verified authorizations for activities for any of the 52 existing NWPs replaced by the January 2021 and December 2021 final rules, if the previously verified activity continues to qualify for NWP authorization under any of the 52 NWPs reissued in those two final rules, that verification letter continues to be in effect until March 18, 2022, unless the district engineer specified a different expiration date in the NWP verification letter. As long as the verified NWP activities continue to comply with the terms and conditions of the 52 existing NWPs reissued in these two final rules, those activities continue to be authorized by the applicable NWP(s) until March 18, 2022, unless a district engineer modifies, suspends, or revokes a specific NWP authorization.

For permittees holding verified authorizations for activities that were authorized by any of the 40 existing 2017 NWPs replaced by the December 27, 2021 final rule (86 FR 73522), if the previously verified activity no longer qualifies for authorization under any of the 40 existing NWPs that are reissued in the December 27, 2021 final rule, those activities continue to be authorized by the 2017 NWP until February 24, 2023 (i.e., 12 months after the expiration date) as long as those activities have commenced (i.e., are under construction) or are under contract to commence in reliance upon a NWP prior to February 24, 2022. That authorization is contingent on the activity being completed by February 24, 2023. This grandfathering provision applies to activities that were previously verified by the district engineer as qualifying for one of the 40 existing 2017 NWPs, but no longer qualifies for that NWP authorization under the modified or reissued NWP.

Please see Special Public Notice #21-08 using the link below for the status of existing NWP permits for permittees holding verified authorizations for activities that were authorized by any of the 12 existing 2017 NWPs replaced by the January 13, 2021, final rule (86 FR 73522).

<https://www.nab.usace.army.mil/Missions/Regulatory/Public-Notices/Public-Notice-View/Article/2526017/spn-21-08-final-regional-conditions-for-16-of-the-2021-nationwide-permits/>

Questions regarding this matter should be directed to Ms. Beth Bachur by telephone at 410-962-4336 or by email at beth.bachur@usace.army.mil.

This public notice is issued by the Baltimore District Chief, Regulatory Branch.