



**PUBLIC NOTICE**



**US Army Corps  
of Engineers**

Omaha District

**Issuance Date: June 16, 2016  
Expiration Date: August 1, 2016**

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NEBRASKA REGULATORY OFFICE  
8901 SOUTH 154<sup>TH</sup> STREET, SUITE 1, OMAHA, NEBRASKA 68138-3635

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**INITIAL PUBLIC NOTICE**

**NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS**

On June 1, 2016, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the 50 existing nationwide permits (NWP) and issue two new NWP.

Nationwide permits 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 NWP require notification to the district engineer before commencing those activities, to ensure that the activities authorized by those NWP cause no more than minimal individual and cumulative adverse environmental effects.

National Issues Concerning the Proposed NWP: The Federal Register notice is the public's opportunity to comment on the proposed NWP, general conditions, and definitions. Comments on national issues relating to these NWP should be submitted to docket number COE-2015-0017 at [www.regulations.gov](http://www.regulations.gov), or by email to [NWP2017@usace.army.mil](mailto:NWP2017@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 June 1, 2016 Federal Register notice. Comments on the proposed NWP are due by August 1, 2016.

Regional Issues Concerning the Proposed NWP, 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 important mechanisms to ensure that the adverse environmental effects of activities authorized by the NWP are no more than minimal, both individually and cumulatively. Division engineers may also suspend or revoke specific NWP 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 NWP may be more than

minimal. An enclosure for this public notice (Enclosure 1) lists the proposed regional conditions currently under consideration by the Northwest Division for State of Nebraska. The Omaha District-Nebraska Regulatory Office is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that the adverse environmental effects of activities authorized by the proposed NWP are no more than minimal, individually and cumulatively. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in the Omaha District-Nebraska Regulatory Office. Comments on regional issues relating to the proposed NWP and proposed regional conditions should be sent to Matt Wray, Nebraska Regulatory Office, 8901 South 154<sup>th</sup> Street, Omaha, Nebraska 68138 or email him at [Matt.T.Wray@usace.army.mil](mailto:Matt.T.Wray@usace.army.mil). Comments relating to regional conditions are due by August 1, 2016. Voice mail comments will not be considered. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices.

After the final NWP are issued, the final regional conditions will be issued after they are approved by the Division Commander. After the final NWP are issued, States and Tribes will make their Clean Water Act Section 401 (401) water quality certification and States will make their Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 90 days of the Federal Register notice announcing the issuance of the NWP. The final NWP will go into effect on March 19, 2017.

Draft decision documents for each of the proposed NWP, 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 NWP with the requirements for issuance under the Corps general permit authority. These documents, as well as the proposed NWP, are available for viewing at [www.regulations.gov](http://www.regulations.gov), docket number COE-2015-0017. Final decision documents will be prepared for the NWP that are issued. In addition, the final national NWP decision documents will be supplemented by division engineers to address their decisions concerning regional conditions for the NWP.

Enclosed is an index of the proposed NWP and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP through the Corps Home Page at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>, at [www.regulations.gov](http://www.regulations.gov) in docket number COE-2015-0017, or at the Federal Register address listed below.

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

### ***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. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
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
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
- A. Removal of Low-Head Dams
- B. Living Shorelines

***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. Single and Complete Project
16. Wild and Scenic Rivers
17. Tribal Rights
18. Endangered Species
19. Migratory Bird and Bald and Golden Eagle Permits
20. Historic Properties
21. Discovery of Previously Unknown Remains and Artifacts
22. Designated Critical Resource Waters
23. Mitigation
24. Safety of Impoundment Structures
25. Water Quality
26. Coastal Zone Management
27. Regional and Case-by-Case Conditions
28. Use of Multiple Nationwide Permits
29. Transfer of Nationwide Permit Verifications
30. Compliance Certification
31. Activities Affecting Structures or Works Built by the United States
32. Pre-Construction Notification

## ***District Engineer's Decision***

### ***Further Information***

#### ***Definitions***

Best management practices (BMPs)  
Compensatory mitigation  
Currently serviceable  
Direct effects  
Discharge  
Enhancement  
Ephemeral stream  
Establishment (creation)  
High Tide Line  
Historic property  
Independent utility  
Indirect effects  
Intermittent stream  
Loss of waters of the United States  
Non-tidal wetland  
Open water  
Ordinary high water mark  
Perennial stream  
Practicable  
Pre-construction notification  
Preservation  
Re-establishment  
Rehabilitation  
Restoration  
Riffle and pool complex  
Riparian areas  
Shellfish seeding  
Single and complete linear project  
Single and complete non-linear project  
Stormwater management  
Stormwater management facilities  
Stream bed  
Stream channelization  
Structure  
Tidal wetland  
Vegetated shallows  
Waterbody

Enclosure 1



**2017 NATIONWIDE PERMITS  
PROPOSED REGIONAL CONDITIONS  
OMAHA DISTRICT  
STATE OF NEBRASKA**

The following Nationwide Permit Regional Conditions will be used in the State of Nebraska. Regional conditions are placed on Nationwide Permits to ensure projects result in minimal adverse impacts to the aquatic environment and to address local resource concerns.

**1. Wetlands Classified as Peatlands – Preconstruction Notification Requirement.**

For all Nationwide Permits, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity in peatlands found in Nebraska. Peatlands are saturated and inundated wetlands where conditions inhibit organic matter decomposition and allow for the accumulation of peat. Under cool, anaerobic, and acidic conditions, the rate of organic matter accumulation exceeds organic decay. Peatlands can be primarily classified into ombrotrophic bogs and minerotrophic fens; the latter subdivided into poor, moderate-rich, and extreme-rich fens, each with distinctive indicator species, community physiognomy, acidity, alkalinity, and base cation content.

**2. Waters Adjacent to Natural Springs – Pre-Construction Notification Requirement.**

For all Nationwide Permits, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity located within 100 feet of the water source in natural spring areas.

For the purpose of this condition, a spring water source is defined as any location where there is artesian flow emanating from a distinct point at any time during the growing season. Springs do not include seeps and other groundwater discharge areas where there is no distinct point source of waters. Springs do not include drain tile outlets.

**3. Rainwater Basin Wetlands – Pre-construction Notification Requirement.** For all Nationwide Permits, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity in any traditional Rainwater Basin wetlands found in the 17 county Rainwater Basin area of south central Nebraska. The following link provides a map showing the general location of the Rainwater Basin geographic area: [http://www.fws.gov/refuge/rainwater\\_basin\\_wmd/](http://www.fws.gov/refuge/rainwater_basin_wmd/).

**4. Eastern Saline Wetlands, Salt Creek and its tributaries, including Rock Creek and its tributaries, in Saunders or Lancaster Counties – Pre-construction Notification Requirement.**

- a. For all Nationwide Permits, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity within any Eastern Saline wetlands, Salt Creek, and its tributaries, including Rock Creek and its tributaries, found in Saunders or Lancaster Counties. The map located at the end of this document shows the Salt Creek Tiger Beetle recovery areas and projects in these areas will receive additional analysis.
- b. All mitigation involving Eastern Saline wetlands shall be conducted pursuant to the Eastern Saline Mitigation Guidelines. The Guidelines can be found at:  
<http://www.nwo.usace.army.mil/Missions/RegulatoryProgram/Nebraska/Mitigation.asp>
5. **Riffle and Pool Complexes—Pre-construction Notification Requirement.** For all Nationwide Permits, permittees shall notify the Corps in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity involving the discharge of dredge or fill material into riffle and pool complexes.
6. **Missouri River, North Platte River, South Platte River, Platte River, Loup River, Elkhorn River, Republican River and all jurisdictional Class A State Resource Waters – Pre-construction Notification Requirement.** For all Nationwide Permits, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity located on the above named rivers and waters. A list of Class A State Resource Waters can be found at:  
[http://www.deq.state.ne.us/RuleAndR.nsf/23e5e39594c064ee852564ae004fa010/9f07eae313ae56d686256888005bc61e/\\$FILE/Wqs05.pdf](http://www.deq.state.ne.us/RuleAndR.nsf/23e5e39594c064ee852564ae004fa010/9f07eae313ae56d686256888005bc61e/$FILE/Wqs05.pdf)
7. **Taylor Creek (and tributaries), Big and Brush Creeks (and tributaries), and Union Creek (and tributaries) – Pre-construction Notification Requirement.** For all Nationwide permits due to the potential presence of Topeka Shiner, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity located on Taylor Creek and its associated tributaries in Madison County, Big and Brush Creeks and their associated tributaries in Cherry County and the segment of Union Creek and its associated tributaries in Madison and Stanton Counties located in the area that is bounded by Nebraska Highway 121 to the west, Nebraska Highway 57 to the east, the Platte County line to the south and 833rd Road (main east-west road between Village of Enola and Village of Stanton, Nebraska) to the north.
8. **Wild and Scenic Rivers, National River Inventory Rivers – Pre-construction Notification Requirement.** For all Nationwide Permits, permittees shall notify the Nebraska Regulatory Office in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity located on the



Niobrara National Scenic River, the Missouri National Recreational River, or any National River Inventory river.

The following link provides a map showing the location of the Niobrara National Scenic River: <https://www.nps.gov/niob/planyourvisit/maps.htm>

The following link provides a map showing the location of the Missouri National Recreational River: <https://www.nps.gov/mnrr/planyourvisit/maps.htm>

The following link provides a map showing the location of the Nebraska Rivers listed on the National River Inventory list:

<https://www.nps.gov/ncrc/programs/rtca/nri/states/ne.html>

**9. Revegetation of Disturbed Areas – All Nationwide Permits.**

- a. All areas adjacent (contiguous, bordering, neighboring) to jurisdictional waters disturbed by construction shall be revegetated with appropriate perennial, native grasses and forbs and maintained in this condition. In accordance with Executive Order 13112, the use of invasive species and non-native species is not appropriate for revegetation of disturbed areas. An annual cover crop may be planted to aid in the establishment of native vegetation. The disturbed areas shall be reseeded concurrently with the project or immediately upon completion. Revegetation shall be acceptable when ground cover of appropriate perennial, native grasses and forbs reaches 75%. If this seeding cannot be accomplished by September 15 in the year of project completion, then an erosion blanket shall be placed on the disturbed areas. The erosion blanket shall remain in place until ground cover of appropriate perennial, native grasses and forbs reaches 75%. If the seeding can be accomplished by September 15, all seeded areas shall be properly mulched to prevent erosion.
- b. When the vegetation has become established, all temporary erosion control materials shall be removed from Waters of the United States on the project site. Biodegradable or photodegradable materials need not be removed.

**10. Temporary Structures/Work/Fill**

**a. All Nationwide Permits**

- i. The use of dredged material in the construction of temporary structures or used for temporary work or used as temporary fill shall not be allowed. The term "dredged material" is defined as material that is excavated or dredged from waters of the U.S. All temporary fill material shall be obtained from an upland source.
- ii. Upon completion of the construction activity, all temporary fill material shall be removed in its entirety from the water of the U.S. to an upland area and the affected area shall be restored to its pre-construction condition.

Wetland disturbed by temporary construction shall be seeded with appropriate native hydrophytic species.

- iii. General Condition No. 13 (Removal of Temporary Fills) is amended by adding the following: When temporary fills are placed in wetlands, a horizontal marker (i.e. fabric, certified weed-free straw, etc.) must be used to demarcate the existing ground elevation of wetlands that will be temporarily filled during construction, in order to restore the wetlands to pre-project conditions.

**b. Nationwide Permits with a Pre-construction Notification Requirement**

In addition to the above Regional Conditions in "a", the following apply to Nationwide permits with a Pre-Construction Notification requirements.

- i. A proposal for the temporary structure/work/fill, if not already provided in the PCN, shall be submitted 30 days prior to construction and authorized/verified by the Nebraska Regulatory Office prior to the commencement of construction.
- ii. The Nebraska Regulatory Office shall be notified with documentation (i.e. photos) when the site has been restored to its pre-project condition.

**11. Stream Channelization Projects – All Nationwide Permits.**

- a. Permittees must notify the Corps in accordance with General Condition No. 32 (Pre-Construction Notification) prior to straightening, relocating and/or shortening an existing stream channel. The total channel length reduction for all ephemeral, intermittent or perennial channels must be less than 100 feet. Stream channel length includes the length flowing through culverts or similar structures.
- b. Activities can result in the loss of no more than 300 linear feet of stream bed. Loss of stream bed includes the distance flowing through new culverts or similar structures as a result of the activity.
- c. Buffer strips must be set along both sides of a channelized, relocated, or other new stream channel. Buffers shall be at least 50 feet wide from the ordinary high water mark, and slope landward no steeper than a slope of 4H:1V. New buffers in disturbed areas shall be revegetated with a mixture of perennial grasses, forbs and trees as appropriate. In accordance with Executive Order 13112, the use of invasive species and non-native species is not appropriate for revegetation of disturbed areas or buffers. An initial cover crop may be planted to aid in the establishment of native vegetation. Buffers established where appropriate native species and slopes are present do not need to be re-graded or replanted.
- d. The Corps may allow a waiver of this condition on a case-by-case basis if the Corps determines the activity will result in only minimal adverse effects. The applicant must request the waiver in writing and provide documentation and

environmentally based reasons to support the waiver request. The Corps will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects.

## **REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NATIONWIDE PERMITS**

### **Nationwide Permit No. 13 – Bank Stabilization – Pre-construction Notification**

**Requirement.** All permittees shall notify the Nebraska Regulatory Office in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity under Nationwide Permit No. 13.

### **Nationwide Permit No. 16 – Return Water From Upland Contained Disposal Areas**

**– Pre-construction Notification Requirement.** All permittees shall notify the Nebraska Regulatory Office in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity under Nationwide Permit No. 16.

### **Nationwide Permit No. 23 - Approved Categorical Exclusions – Pre-construction**

**Notification Requirement.** All permittees shall notify the Nebraska Regulatory Office in accordance with General Condition No. 32 prior to initiating any regulated activity under Nationwide Permit No. 23. In addition to information required by General Condition No. 32 (Pre-Construction Notification), the applicant must identify the approved categorical exclusion that applies in Regulatory Guidance Letter (RGL) 05-07 or the appropriate U.S. Army Corps of Engineers RGL and provide documentation that the project fits the categorical exclusion.

### **Nationwide Permit 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities – Pre-construction Notification Requirement.**

All permittees shall notify the Nebraska Regulatory Office in accordance with General Condition No. 32 (Pre-Construction Notification) prior to initiating any regulated activity under Nationwide Permit No. 27. Channel realignment is not authorized by this permit unless it is demonstrated that the realignment is consistent with the natural morphological evolution of the stream and historic location of the stream.



