



FINAL PUBLIC NOTICE

**US Army Corps
of Engineers®**

Albuquerque, Sacramento, and Omaha Districts

PUBLIC NOTICE FOR THE FINAL COLORADO REGIONAL CONDITIONS IN COLORADO APPLICABLE TO THE 16 NATIONWIDE PERMITS PUBLISHED IN THE FEDERAL REGISTER ON JANUARY 13, 2021

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 12 existing nationwide permits (NWP) and four new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP will go into effect on March 15, 2021 and will expire on March 14, 2026:

- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 21 – Surface Coal Mining Activities
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 44 – Mining Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
- NWP 55 – Seaweed Mariculture Activities
- NWP 56 – Finfish Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances

The January 13, 2021, *Federal Register* notice is available for viewing at <https://www.federalregister.gov/documents/2021/01/13/2021-00102/reissuance-and-modification-of-nationwide-permits>. As an alternative, interested parties can access the January 13, 2021, final rule and related documents at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>.

There are 40 existing NWP that were not reissued or modified by the January 13, 2021, final rule. Those 40 NWP were published in the January 6, 2017, issue of the *Federal Register* (82 FR 1860), and those NWP remain in effect until the Corps issues a final rule reissuing those NWP, or March 18, 2022, whichever comes first. The 40 2017 NWP that remain in effect are:

- NWP 1 – Aids to Navigation
- NWP 2 – Structures in Artificial Canals
- NWP 3 – Maintenance
- NWP 4 – Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
- NWP 5 – Scientific Measurement Devices
- NWP 6 – Survey Activities
- NWP 7 – Outfall Structures and Associated Intake Structures
- NWP 8 – Oil and Gas Structures on the Outer Continental Shelf
- NWP 9 – Structures in Fleeting and Anchorage Areas
- NWP 10 – Mooring Buoys
- NWP 11 – Temporary Recreational Structures
- NWP 13 – Bank Stabilization
- NWP 14 – Linear Transportation Projects
- NWP 15 – U.S. Coast Guard Approved Bridges
- NWP 16 – Return Water From Upland Contained Disposal Areas
- NWP 17 – Hydropower Projects
- NWP 18 – Minor Discharges
- NWP 19 – Minor Dredging
- NWP 20 – Response Operations for Oil or Hazardous Substances
- NWP 22 – Removal of Vessels
- NWP 23 – Approved Categorical Exclusions
- NWP 24 – Indian Tribe or State Administered Section 404 Programs
- NWP 25 – Structural Discharges
- NWP 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities
- NWP 28 – Modifications of Existing Marinas
- NWP 30 – Moist Soil Management for Wildlife
- NWP 31 – Maintenance of Existing Flood Control Facilities
- NWP 32 – Completed Enforcement Actions
- NWP 33 – Temporary Construction, Access, and Dewatering
- NWP 34 – Cranberry Production Activities
- NWP 35 – Maintenance Dredging of Existing Basins
- NWP 36 – Boat Ramps
- NWP 37 – Emergency Watershed Protection and Rehabilitation
- NWP 38 – Cleanup of Hazardous and Toxic Waste
- NWP 41 – Reshaping Existing Drainage Ditches
- NWP 45 – Repair of Uplands Damaged by Discrete Events
- NWP 46 – Discharges in Ditches
- NWP 49 – Coal Remining Activities
- NWP 53 – Removal of Low-Head Dams
- NWP 54 – Living Shorelines

The regional conditions for these 40 NWPs that were approved by the Division Engineer in 2017 remain in effect and can be found at <https://www.spa.usace.army.mil/reg/nwp>.

In accordance with the U.S. Environmental Protection Agency's (EPA's) current water quality certification (WQC) regulations at 40 Code of Federal Regulations (CFR) Part 121, the Albuquerque District has reviewed Clean Water Act Section (CWA) 401 WQC decisions received from certifying

authorities. As lead district in Colorado, Albuquerque District has determined that all accepted granted and denied WQC decisions in Colorado satisfied the requirements set forth in 40 CFR 121.7. For a list of WQC decisions see the summary spreadsheet found on our website at:

<http://www.spa.usace.army.mil/reg/wqc>. If a permittee engages in activities within the scope of a NWP, the permittee must also comply with any applicable regional conditions. In Colorado, the regional conditions that apply to the 16 NWPs, as described above, are as follows:

1. Construction of Diversions and Intakes. The permittee must submit a pre-construction notification (PCN) to the District Engineer in accordance with General Condition (GC) 32 prior to commencing any activity that involves the construction of new water diversions and intakes. This regional condition does not apply to activities that are covered by NWP 3, which authorizes maintenance activities.
2. Open Trenching in Perennial Streams. The permittee must submit a PCN to the District Engineer in accordance with GC 32 prior to commencing any activity that involves open trenching in perennial streams.
3. Peatlands. The use of the NWPs published in the January 13, 2021, issue of the Federal Register (86 FR 2744) is prohibited for activities that result in the discharge of dredged or fill material into peatlands. The term peatland includes fens and bogs. For the purposes of this regional condition, a peatland is defined as a wetland with organic soil that is classified as a histosol in the Natural Resources Conservation Service (NRCS) guidance document entitled Field Indicators of Hydric Soils in the United States (Version 8.0, 2016). A copy of the document can be obtained from the NRCS at: https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_053171.pdf.
4. Stream Stabilization. The permittee must submit a PCN to the District Engineer in accordance with GC 32 prior to commencing any stream stabilization activity that utilizes non-native material. The permittee must also submit a PCN to the District Engineer in accordance with GC 32 prior to commencing any stream stabilization activity that exceeds the placement of ¼ cubic yard of material per linear foot on average below the plane of the ordinary high water mark (OHWM) for streams with an average width of less than 20 feet (measured between the OHWM).

Non-native materials include clean brick, broken concrete, cinder block, slab material, wire mesh, such as gabion baskets, grout, and sheet piling. Use of broken concrete with exposed rebar and tires (loose or formed into bales), and other materials listed under General Condition (GC) 3 of the NWPs is prohibited in all waters of the United States. Rock, rip rap, and woody debris are considered native material. For all stream stabilization activities involving non-native material, permittees must demonstrate that alternative engineering methods utilizing native materials are not practicable (with respect to cost, existing technology, and logistics), before the Corps will consider whether the use of non-native material constitutes suitable fill.

5. Gold Medal Waters. The permittee must submit a PCN to the District Engineer in accordance with GC 32 prior to commencing all activities located in waters identified as “Gold Medal” by the Colorado Wildlife Commission. Upon receipt of a complete PCN, the Corps will initiate agency coordination with Colorado Parks and Wildlife (CPW) as outlined in the procedures under GC 32(d) of the NWPs. Pre-application consultation with CPW is not required but highly recommended. If a pre-application consultation is conducted with CPW, providing written documentation of CPW’s response to the project will satisfy the coordination requirements resulting in quicker processing

times. Please visit CPW's website to determine the location of Gold Medal waters and the appropriate office for coordination: <http://cpw.state.co.us>.

6. Section 401 Water Quality Certification. In accordance with Code of Federal Regulations (CFR) 33 Part 330.4(c), the conditions of Clean Water Act (CWA) Section 401 water quality certifications (WQC) are incorporated as conditions of the Section 404 Nationwide Permits. Water quality certifications are available at: <http://www.spa.usace.army.mil/reg/wqc>.