



Public Notice

U.S. Army Corps
of Engineers

Date: March 5, 2021
Special Public Notice # 21-08

Baltimore District

Philadelphia District

Pittsburgh District

ANNOUNCING THE FINAL REGIONAL CONDITIONS FOR 16 OF THE 2021 NATIONWIDE PERMITS

The purpose of this special public notice is to inform the public of the issuance of the final regional conditions applicable to 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.

On January 13, 2021, the U.S. Army Corps of Engineers (Corps) published a final rule in the *Federal Register* (86 FR 2744) announcing the reissuance of twelve (12) existing Nationwide Permits (NWPs) and the issuance of four (4) new NWPs (2021 NWPs). These 16 NWPs will go into effect on March 15, 2021 and will expire on March 14, 2026. The 12 existing 2017 NWPs being replaced will expire March 14, 2021, the day before the reissued NWPs take effect. More information on the 2021 NWPs and the January 13, 2021 *Federal Register* (86 FR 2744) 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, Pittsburgh, and Philadelphia Districts proposed regional conditions for the NWPs and solicited public comments thereon, in Special Public Notice (SPN) #20-62 dated 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.

The Baltimore District has posted the final regional conditions and suspensions for these 16 final 2021 NWPs (86 FR 2744) on the Regulatory webpage at: <https://www.nab.usace.army.mil/Missions/Regulatory/Permit-Types-and-Process/>. In addition, the following enclosures to this special public notice provide the final regional conditions and suspensions by State for the 16 final 2021 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 NWP's 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/>.

Grandfathering:

For permittees currently holding written 2017 NWP verification letters for activities under any of the 12 NWP's replaced by this final rule, that verification letter continues to be in effect until March 18, 2022, as long as the verified 2017 NWP activities continue to comply with the terms and conditions of the 12 existing NWP's issued in this final rule, or the district engineer specified a different expiration date in the NWP verification letter or modifies, suspends, or revokes a specific NWP authorization. For permittees currently holding written 2017 NWP verification letters for activities under any of the 12 NWP's replaced by this final rule that no longer qualify for authorization under any of the 12 existing NWP's reissued in this final rule, the activities in that verification letter continue to be authorized by the 2017 NWP(s) until March 14, 2022 as long as those activities have commenced (i.e., are under construction) or are under contract to commence on or before March 14, 2021.

Concurrences and Certifications:

On December 15, 2020, the Commonwealth of Pennsylvania conditionally granted Clean Water Act Section 401 Water Quality Certification (WQC) and Coastal Zone Management Act (CZMA) consistency concurrence for the 16 NWP's subject to this final rule. The conditions in the 401 WQC and CZMA for the issuance of the NWP's have been incorporated as regional conditions of the NWP's in accordance with Section 401(d) of the Clean Water Act. Please see Pennsylvania regional general conditions II.H and II.I. For those activities requiring 401 WQC and CZMA, if an applicant cannot or will not comply with one or more conditions of this WQC or CZMA, then the applicant would be required to obtain an activity-specific 401 WQC or waiver thereof and/or an individual CZMA consistency concurrence or presumption of concurrence for the specific activity.

On December 14, 2020, the District of Columbia denied 401 WQC for certain activities authorized by the proposed NWP's 12, 29, 39, 40, 42, 43, 44, 51, 52, 57, and 58 in the District of Columbia. Accordingly, 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 NWP's 12, 29, 39, 40, 42, 43, 44, 51, 52, 57, and 58 that result in a discharge into waters of the U.S. must first obtain an activity-specific 401 WQC from the District of Columbia, Department of Energy and Environment (DOEE) or a waiver thereof. See DOEE's website at: <https://doee.dc.gov/service/wetland-and-stream-permits-water-quality-certifications>

On December 15, 2020, the State of Maryland conditionally granted 401 WQC and CZMA consistency concurrence for the 16 NWP's subject to this final rule. The Baltimore District reviewed the 401 WQC and CZMA approvals for these NWP's and has determined that the conditions for 401 WQC are inconsistent with the Environmental Protection Agency's

(EPA's) regulations implementing Section 401, the NWP rulemaking, and the Corps regulations governing the NWP program. Furthermore, conditions associated with the CZMA consistency concurrence for the NWPs are inconsistent with the NWP rulemaking and the Corps regulations governing the NWP program. Accordingly, the Corps declines to rely on Maryland's WQC and CZMA consistency concurrence for the NWPs and will instead require individual WQCs (or waiver) and individual CZMA consistency concurrence (or presumption of concurrence) for activities authorized by these NWPs to which WQC and CZMA apply (including NWPs that do not require a PCN to the Corps). In accordance with the Corps' regulations at 33 CFR 330.4(c), the Corps will not issue authorization under the 2021 NWPs (86 FR 2744) for any activity that results in a discharge until an applicant obtains an individual 401 WQC or waiver thereof. In accordance with the Corps' regulations at 330.4(d), the Corps will not issue authorization under the 2021 NWPs for any activity in one of Maryland's Coastal Zone Counties until the applicant obtains an individual CZMA consistency concurrence or presumption of concurrence. See Maryland regional conditions II.H.1 and II.H.2. Instructions for requesting individual CZMA concurrence and individual 401 WQC, or a waiver thereof, can be found on Maryland Department of the Environment's website at <https://mde.maryland.gov/programs/Water/WetlandsandWaterways/PermitsandApplications/Pages/index.aspx>

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.