

# PUBLIC NOTICE



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

**Issue Date:** October 13, 2006  
**Expiration Date:** November 27, 2006

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## **NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS STATE OF MISSOURI**

On September 26, 2006, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue its nationwide permits (NWP).

Nationwide permits are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWPs require notification to the district engineer before commencing the work, to ensure that the activities authorized by those NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

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-2006-0005 at [www.regulations.gov](http://www.regulations.gov). Instructions for submitting comments are provided in the September 26, 2006 Federal Register notice. Comments on the proposed NWPs are due by November 27, 2006.

Division engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWPs are 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 impacts authorized by those NWPs may be more than minimal. Regional conditions approved by the Division Engineer become effective when the NWPs become effective.

The Kansas City District is seeking comments on the proposed regional conditions (Enclosure 2) for the State of Missouri. The Kansas City District is also seeking comments on the need for additional regional conditions to help ensure that impacts authorized by the proposed NWPs are minimal. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the State of Missouri. Comments on regional issues relating to the proposed NWPs and regional conditions are to be sent to Mr. Joshua Marx, U.S. Army Corps of Engineers, Kansas City District Office, 700 Federal Building, 601 East 12<sup>th</sup> Street, Kansas City,

Missouri 64106 or via email at [Joshua.a.marx@usace.army.mil](mailto:Joshua.a.marx@usace.army.mil). Comments relating to regional conditions are due by November 27, 2006. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices. In response to the comments received on regional conditions, an additional public notice announcing proposed new and revised regional conditions may be published depending on the extent of proposed changes.

When the final NWP's are issued, the final regional conditions will be issued at the same time so that the States and Tribes can make their Clean Water Act Section 401 water quality certification consistency determination decisions. The 401/CZMA decisions must be made within 60 days of the Federal Register notice announcing the issuance of the NWP's. After that 60-day period, the NWP's and the regional conditions will become effective.

Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWP's with the requirements for issuance under general permit authority. These documents, as well as the proposed NWP's, are available for viewing on the Internet at the [www.regulations.gov](http://www.regulations.gov) site (docket ID number COE-2006-0005). Final decision documents will be prepared for those NWP's that are issued. In addition, supplemental decision documents will be issued by division engineers to address their determinations concerning regional conditions for the NWP's.

Enclosed (Enclosure 1) is an index of the proposed NWP's and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP's through [www.regulations.gov](http://www.regulations.gov) (docket ID number COE-2006-0005), the Corps home page or the Federal Register address listed below.

Copies of the Federal Register notice and the draft decision documents will also be available at <http://www.regulations.gov> in docket ID number COE-2006-0005. The Corps home page is: <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>. As an alternate, internet users can access the Federal Register through the Government Printing Office (GPO) at <http://www.gpoaccess.gov/fr/index.html>.

# ENCLOSURE 1

## Index of Proposed Nationwide Permits, Conditions, and Definitions

### Proposed Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Operations
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities

- A. Emergency Repair Activities
- B. Discharges into Ditches and Canals
- C. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
- D. Commercial Shellfish Aquaculture Activities
- E. Coal Remining Activities
- F. Underground Coal Mining Activities

***Proposed Nationwide Permit General Conditions***

- 1. Navigation
- 2. Aquatic Life Movements
- 3. Spawning Areas
- 4. Migratory Bird Breeding Areas
- 5. Shellfish Beds
- 6. Suitable Material
- 7. Water Supply Intakes
- 8. Adverse Effects from Impoundments
- 9. Management of Water Flows
- 10. Fills Within 100-Year Floodplains
- 11. Equipment
- 12. Soil Erosion and Sediment Controls
- 13. Removal of Temporary Fills
- 14. Proper Maintenance
- 15. Wild and Scenic Rivers
- 16. Tribal Rights
- 17. Endangered Species
- 18. Historic Properties
- 19. Designated Critical Resource Waters
- 20. Mitigation
- 21. Water Quality
- 22. Coastal Zone Management
- 23. Regional and Case-by-Case Conditions
- 24. Use of Multiple Nationwide Permits
- 25. Transfer of Nationwide Permit Verifications
- 26. Compliance Certification
- 27. Pre-Construction Notification

## ***Proposed Nationwide Permit Definitions***

Best management practices (BMPs)  
Compensatory mitigation  
Currently serviceable  
Enhancement  
Ephemeral stream  
Establishment (creation)  
Independent utility  
Intermittent stream  
Loss of waters of the United States  
Non-tidal wetland  
Open water  
Perennial stream  
Practicable  
Pre-construction notification  
Preservation  
Re-establishment  
Rehabilitation  
Restoration  
Riffle and pool complex  
Riparian areas  
Single and complete project  
Stormwater management  
Stormwater management facilities  
Stream bed  
Stream channelization  
Structure  
Tidal wetland  
Vegetated shallows  
Waterbody

## ENCLOSURE 2

### Proposed Regional Conditions for the State of Missouri

**1. NWP 3 – Maintenance.** 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.

**2. 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 has multiple stream crossings or cross forested wetlands (example: a gravity fed utility line that crosses a stream multiple times). Impacted stream buffers and forested wetlands must be revegetated with native species similar to the composition removed (i.e. trees for impacted wooded stream buffer and grasses for impacted herbaceous stream buffer), 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. The PCN must include a revegetation plan detailing the native plantings.

**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 (i.e. list Federal Register citation) and include documentation that the project fits the categorical exclusion.

**4. NWP 27 - Stream and Wetland Restoration Activities.** NWP 27 does not authorize 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 44 – Mining Activities.** NWP 44 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. In-stream sand and gravel mining is excluded from NWP 44 in Missouri.

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

**9. NWPs 14, 29, 39 – Culverts.** All culverts associated with NWP 14, 29, and 39 must be designed to match existing stream bottom elevation and slope, have a vent area ratio of no less than 30 percent at bank full condition, and be the shortest length necessary to meet project purposes (i.e., perpendicular crossing vs. obtuse crossing). To the maximum extent practicable, the structure should be bottomless and contain a substrate that matches the existing stream. If a floor is needed it must be placed at the lowest scour potential of the stream. Where multiple culverts are used for a single road crossing, the center culvert must be set slightly lower than that the other culverts to concentrate low flows.

**10. Agency Coordination Requirements for Waiver of 300 Linear Foot Limit of NWP 29, 39, 40, 42, 43, 44.** All requests for a waiver of the 300 linear foot limit for losses of intermittent and ephemeral streams will be coordinated in accordance with the agency coordination procedures. The applicant must provide documentation of avoidance and minimization of individual and cumulative impacts associated with the proposed project.

**11. Mitigation Requirements (Applicable To All NWPs)** Compensatory mitigation sites may require a long-term legal protection instrument such as a deed restriction, conservation easement, or other protective covenant. When the Corps determines monitoring is required for compensatory mitigation sites, the applicant must comply with Regulatory Guidance Letter 06-03.

**12. Notification Requirement for Activities Proposed in Fens, Seeps and Bogs (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 fen, seep or bog of any size.

**13. 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 <http://www.nwk.usace.army.mil/regulatory/gravel.txt> ([Missouri Combined Stream Spawning Season List](#)).

**14. District-Designated Waters.**

**Kansas City District:** For any regulated activity in the Fishing River watershed the permittee must notify the District Engineer accordance with the "Notification" general condition of the NWPs (general condition 27).

Lake of the Ozarks: The Kansas City District is proposing to revoke or further restrict NWPs lakeward of the ordinary high water mark in the Lake of the Ozarks, and any adjacent wetlands where those NWPs are duplicated by Regional General Permit 38M (<http://www.nwk.usace.army.mil/regulatory/gp/GP-38M.pdf>) or otherwise have been commonly

determined through regional Lake of the Ozarks planning initiatives to be inconsistent with local planning and shoreline management plans. The following NWP's are revoked in these waters: 2, 13, 14, 15, 16, 18, 19, 25, 29, 31, 35, 36, 39, 42, 43 and 44. NWP's 1, 9, 10, 11 and 28 are only valid when both AmerenUE and the Missouri Water Patrol have approved the activity. Applicants must provide a preconstruction notification (PCN) for any activity proposed under NWP's 3, 7, 22, 27 and 33, as described in general condition 27, and must copy that PCN concurrently to AmerenUE. The Corps and AmerenUE, regardless of the request to use the NWP, may verify the activity under the provisions of Regional General Permit 38M.

**St. Louis District:** For any discharge or excavation activity requiring authorization, proposed under NWP's 41 and 43, in any ephemeral, intermittent, and perennial streams in the following Missouri watersheds, the permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWP's (general condition 27).

St. Louis County: Wildhorse Creek, Bonhomme Creek, Creve Coeur Creek, Fox Creek, and Deer Creek.

St. Charles County: Dardenne Creek and Perouque Creek.

Jefferson County: Saline/Sugar/Romaine Creeks, Rock Creek, Dulin/Bourne/Heads/Bear Creeks, La Barque Creek, Glaize Creek, and Joachim/Sandy Creeks.

Ste. Genevieve and Perry Counties: Saline Creek.

Cape Girardeau County: Indian Creek, Williams/Hubble/Randol/ Goose Creeks, Ramsey Branch, Ranney Creek, and Byrd Creek.

**Memphis District:** For any regulated activity proposed under NWP's 14, 41 and 43, in the following waters; the permittee must notify the District Engineer in accordance with the "Notification" general condition of the NWP's (general condition 27).

St. Francis Floodway from 1 mile below Wappapello Lake to the Arkansas/Missouri state line below U.S. Highway 314, in Dunklin County.

Castor River from the Union Pacific Railroad bridge, in Stoddard County, to the headwater levee, in Bollinger County.

Ramsey Branch from St. Louis District line to Headwater Diversion Channel in Cape Girardeau and Scott Counties.

Ramsey Creek from the Headwater Diversion Channel to State Routes PP & N (East Branch), and Scott County Route 325 (West Branch) in Scott County.