CHARLESTON DISTRICT, CORPS OF ENGINEERS
REGULATORY DIVISION
Refer to: P/N #06-29-2007-NWP

29 JUNE 2007

PUBLIC NOTICE ANNOUNCING REGIONAL CONDITIONS FOR NATIONWIDE PERMITS IN SOUTH CAROLINA

On 12 March 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 also issued six new NWPs, two new general conditions, and 13 new definitions. The NWPs were effective on March 19, 2007.

The 12 March 2007 *Federal Register* is available for viewing at the

CHARLESTON DISTRICT, CORPS OF ENGINEERS
69A HAGOOD AVENUE
CHARLESTON, SOUTH CAROLINA 29403-5107

or on the Internet at http://www.usace.army.mil/cw/cecwo/reg/nationwide_permits.htm

The Corps has also issued final decision documents for the new and modified NWPs. These documents are also available at the website listed above and Corps district offices. Furthermore, the NWP decision documents were supplemented by Division Engineers to address decisions concerning regional conditioning of the NWPs.

On 23 March 2007, the Charleston District published Public Notice #19-MAR-2007-NWP requesting written statements regarding any suggested regional conditions. As a result of the public notice, Charleston District has finalized their regional conditions for the new and modified NWPs. Regional conditions will 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 will help ensure protection of high value waters within the State of South Carolina.

The Nationwide Permit Regional Conditions for South Carolina are **effective** as of the date of this notice and apply to all activities authorized by the reissued and new Nationwide Permits in the State of South Carolina. A copy of the Regional Conditions and an Index of Nationwide Permits and General Conditions are attached.

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The following Regional Conditions have been implemented by the Charleston District for the nationwide permits (NWP) published in the 12 March 2007 Federal Register as authorized under General Condition #23. Certain terminologies used in the following conditions are identified in *italics* and are defined in the above referenced Federal Register under Definitions.

FOR ALL NATIONWIDE PERMITS:

1. The applicant must implement *best management practices* during and after all construction to minimize erosion and migration of sediments off site. These practices may include use of devices capable of preventing erosion and migration of sediments in streams and wetland areas. These devices must be maintained in a functioning capacity until the area is permanently stabilized. All disturbed land surfaces must be stabilized upon project completion.

2. Necessary measures must be taken to prevent oil, tar, trash, debris and other pollutants from entering the adjacent waters or wetlands.

3. Any excess excavated materials not utilized as authorized back fill must be placed and contained on high land well away from waters of the U.S., including wetlands. Such material must be permanently stabilized to prevent erosion.

4. Placement and/or stockpiling (double handling) of excavated material in waters of the U.S, including wetlands, is prohibited unless specifically authorized by the nationwide permit verification. Should double handling be authorized, the material must be placed in such a manner to allow for adequate circulation of water and not be dispersed by currents or other erosive forces.

5. Once project construction is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to aquatic resources and surrounding environment.

6. The permittee must notify the Corps of Engineers, Charleston District in the event archaeological or paleontological remains are found during the course of work. Archaeological remains consist of any materials made or altered by man, which remain from past historic or prehistoric times (i.e., older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures, or non-recent (i.e., older than 100 years) vessel ruins. Paleontological remains consist of old animal remains, original or fossilized, such as teeth, tusks, bone, or entire skeletons.

7. Use of nationwide permits does not obviate requirements to obtain other Federal, State, county, or local government authorizations.

8. With the exception of NWP 38, no NWP is authorized in areas of known or suspected sediment contamination.

For Specific Nationwide Permits:

9. For **NWP's 12, 14, 18, 27, 29, 38, 39, 40, 42, 43**, and **44** a discharge cannot cause the loss of greater than 300 linear feet of *streambed.*

10. For **NWP's 1, 3, 5, 7, 8, 10, 11, 12, 13, 14, 15, and 36**, a notification must be submitted for any activity that would be located adjacent to an authorized Federal Navigation project. These Federal navigation areas include Adams Creek, Savannah River, Jeremy and Town Creek at McClellanville, Village Creek at Beaufort, the Charleston Harbor Navigation Project (to include the federal navigation channels in Shipyard River, Wando River, Town Creek, and channels at the Naval Weapons Station), Georgetown Harbor, Little River Inlet, Murrells Inlet, Main Creek at Murrells Inlet, Port Royal Harbor, Waccamaw River, Shem Creek, and the Atlantic Intracoastal Waterway.

11. For **NWP 3**, excavation of accumulated sediment or other material is not authorized in areas adjacent to existing private or commercial dock facilities, piers, canals dug for boating access, marinas, or boat slips.

12. For **NWP 3, paragraph (a) activities**, the permittee must notify the District Engineer in accordance with General Condition 27, if the discharge of dredged or fill material causes the loss of greater than 1/10-acre of waters of the U.S. or there is a discharge in a special aquatic site, including wetlands and riffle pool complexes.

13. For **NWP's 7 and 12**, the associated intake structure must be screened to prevent entrainment of juvenile and larval organisms and the inflow velocity of the associated intake structures must be limited to $\leq$ 0.5 ft/sec.

14. For **NWP 7**, activities related to the construction of outfall structures must occur in the immediate vicinity of the outfall, and must be necessary for the overall construction or operation of the outfall (e.g. pump equipment, rip-rap). Authorization does not include ancillary activities such as construction of access roads, installation of utility lines leading to or from the outfall or intake structures, construction of buildings, distant activities, etc.

15. **NWP's 12, 14, and/or 43** will not be used in conjunction with **NWP 29 or 39** for a *single and complete project.*

16. For **NWP's 12, 14, 29, and 39**, wetland/stream crossings must be aligned and designed to minimize the *loss of waters of the U.S.*

17. For **NWP 12**, excavated material shall be returned to the trench and any remaining material shall be relocated and retained on an upland disposal site. Substrate containing roots, rhizomes, seeds, etc., must be kept viable and replaced at the surface of the excavated site. Impacted wetlands will be allowed to naturally re-vegetate from replaced substrate and/or be replanted with native wetland species.

18. For **NWP 12**, stream banks that are cleared of vegetation will be stabilized using bioengineering techniques and/ or the planting of deep-rooted native species.

19. For **NWP's 12, 14, 29, and, 39**, each individual wetland/stream crossing will be stabilized immediately following completion of construction/installation at that crossing.

20. For **NWP 12**, construction techniques to prevent draining, such as anti-seep collars, will be required for utility lines buried in wetlands, when necessary. If no construction techniques to prevent draining are proposed, the applicant must provide appropriate documentation that such techniques are not required to prevent wetland drainage.

21. For **NWP 12**, all notifications must include:
    - specifications of how pre-construction contours will be re-established and verified after construction;
    - a justification for the required width of all maintained utility crossings impacting waters of the U.S.;
    - a justification for the *loss of waters of the U.S.* impacted by utility line sub-stations.
    - the acreage of impacts to waters of the U.S indefinitely converted from a forested wetland to a herbaceous wetland and a compensatory mitigation proposal.

22. For **NWP's, 14, 29, 39**, and **46** all notifications must include appropriately sized and located culverts for crossings of waters of the U.S. that meet the requirements of General Conditions 2, 9 and 10.

23. For **NWP's 14, 29, and 39**, stream crossings are required to accommodate bankfull* flows by maintaining the existing bankfull channel cross sectional area. Flows that exceed bankfull flow must be accommodated by placement of additional culverts above the bankfull elevation.

24. For **NWP 29**, the loss of waters of the U.S. is limited to ¼-acre for a single family residence.

25. Notifications for aquatic habitat *restoration,* establishment, and enhancement activities authorized by **NWP 27** will require coordination with appropriate Federal, State, and local agencies. The coordination activity will be conducted by the Corps of Engineers. Agencies will generally be granted 15 days to review and provide comments unless the District Engineer determines that an extension of the coordination period is reasonable and prudent.

26. For **NWP 36**, the width of the boat ramp will be limited to 12 feet, only one boat ramp may be constructed on a single lot or tract of land (e.g. each lot within a subdivision), and the ramp must be limited to single family recreational uses or non-commercial, non-profit, recreational uses.

27. For **NWP 38**, notifications require the following information:
    - documentation that the specific activities are required to effect the containment, stabilization, or removal of hazardous or toxic waste materials as performed, ordered, or sponsored by a government agency with established legal or regulatory authority;
    - a narrative description indicating the size and location of the areas to be restored, the work involved and a description of the anticipated results from the restoration;
    - a plan for the monitoring, operation, or maintenance of the restored area.

28. For **NWP's 29 and 39**, the discharges of dredged or fill material for the construction of *stormwater management facilities* in *perennial streams* are not authorized.

29. For **NWP's 29 and 39,** channel relocations are limited to man-made drainage ditches.

30. For **NWP 41**, notification must be submitted for projects that require mechanized land clearing in waters of the U.S., including wetlands, in order to access or perform reshaping activities.

31. **NWP 41** is prohibited in channelized streams or stream relocation projects that exhibit natural stream characteristics and/or perform natural stream functions.

*Bankfull corresponds to the discharge at which channel-forming processes, such as forming or removing bars or meanders, is most effective. It is typically associated with the 1.5-year storm event, the "ordinary high water mark", and the elevation on the stream bank where flooding begins in a stable stream system. It can often be identified in the field by the elevation of the highest depositional feature (e.g. point bars), a recognizable floodplain, or a break in perennial vegetation.

Enclosed is an index of the Nationwide permits and conditions. They are also available through the Corps Home Page or the *Federal Register*.

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
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
48. Existing Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities

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
28. Single and Complete Project