

CONSIDERATIONS IN ADDITION TO RGP8

Exemptions, No Permit Required, and Non-Notifying Permits

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US Army Corps
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THE MAIN CATEGORIES



No Permit Required (NPR's)

- Activities that fall outside of the Corps' Regulatory jurisdiction
 - Work outside waters of the U.S.
 - Placement of pilings in non-Section 10 waters
 - Clean excavation in non-navigable waters

Exemptions

- Activity-based exemptions which are excluded under Section 404F of the CWA
- Includes in-kind maintenance and emergency repairs, as well as certain agricultural and silvicultural activities

Non-Notifying Nationwide Permits

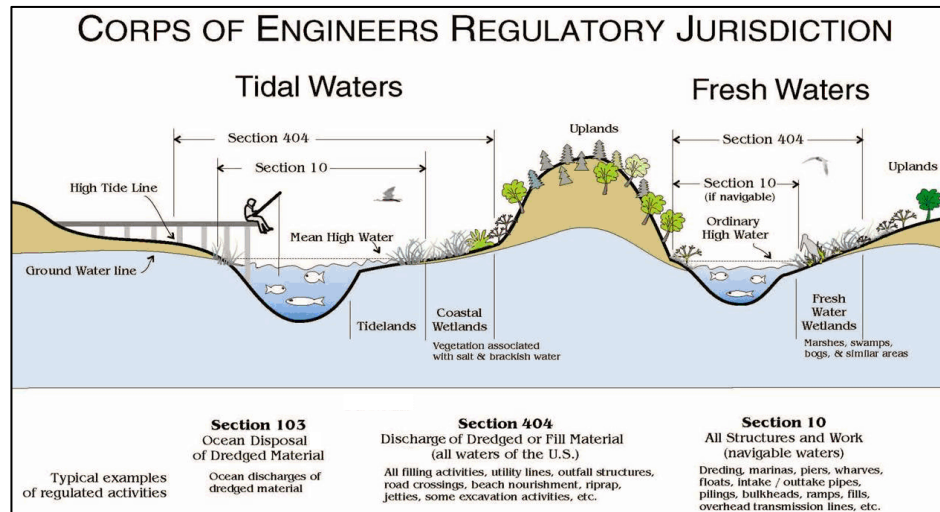
- Activities that are regulated but fall below the threshold of notifying the Corps
- Usually due to amount or acreage of fill placed
- *Still need to comply with Section 401 (NWP general condition #25)

NO PERMIT REQUIRED



Activities that fall outside of the Corps' Jurisdiction:

- Section 9 RHA work on bridges, dams, causeways, etc. that does not have a Section 404 CWA component.
 - Falls under jurisdiction of the USCG
- Work in non-Section 10 waters that does not result in discharge of fill
 - Clean excavation (e.g. dredging and disposal in uplands)
 - Grubbing and vegetation removal above the soil
 - Pilings, unless they provide the function of fill



EXEMPTIONS

Outlined in Section 404(F)(1) of the CWA

Includes activities below:

- Established (ongoing) farming, ranching, and silviculture activities
- Maintenance (but not construction) of drainage ditches
- Maintenance and construction of irrigation ditches
- Maintenance and construction of farm or stock ponds
- Maintenance and construction of farm and forest roads, in accordance with best management practices
- Maintenance of structures such as dams, dikes, and levees





EXEMPTIONS (CONT'D)



Ditch Exemption:

- Maintenance and construction of irrigation ditches
 - If a ditch carries only irrigation water, irrigation return flows, and/or overland flow (precipitation and/or snowmelt) to and/or from an irrigated area, that ditch would be considered an irrigation ditch, not a drainage ditch
- Maintenance, but not construction, of drainage ditches
- Maintenance:
 - Removal of material
 - Minor changes to the cross-section of the ditch
 - Replacement or repair of existing related structures
- Construction:
 - Relocation of irrigation ditches
- Maintenance and/or Construction (Case Dependent)
 - Sidecasting
 - Armoring, lining, and/or piping repair activities
 - Temporary discharges

For more information, see the
Corps/EPA 2020 Ditch Exemption
Memo, available at:

<https://www.spk.usace.army.mil/Portals/12/documents/regulatory/upload/Encl%201%20Joint%20Memo.pdf?ver=7pOe546tMmqdHUXSyyqe4g%3d%3d>



EXEMPTIONS (CONT'D)



Maintenance

- Includes **emergency repair** and reconstruction of currently serviceable structures
 - Emergency repairs must occur in a reasonable period of time after damage to qualify
- Maintenance must not result in any modifications such as changes in scope, purpose, construction, or location of the fill
 - “Maintenance” activities that would result in a modification to the fill, or Section 10 maintenance activities, can be verified with NWP 3.
 - If maintenance activities that result in a modification require authorization and meet the Regulatory Program’s definition of an “emergency situation” (33 CFR 325.2[e][4]), look toward RGP 8, Emergency Repair and Protection Activities

Recapture Provision

- A two-part test that would result in an activity being considered not exempt when both conditions are met:
 - 1) does the activity represent a "new use" of the wetland?
 - 2) would the activity result in a "reduction in reach/impairment of flow or circulation" of waters of the United States?
- An activity would also not be considered exempt if it results in discharge of toxic pollutants.



NON-NOTIFYING PERMITS



Activities that would not trigger a PCN requirement

- Thresholds can be found in the permit summary
- Other considerations should be made for endangered species and historic properties
 - Requirements for PCN submittal can be found in General Condition 32 of the NWP summary
- If you are unsure, please feel free to contact our office.



U S Army Corps of
Engineers
Sacramento District

2021 Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide
Permits – February 25, 2022

3. Maintenance.

(a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized. This NWP also authorizes the removal of previously authorized structures or fills. Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill; such modifications, including the removal of material from the stream channel, must be immediately adjacent to the project. This NWP also authorizes the removal of accumulated sediment and debris within, and in the immediate vicinity of, the structure or fill. This NWP also authorizes the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of

deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

(c) This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation. This NWP does not authorize beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a preconstruction notification to the district engineer prior to commencing the activity (see general condition 32). The pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Authorities: Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (Sections 10 and 404)).

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.



SUMMARY: TOOLS FOR EMERGENCY SITUATIONS



No Permit Required (NPR's)

Exemptions (Particularly Maintenance Exemptions)

Non-Notifying Nationwide Permits

Nationwide Permit #3

Emergency Procedures (Regional General Permit 8)