NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS - Missouri

On September 15, 2020, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the 52 existing nationwide permits (NWPs) and issue five new NWPs.

NWPs are general permits issued on a nationwide basis to streamline the authorization of activities that result in no more than minimal individual and cumulative adverse environmental effects. Many of the proposed NWPs require notification to the District Engineer before commencing those activities to ensure that the activities authorized by those NWPs cause no more than minimal individual and cumulative adverse environmental effects.

National Issues Concerning the Proposed NWPs: The Federal Register notice is the public’s opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2020-0002 at www.regulations.gov, or by email to nationwidepermits2020@usace.army.mil or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the September 15, 2020 Federal Register notice. Comments on the proposed NWPs are due by November 16, 2020.

Regional Issues Concerning the Proposed NWPs, Including Regional Conditioning: Division Engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are an important mechanism to help ensure that the adverse environmental effects of activities authorized by the NWPs are no more than minimal, both individually and cumulatively. Division Engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where the adverse environmental effects caused by activities authorized by those NWPs may be more than minimal.

Missouri is covered by five Corps of Engineers Districts (Kansas City, St. Louis, Little Rock, Memphis and Rock Island). The Kansas City District, as the lead district for Missouri, and in coordination with the other four Districts, is seeking comment on the proposed regional conditions (listed below), and is also seeking comment on the need for additional regional conditions to help ensure that the adverse environmental effects of activities authorized by the proposed NWPs are no more than minimal, individually and cumulatively. Comments on Missouri regional issues relating to the proposed NWPs and proposed regional conditions should be sent to the Kansas City District, Missouri State Regulatory Office, 515 East High Street, Suite 202, Jefferson City, Missouri 65101, or by email to james.s.reenan@usace.army.mil. Comments relating to regional conditions are due by November 16,
2020. Similar public notices proposing regional conditions in other regions or states are being published concurrently by other division or district offices. After the final NWPs are issued, the final regional conditions will be issued after they are approved by the Division Commander.

States, tribes, and other certifying authorities will make their Clean Water Act Section 401 water quality certification (WQC) decisions after reviewing the proposed NWPs.

Draft decision documents for each of the proposed NWPs, which include environmental documentation prepared for the purposes of the National Environmental Policy Act, have been written by Corps Headquarters. The decision documents will address compliance of the NWPs with the requirements for issuance under the Corps’ general permit authority. These draft decision documents, as well as the proposed NWPs, are available for viewing at www.regulations.gov, docket number COE-2020-0002. Final decision documents will be prepared for the NWPs that are issued.

Enclosed is an index of the proposed NWPs and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWPs through the Corps Home Page at https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/, at www.regulations.gov in docket number COE-2020-0002, or at the following Federal Register address: https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits.

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Proposed Missouri Regional Conditions:

Applicable to All Nationwide Permits:

1. **Stream Crossings.** In addition to requirements of General Condition 2 and General Condition 9 of the Nationwide Permits, the following guidelines for stream crossings apply for regulated activities in waters of the United States. The guidelines are appended below.

   - Corps Districts may waive Regional Condition 1 when project site geomorphology (i.e. bedrock, gradient) or existing alterations (i.e. adjacent impoundment, as part of a dry detention basin) creates conflict with the guidelines. The applicant must provide preconstruction notification to the District Engineer for any waiver request.

2. **Suitable Material.** In addition to the specific examples in General Condition 6 of the Nationwide Permits, the following materials are not suitable for fill activities in waters of the United States: garbage, tires, treated lumber products that do not comply with the Registration Documents issued by the U.S. Environmental Protection Agency (USEPA) under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and that are not in accordance with standards issued by American Wood Protection Association of the International Code Council, liquid concrete not poured into forms, grouted riprap, bagged cement and sewage or organic waste.

   Broken concrete used as bank stabilization must be reasonably well graded, consisting of pieces varying in size from 20 pounds up to and including at least 150 pound pieces to withstand expected high flows. Applicants must break all large slabs to conform to the well graded requirement. Generally, the maximum weight of any piece should not be more than 500 pounds. Gravel and dirt should not exceed 15% of the total fill volume when using broken concrete as fill. All protruding reinforcement rods, trash, asphalt, and other extraneous materials must be removed from the broken concrete prior to placement in waters of the United States.

3. **Priority Watersheds.** The applicant must provide preconstruction notification to the District Engineer for any regulated activity in a priority watershed. The list of priority watersheds requiring notification is available on request from the Corps or at https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll11/id/2652

4. **Sensitive Aquatic Species.** The applicant must provide preconstruction notification to the District Engineer for any regulated activity in waters listed at: https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll11/id/2657. The submitted preconstruction notification will be coordinated in accordance with General Condition 32(d) with the U.S. Fish and Wildlife Service as determined appropriate by the Corps.

For Specific Nationwide Permits:

5. **NWP 44 – Mining Activities.** Nationwide Permit 44 cannot be used to authorize in-stream mining projects, including in-stream sand and gravel mining operations.

6. **Lake of the Ozarks:** The applicant must provide a preconstruction notification to the District Engineer for any regulated activity associated with Nationwide Permits 3, 7, 12, 14, 15, 18, 22, 27, 33 and 45 within Lake of the Ozarks. A copy of this notification must also concurrently be sent to Ameren Missouri. Nationwide Permits 2, 13, 16, 19, 25, 29, 31, 35, 36, 39, 41 and 44 are revoked in the Lake of the Ozarks. NWPs 1, 9, 10, 11 and 28 are only valid when both Ameren Missouri and the Missouri State Water Patrol have approved the activity. The Corps and Ameren Missouri, regardless
of the request to use any Nationwide Permit, may verify the activity under the provisions of Regional General Permit 38M  https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll7/id/7726. Additional information on Ameren Missouri and Lake of the Ozarks permit requirements can be found at the following webpage:  https://www.ameren.com/missouri/lake-of-the-ozarks/forms-requirements.
Regional Condition 1

For all Nationwide Permits that involve the construction/installation of culverts and low water crossings, measures will be included in the construction, design, and installation that will allow for the passage of flows and promote the safe passage of fish and other aquatic organisms. The following General Guidelines are required to supplement General Condition (2) Aquatic Life Movements and General Condition (9) Management of Water Flows.

Culverts:

- New or replacement culverts (e.g., box or tubular, pipes, etc.) must be designed, sized, and placed correctly. Culverts perched above the grade of the stream are not allowed. This includes other in-stream structures placed at the inlet with the purpose to reduce sedimentation within the stream crossing. It is acceptable for a portion of the water to pass over the structure if it is designed to be overtopped. Culverts must be the shortest length necessary to meet the project purpose, and a single culvert is encouraged.

- Drop boxes or other structures placed at the inlet with the purpose to reduce sedimentation within the stream crossing are not allowed. Culvert must be the shortest length necessary to meet the project purpose.

- New or replacement culverts, in conjunction with the associated fill material, shall have an appropriately sized opening that allows water flow through and over the crossing that is relative to the bankfull area (See Image 1). For purposes of this regional condition, bankfull area is defined as the height and width of the stream channel within the project to the top of the high bank(s). In addition, if elevations differ on both sides of the stream the lowest elevation shall be used as the height. The following basic guidelines shall be used when designing new or replacement crossing projects:

<table>
<thead>
<tr>
<th>Stream Type</th>
<th>% of crossing profile that shall remain open</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perennial</td>
<td>Designed to allow an 85% opening to include the culvert(s) and area above the crossing up to the bankfull area.</td>
</tr>
<tr>
<td>Intermittent</td>
<td>Designed to allow a 50% opening to include the culvert(s) and area above the crossing up to the bankfull area.</td>
</tr>
</tbody>
</table>
For permanent crossings, the culvert must be embedded and backfilled below the grade of the stream on both the upstream and downstream sides ≥ 1 foot for culverts >48 inches. On culverts ≤ 48 inches the bottom of the culvert must be placed at a depth below or at the natural stream bottom to provide for aquatic organism passage during low flow conditions. Culverts in streams with non-erodible beds (i.e. bedrock or stable clay) must be constructed flush with the stream bed, but do not need to be embedded. Culverts in streams with highly erodible beds must be embedded deeper to lessen the chance of future perching due to downstream degradation and may be accompanied with other grade control measures to prevent erosion while maintaining General Condition (2) Aquatic Life Movements.

Low Water Crossings:

- The applicant must notify the District Engineer when repairing, rehabilitating or replacing low water crossings when discharges of dredged or fill material would raise or lower the lowest elevation of the crossing.

- When replacing or removing low water crossings the applicant must propose and employ measures to mitigate for and minimize the potential of streambed headcutting where channel incision has occurred downstream of the structure and the structure is providing grade control that is preventing channel incision from migrating upstream.