



# Nationwide Permit Reissuance

February 15, 2012

**U.S. ARMY CORPS OF ENGINEERS**

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**Background:** Under Section 404(e) of the Clean Water Act, the U.S. Army Corps of Engineers (USACE) can issue general permits to authorize activities that have minimal individual and cumulative adverse environmental effects. General permits can be issued for a period of no more than five years. A nationwide permit is a general permit that authorizes activities across the country, unless a district or division commander revokes the nationwide permit in a state or other geographic region. The nationwide permits authorize approximately 40,000 reported activities per year, as well as approximately 30,000 activities that do not require reporting to USACE districts. There are currently 49 nationwide permits, and they authorize a wide variety of activities such as mooring buoys, residential developments, utility lines, road crossings, mining activities, wetland and stream restoration activities, and commercial shellfish aquaculture activities.

The process for issuing nationwide permits is a rulemaking activity. The proposal to reissue the nationwide permits was published in the *Federal Register* on February 16, 2011, for a 60-day public comment period ending on April 18, 2011. USACE proposed to reissue 48 of the 49 existing nationwide permits. One nationwide permit was not proposed to be reissued because it depended on the implementation of a reporting system by the Pipeline and Hazardous Materials Safety Administration, which will not occur. USACE sought public comment on three options for the reissuance of nationwide permit 21, which authorizes discharges of dredged or fill material into waters of the United States for surface coal mining activities. USACE also proposed to issue two new nationwide permits to support the Administration's initiatives on renewable energy. Concurrent with the *Federal Register* notice, districts issued local public notices to solicit comment on proposed regional conditions to further restrict the use of the nationwide permits to protect local aquatic resources.

Approximately 26,600 comments were received in response to the *Federal Register* notice. The comments were evaluated and the draft final nationwide permit rule was prepared. The draft final rule was submitted to OMB on September 26, 2011, for interagency review. Eight agencies provided comments on the draft final rule. The agency comments were reviewed and some modifications were made to the draft final nationwide permits to address the agency comments.

**New Nationwide Permits:** Most of the new nationwide permits have no major changes from 2007, the last time the nationwide permits were authorized in accordance with the law. The revised permits will streamline the requirements of the Clean Water Act, and are informed by extensive feedback from the public and key stakeholders. The Corps is reissuing 48 permits and adding two new ones. These permits provide expedited review of projects that have minimal impact on the aquatic environment. Categories of activities that may be covered under these NWP's include linear transportation projects, bank stabilization activities, residential development, commercial and industrial developments, aids to navigation and certain maintenance activities.

The two new nationwide permits provide an appropriate mechanism for quickly evaluating land-based and water-based renewable energy proposals in support of the Administration's clean energy initiatives. Notification requirements and impact limits have been revised for some permits to provide greater national consistency and foster making timely decisions for the regulated community. Effective decisions will be enhanced by interagency coordination on certain activities while continuing to maintain an expeditious process for all permit evaluations. All improvements, additions, and revisions to the package are consistent with our commitment to evaluate minor activities efficiently, while ensuring appropriate environmental protection for our nation's aquatic resources.

USACE division engineers may add, after public review and consultation, regional conditions to nationwide permits in order to protect local aquatic ecosystems such as fens or bottomland hardwoods, or to minimize adverse effects on fish or shellfish spawning, wildlife nesting or other ecologically critical areas. Division and district commanders are also charged with ensuring appropriate coordination and consultation occurs with federally-recognized American Indian and Alaska Native governments.

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**Highlights of the New Nationwide Permits:** NWP 21 – The NWP 21 for Surface Coal Mining Activities is revised to impose new limits on stream impacts that may be authorized, consistent with the other NWPs, and prohibits valley fills under this NWP. This updated permit was based on extensive feedback from the public and key stakeholders and leverages important flexibilities while also taking steps to protect aquatic resources. Updated permits will only be necessary for new or expanded activities. Operators that relied upon previously verified surface coal mining authorizations, but have not yet completed work in waters of the U.S., may request re-verification under the 2012 NWP 21 of all previously authorized activities.

NWP 48 – The NWP 48 for Existing Commercial Shellfish Aquaculture Activities is revised to provide greater flexibility in its use. For example, NWP 48 now incorporates provisions that authorize activities that are consistent with other federal/state/tribal and local regulatory authorities. Incorporating these already authorized activities will reduce the number of activities that require review by individual Corps districts.

NWP 51 – This new NWP covers Land Based Renewable Energy General Facilities including facility construction, expansion or modification, including attendant features.

NWP 52 – This new NWP 52 covers Water Based Renewable Energy Generation *Pilot Projects* including water based wind or hydrokinetic proposals.

Renewable energy facilities on both land and water may also continue to make full use of existing general permits to the full extent that they have previously done so.

**Public Interests:** The nationwide permit reissuance is of interest to various entities involved in the development of our nation's economy and the employment and well-being of our citizens, such as agricultural producers, housing developers, industrial and commercial development companies, utility companies, mining industries, transportation departments, and commercial and recreational uses of our navigable waterways. The nationwide permit reissuance is also of interest to government agencies and non-governmental organizations who seek protection of natural resources and other environmental qualities. The nationwide permits provide incentives to avoid and minimize impacts to wetlands, streams, and other aquatic resources because of the limits and other conditions imposed on these authorizations. The signed nationwide permit final rule have been submitted to the *Federal Register* for publication and a pre-publication copy of the final nationwide permits will be posted on USACE's Web site

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>