

# PUBLIC NOTICE



**US Army Corps  
of Engineers  
Kansas City District**

**Issue Date: June 26, 2007**

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## **SPECIAL PUBLIC NOTICE**

### **IMPLEMENTATION OF REGIONAL SPECIAL CONDITIONS FOR NATIONWIDE PERMITS IN MISSOURI AND KANSAS AND STATUS OF SECTION 401 WATER QUALITY CERTIFICATION FOR THE NWPS IN KANSAS INCLUDING INDIAN COUNTRY**

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

Concurrently with the public interest review conducted for the NWPs, the Kansas City District solicited public comment concerning the adequacy of modified regional conditions adopted from the 2002 NWPs. The regional conditions are intended to 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 help ensure protection of high value waters within the District. The District's decision documents for implementation of these regional conditions are available for public viewing at the Kansas City District Corps of Engineers, Regulatory Program Office, Room 706, 601 East 12<sup>th</sup> Street, Kansas City, Missouri, 64106. Please contact Mr. Joshua Marx at 816-389-3658 or at [Joshua.a.marx@usace.army.mil](mailto:Joshua.a.marx@usace.army.mil) to schedule viewing of these documents.

The Kansas Department of Health and Environment has issued Section 401 Water Quality Certification for all Section 404 NWP activities in Kansas (excluding Indian Country). The provisions/conditions of this certification are posted at: <http://www.nwk.usace.army.mil/regulatory/2007nwps/KS401.pdf>

The U.S. Environmental Protection Agency has issued Section 401 Water Quality Certification for all Section 404 NWP activities in Indian Country within Kansas. For additional information regarding this Water Quality Certification you may contact the U.S. Environmental Protection Agency at (913) 551-7498 or by writing to 901 N. 5<sup>th</sup> Street, Kansas City, Kansas 66101. The provisions/conditions of this certification are posted at: <http://www.nwk.usace.army.mil/regulatory/2007nwps/EPA401.pdf>

**EFFECTIVE IMMENDIATELY  
COMPLIANCE WITH THE FOLLOWING REGIONAL CONDITIONS IS  
MADATORY FOR ALL NWP AUTHORIZED ACTIVITIES**

## **NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS - KANSAS**

- 1. NWP 12 – Utility Activities.** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) when new utility line construction activities parallel a stream and have multiple stream crossings (example: a gravity fed utility line that crosses a stream multiple times). The preconstruction notification must include a revegetation plan for impacted riparian areas. Impacted riparian areas must be revegetated with native species similar to the composition removed (i.e., native trees or grasses), except for a minimal corridor that is essential for operation and maintenance of the utility line. The applicant must submit rationale for the minimum width necessary for the operation and maintenance corridor.
- 2. NWP 13 – Bank Stabilization.** 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. 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. 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. NWP 23 – Approved Categorical Exclusions.** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) for all regulated NWP 23 activities in waters of the United States. In addition to information required by NWP general condition 27, the notification must identify the approved categorical exclusion that applies (e.g., as listed in Regulatory Guidance Letter 05-07 or Federal Register) and include documentation that the project fits the categorical exclusion.
- 4. NWP 27 – Stream and Wetland Restoration Activities.** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) for any regulated discharges associated with the relocation of forested wetlands.
- 5. NWP 40 – Agricultural Activities.** NWP 40 does not authorize discharges that cause the loss of greater than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the District Engineer.
- 6. NWP 43 – Stormwater Management Facilities.** This NWP does not authorize the retention of water, in excess of that required to meet stormwater management requirements, for other purposes such as recreational lakes, reflecting pools and irrigation.
- 7. NWP 45 – Emergency Repair Activities.** This NWP does not authorize the removal of borrow material from waters of the United States to restore uplands lost in discrete events.
- 8. NWP 3 and 14 – Low Water Crossings.** The permittee 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 by a total of 12-inches or more, or when removing the structure. The permittee must propose and employ measures to mitigate the potential impact of impounding gravel above the low water crossing or of releasing impounded-gravel downstream of the structure. Such mitigation might include: removing

impounded gravel in the unstable area upstream of the low water crossing to prevent it from being transported downstream and/or constructing a notched weir to slow the release of impounded gravel from upstream of the low water crossing.

**9. Agency Coordination Requirements for Waiver of 300 Linear Foot Limit Associated with NWP 29, 39, 40, 42, and 43.** Agency coordination procedures will be completed prior to granting a request for a waiver of the 300 linear foot limit for losses of intermittent and ephemeral streams. The applicant must provide documentation of avoidance and minimization of individual and cumulative impacts associated with the proposed project.

**10. Suitable Material (Applicable to all NWPs).** In addition to the specific examples in General Condition 6 of the NWPs, the following materials are not suitable for fill activities into waters of the U.S. in conjunction with any NWP: buses or rail cars, construction or demolition debris, garbage, loose or improperly placed tires, treated lumber (chromated copper arsenate (CCA), creosote, and pentachlorophenol), liquid concrete not poured into forms, grouted riprap, bagged cement, and sewage or organic waste.

**11. Culverts.** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) for any regulated activity which involves the construction of a new or replacement culvert on an expected aquatic life use water or restricted aquatic life use water located in the Kansas Water Register. The Kansas Water Register is available on request from the Corps or can be found at [http://www.kdheks.gov/befs/download/Current\\_Kansas\\_Water\\_Register.pdf](http://www.kdheks.gov/befs/download/Current_Kansas_Water_Register.pdf). All culverts must be designed to allow the natural passage of aquatic organisms. The culvert design must mimic the natural shape and flow of the channel. For all box culverts with three or more cells on expected aquatic life use waters or restricted aquatic life use waters, the opening of the center culvert must be slightly lower than the adjacent culverts to concentrate low flows for the passage of aquatic organisms.

**12. Notification Requirement for Aquatic Resources in Kansas (Applicable to all NWPs).** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) for any regulated activity which may impact a jurisdictional fen, bog, playa wetland, and/or forested wetland.

**13. Big Soldier Creek Exclusion.** All NWPs are prohibited from use in Big Soldier Creek located on or within the reservation boundaries of the Prairie Band of Potawatomi Nation in Kansas.

**14. Zebra Mussel (Applicable to all NWPs).** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) for any regulated activity where the applicant is proposing to remove equipment from a known zebra mussel water to use in a different water not known to support zebra mussels. Known zebra mussel waters within Kansas is available on request from the Corps or can be found at the following webpage: <http://nas.er.usgs.gov/queries/zmbyst.asp>. The notification must include measures to limit the likelihood of spreading the zebra mussel to other waters.

**15. Exceptional State Waters and Special Aquatic Life Use Waters (Applicable to all NWPs).** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) for any regulated discharge in an

Exceptional State Water (ESW) or a Special Aquatic Life Use Water (SALU). The current list of ESWs and SALUs is available upon request from the Corps or at the following link: [http://www.nwk.usace.army.mil/regulatory/2007nwps/KS\\_SpecialWaters10May2007.pdf](http://www.nwk.usace.army.mil/regulatory/2007nwps/KS_SpecialWaters10May2007.pdf)

**Note:** General condition 19 (Critical Resource Waters) references Outstanding National Resource Waters (ONRW). The ONRWs in Kansas can also be found in the link above.

**16. Threatened & Endangered Species (Applicable to all NWP's).** The following locations and waters are subject to the "Notification" general condition of the NWP's (general condition 27). The requirements of general condition 17 "Endangered Species" applies to the following waters:

- a. **Arkansas River** – That portion flowing through Barton, Cowley, Edwards, Finney, Ford, Gray, Hamilton, Kearny, Kiowa, Pawnee, Reno, Sedgwick and Sumner Counties, excluding that reach upstream of the Kansas Route 27 bridge in Hamilton County and a 12.4 mile reach within the City of Wichita metropolitan area, extending from the westbound land of Kansas Route 96 downstream to Interstate 35 (Arkansas River Shiner, *Notropis girardi*) (Interior Least Tern, *Sterna antillarum* in Sedgwick County only).
- b. **Cimarron River** - That portion flowing through Clark, Comanche, and Meade Counties (Interior Least Tern, *Sterna antillarum* and Arkansas River Shiner, *Notropis girardi*).
- c. **Cottonwood River** - From the point of discharge of Marion Dam to its confluence with the Neosho River in Lyon County (Neosho Madtom, *Noturus placidus*).
- d. **South Fork Cottonwood River** – Downstream of Bazzarr to confluence with Cottonwood River (Neosho Madtom, *Noturus placidus*).
- e. **Neosho River** - From the point where it discharges from Council Grove Reservoir in Morris County to the point where it leaves Lyon County and from the point where it discharges from John Redmond Reservoir in Coffey County to the Kansas-Oklahoma border in Cherokee County (Neosho Madtom, *Noturus placidus*).
- f. **Spring River** - The entire main stem portion within the state of Kansas in Cherokee County (Neosho Madtom, *Noturus placidus*).
- g. **Cow Creek and tributaries** - A 144 square mile area within Crawford County whose western boundary is highway K-7, whose southern boundary is the Crawford/Cherokee county line, whose eastern boundary is the Kansas/Missouri state line and whose northern boundary is highway K-57 east of the town of Girard extended to the state line. Also included in this area is all of Cow Creek in Cherokee County (Gray Bat, *Myotis grisescens*).
- h. **Kansas River** – From its origin in Geary County downstream to the Missouri River (Bald Eagle, *Haliaeetus leucocephalus*) and from its origin in Geary County downstream to Lecompton in Shawnee County (Interior Least Tern, *Sterna Antillarum* and Piping Plover, *Charadrius melodus*).

- i. The following locations may contain the Topeka Shiner, *Notropis topeka*, which has been listed as endangered, and are subject to the notification requirement above:
  1. **Butler County** – Headwaters of the South Fork Cottonwood River (Sec. 4, 9, 16 & 21 T23S, R8E).
  2. **Chase County** – Bloody Creek, Collett Creek, Diamond Creek, Gannon Creek, Jack Creek, Little Cedar Creek, Mercer Creek, Mulvane Creek, Rock Creek, Schaeffer Creek, Shaw Creek, Unnamed tributary of Thurman Creek (Sec. 31 & 32 T22S, R9E), Unnamed tributary of Mercer Creek (Sec. 30 & 31 T22S, R 8E), Middle Creek, Unnamed tributary of Middle Creek (Sec. 4, 9 & 10 T19S, R6E), Unnamed tributary of Diamond Creek (Sec. 9 T19S, R7E), Unnamed tributary of Fox Creek (Sec. 31 T18S, R8E).
  3. **Dickinson County** – Cary Creek, Middle Branch Lyons Creek, Rock Springs Creek, West Brach Lyons Creek.
  4. **Geary County** – Rock Springs Creek, Davis Creek.
  5. **Greenwood County** – Thurman Creek, Unnamed tributaries of Thurman Creek (Sec. 6 T23S, R9E; Sec. 1 T23S, R8E).
  6. **Marion County** – Collett Creek, Middle Creek, Mud Creek.
  7. **Marshall County** - North Elm Creek, Clear Fork Creek.
  8. **Morris County** - Collett Creek, Middle Creek.
  9. **Pottawatomie County** - Clear Fork Creek.
  10. **Riley County** – Deep Creek, Seven-Mile Creek, Little Arkansas Creek, Walnut Creek, Wildcat Creek.
  11. **Shawnee County** – Mission Creek.
  12. **Wabaunsee County** – East Branch Mill Creek, Hendricks Creek, Illinois Creek, Kuenzli Creek, Loire Creek, Mission Creek, Mulberry Creek, Nehring Creek, Paw Paw Creek, Spring Creek (Paxico), Spring Creek (Tributary of West Branch Mill Creek), South Branch Mill Creek, West Branch Mill Creek.
  13. **Wallace County** - Willow Creek.
- j. The following waterways maintain critical habitat for the Whooping Crane, *Grus americana*, and are subject to the notification requirement above:
  1. **Walnut Creek** – in Ness, Rush and Barton Counties which feeds Cheyenne Bottoms.
  2. **Cheyenne Bottoms** – All water bodies within Cheyenne Bottoms.

3. **Rattlesnake Creek** – in Edwards, Stafford and Pratt Counties which feeds Quivera National Wildlife Refuge.
  4. **Quivera National Wildlife Refuge** – All water bodies within Quivera National Wildlife Refuge.
- k. The following waterways for the Federal candidate species listed below are subject to the notification requirement above:
1. **Arkansas darter**, *Etheostoma cragini*, in vegetated wetlands and spring-fed pools in the mainstem and tributaries to the Arkansas, Cimarron, Medicine Lodge, Chikaskia, Ninnescah, and Spring Rivers in Barber, Barton, Cherokee, Clark, Comanche, Cowley, Harper, Kingman, Kiowa, Meade, Pratt, Reno, Rice, Sedgwick, Seward, Stafford and Sumner Counties.
  2. **Neosho mucket**, *Lampsilis rafinesqueana*, in riverine runs, shoals, and riffles with gravel substrates and moderate currents in the Fall, Verdigris, Neosho, Cottonwood, and Spring Rivers in Allen, Chase, Cherokee, Coffey, Greenwood, Labette, Lyon, Montgomery, Neosho, Wilson, and Woodson Counties.
  3. **Spectaclecase**, *Cumberlandia monodonta*, in the Marais des Cygnes River in Linn County.

## **NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS – MISSOURI**

**1. NWP 12 – Utility Activities.** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) when new utility line construction activities parallel a stream and have multiple stream crossings (example: a gravity fed utility line that crosses a stream multiple times). The preconstruction notification must include a revegetation plan for impacted riparian areas. Impacted riparian areas must be revegetated with native species similar to the composition removed (i.e., native trees or grasses), except for a minimal corridor that is essential for operation and maintenance of the utility line. The applicant must submit rationale for the minimum width necessary for the operation and maintenance corridor.

**2. NWP 13 – Bank Stabilization.** 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. 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. 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. NWP 23 – Approved Categorical Exclusions.** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) for all regulated NWP 23 activities in waters of the United States. In addition to information required by NWP general condition 27, the notification must identify the approved categorical exclusion that applies (e.g., as listed in Regulatory Guidance Letter 05-07 or Federal Register) and include documentation that the project fits the categorical exclusion.

**4. NWP 27 – Stream and Wetland Restoration Activities.** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) for any regulated discharge associated with the relocation of forested wetlands.

**5. NWP 40 – Agricultural Activities.** NWP 40 does not authorize discharges that cause the loss of greater than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer.

**6. NWP 43 – Stormwater Management Facilities.** This NWP does not authorize the retention of water, in excess of that required to meet stormwater management requirements, for other purposes such as recreational lakes, reflecting pools and irrigation.

**7. NWP 44 – Mining Activities.** In-stream sand and gravel mining is excluded from NWP 44 in Missouri.

**8. NWP 45 – Emergency Repair Activities.** This NWP does not authorize the removal of borrow material from waters of the United States to restore uplands lost in discrete events.

**9. NWPs 3 and 14 – Low Water Crossings.** The permittee 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 by a total of 12-inches or

more, or when removing the structure. The permittee must propose and employ measures to mitigate the potential impact of impounding gravel above the low water crossing or of releasing impounded-gravel downstream of the structure. Such mitigation might include: removing impounded gravel in the unstable area upstream of the low water crossing to prevent it from being transported downstream and/or constructing a notched weir to slow the release of impounded gravel from upstream of the low water crossing.

**10. Agency Coordination Requirements for Waiver of 300 Linear Foot Limit Associated with NWPs 29, 39, 40, 42, and 43. Agency Coordination Requirements for Waiver of 300 Linear Foot Limit Associated with NWPs 29, 39, 40, 42, and 43.** Agency coordination procedures will be completed prior to granting a request for a waiver of the 300 linear foot limit for losses of intermittent and ephemeral streams. The applicant must provide documentation of avoidance and minimization of individual and cumulative impacts associated with the proposed project.

**11. Suitable Material (Applicable to all NWPs).** In addition to the specific examples in General Condition 6 of the NWPs, the following materials are not suitable for fill activities into waters of the U.S. in conjunction with any NWP: buses or rail cars, construction or demolition debris, garbage, loose or improperly placed tires, treated lumber (chromated copper arsenate (CCA), creosote, and pentachlorophenol), liquid concrete not poured into forms, grouted riprap, bagged cement, and sewage or organic waste.

**12. Culverts.** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) for any regulated activity which involves the construction of a new or replacement culvert on a class P or C stream in Missouri. Class P and C streams in Missouri is available upon request from the Corps or at the following link: <http://www.sos.mo.gov/adrules/csr/current/10csr/10c20-7c.pdf>. All culverts must be designed to allow the natural passage of aquatic organisms. The culvert design must mimic the natural shape and flow of the channel. For all box culverts with three or more cells on class P and C streams, the opening of the center culvert must be slightly lower than the adjacent culverts to concentrate low flows for the passage of aquatic organisms.

**13. Notification Requirement for Aquatic Resources in Missouri (Applicable To All NWPs).** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) for any regulated activity which may impact a jurisdictional fen, seep or bog of any size.

**14. Seasonal Restrictions for Activities Proposed in Spawning Areas (Applicable To All NWPs).** In addition to the requirements of NWP general condition 3, for any regulated activity, the following specific seasonal restrictions apply. Between the closed dates listed in the Missouri Combined Stream Spawning List, the permittee must not excavate from or discharge into the listed waters. The list of waters with seasonal restrictions is available on request from the Corps or at the following link: <http://www.nwk.usace.army.mil/regulatory/gravel.txt>

**15. Zebra Mussel (Applicable To All NWPs).** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWPs (general condition 27) for any regulated activity where the applicant is proposing to remove equipment from a known zebra mussel water to use in a different water not known to support zebra mussels. Known zebra

mussel waters within Missouri is available on request from the Corps or can be found at the following webpage: <http://nas.er.usgs.gov/queries/zmbyst.asp>. The notification must include measures to limit the likelihood of spreading the zebra mussel to other waters.

**16. Priority Watersheds (Applicable To All NWP's).** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWP's (general condition 27) for any regulated activity in a priority watershed. The list of priority watersheds requiring notification is available on request from the Corps or at the following link: <http://www.nwk.usace.army.mil/regulatory/2007nwps/COAs.pdf>

**17. Lake of the Ozarks:** The permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWP's (general condition 27) for any regulated activity associated with NWP's 3, 7, 12, 14, 15, 18, 22, 27, 33, and 45. A copy of this notification must also concurrently be sent to AmerenUE. NWP's 2, 13, 16, 19, 25, 29, 31, 35, 36, 39, 41, and 44 are revoked in the Lake of the Ozarks. NWP's 1, 9, 10, 11 and 28 are only valid when both AmerenUE and the Missouri Water Patrol have approved the activity. The Corps and AmerenUE, regardless of the request to use any NWP, may verify the activity under the provisions of Regional General Permit 38M (<http://www.nwk.usace.army.mil/regulatory/gp/GP-38M.pdf>). Additional information on AmerenUE and Lake of the Ozarks permit requirements can be found at the following webpage: [http://www.ameren.com/Environment/adc\\_ev\\_PermitRequirements.asp](http://www.ameren.com/Environment/adc_ev_PermitRequirements.asp).