

PIPELINERS ASSOCIATION OF HOUSTON MEETING

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TOPICS

- Overview of Program
- Nationwide Permit Program
- 2017 Nationwide Permit Program
- Changes
- Transition from 2012 to 2017 Nationwide Permit Verifications
- Galveston District Regional General Permit
- Hot Topics



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REGULATORY MISSION

To protect the Nation's aquatic resources, while allowing reasonable development through fair and balanced decisions.



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AUTHORITIES

Section 10 Rivers and Harbors Act of 1899

Regulate the obstruction or alteration of navigable waters

- Constructing structures in, over, under navigable waters
- Excavation/dredging
- Depositing material
- Any other work that affects the course, location, condition, or capacity of navigable waters
- Also applies to the construction of artificial islands, installations, and other devices located on the seabed on the outer continental shelf.

Clean Water Act Section 404

Corps regulates the discharge of dredged or fill material into waters of the U.S.

Not all waters are waters of the U.S.



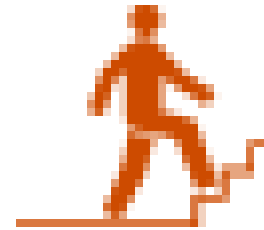
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PERMIT TYPES

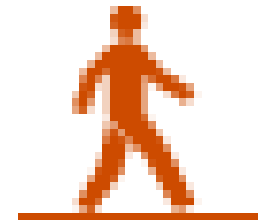
- **Individual Permits**

- Standard Permits
- Letters of Permission



- **General Permits**

- Nationwide Permits
- Regional General Permits
- Programmatic General Permits



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NATIONWIDE PERMITS

- Congressional intent (Clean Water Act Section 404(e))
 - Streamlined authorization process for small activities with no more than minimal adverse environmental effects
 - Issued for no more than 5 years (Last Issued March 19, 2017)
- Authorize Nationally ~35,000 activities per year (reported) plus ~30,000 non-reporting activities
- First issued in 1977
 - 15 nationwide permits
 - 14 general conditions
- Current nationwide permits expire on March 18, 2022
 - 52 nationwide permits
 - 32 general conditions
 - Note: Individual verifications will also expire on March 18, 2022.



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SUMMARY OF 2017 FINAL RULE

- What's stayed the same:
 - Acreage limits
 - Linear foot limits
 - Cubic yard limits
 - Most pre-construction notification (PCN) thresholds
- Vast majority of the changes are clarifications
- Little or no change to processes



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NATIONWIDE PERMITS PRE-CONSTRUCTION NOTIFICATION (PCN)

8

No PCN
(Non-Reporting)

Vs

PCN
(Reporting)

It's all about the thresholds.



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NO PRE-CONSTRUCTION NOTIFICATION

- A request does not need to be submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit.
- The project proponent is responsible for assuring all terms and conditions of the nationwide permit have been met.

Note: Endangered Species Act and National Historic Preservation Act



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PRE-CONSTRUCTION NOTIFICATION

- Opportunity for district to review proposed NWP activity to determine eligibility for authorization
 - Will the proposed activity result in only minimal adverse environmental effects?
 - Does proposed activity comply with all applicable general and regional conditions?
 - Is compensatory mitigation or other mitigation required to ensure no more than minimal adverse environmental effects?
 - Are any consultations required?
 - Endangered Species Act Section 7
 - National Historic Preservation Act Section 106
 - Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act



ENDANGERED SPECIES ACT COMPLIANCE

- Based on requirements of:
 - General condition 18, endangered species
 - For non-federal permittees, PCNs are required for proposed activities that might affect listed species or designated critical habitat
 - 33 CFR 330.4(f)
- Compliance with requirements of ESA section 7(a)(2)
 - No PCN – applicant must assure ESA compliance
 - PCN – Corps assures ESA compliance
 - Activity-specific ESA section 7 consultations
- Applicant shall not begin the activity until notified by the Corps.



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NATIONAL HISTORIC PRESERVATION ACT COMPLIANCE

- Based on requirements of:
 - General condition 20, historic properties
 - For non-federal permittees, PCNs are required for proposed activities that might have the potential to cause effects to historic properties
 - 33 CFR 330.4(g)
- Compliance with requirements of NHPA section 106
 - No PCN – applicant must assure NHPA compliance
 - PCN – Corps assures NHPA compliance
 - Activity-specific NHPA section 106 consultations
- Applicant shall not begin the activity until notified by the Corps.



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CHANGES IN 2017 NATIONWIDE PERMITS AND GENERAL CONDITIONS



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NWP 3 – MAINTENANCE

- (a) Authorizes the repair, rehabilitation, or replacement of previously authorized structures or fills
- (b) Authorizes the removal of accumulated sediments in vicinity of existing structures and associated canals
- Limits:
 - Minor changes to conform to current construction practices, materials, current construction codes, and regulatory requirements (paragraph (a))
 - Removal of accumulated sediment within 200 feet of existing structures (paragraph (b))



NWP 3 – MAINTENANCE

- Changes:
 - Clarified that NWP authorizes removal of previously authorized structures or fills
 - Removal of accumulated sediment within or in immediate vicinity of structure or fill – No PCN required (paragraph (a))
 - Removal of accumulated sediment not in immediate vicinity of structure or fill – PCN required (paragraph (b))
 - Authorize use of timber mats, if Corps authorization required
 - Removed provision in paragraph (b) authorizing riprap to protect the structure
 - Riprap can be authorized by NWP 13, with or without PCN



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NWP 12 – UTILITY LINE ACTIVITIES

- Authorizes crossings of jurisdictional waters and wetlands for utility lines
- Also authorizes utility line substations, foundations for overhead utility lines, and access roads
- Limits Regarding Loss of Waters of US:
 - 1/2-acre limit for each separate and distant waterbody crossing
 - 1/2-acre of non-tidal waters for utility line substations
 - 1/2-acre of non-tidal waters for access road crossings



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NWP 12 – UTILITY LINE ACTIVITIES

- Changes:
 - Clarified that for utility lines, the Corps is only authorizing regulated crossings of waters of the United States
 - Authorize regulated activities associated with remediation of inadvertent returns of drilling fluids if subsurface fracture during horizontal directional drilling activities
 - Authorize use of timber mats, if Corps authorization required
 - Added reference to Corps regulations for minimum clearance for overhead electric power lines over navigable waters



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GC 18 – ENDANGERED SPECIES

- Define “direct effects” and “indirect effects” to assist in Endangered Species Act compliance
 - Direct effects are immediate effects on listed species and critical habitat caused by NWP activity
 - Indirect effects are effects on listed species and critical habitat caused by NWP activity that occur later in time, and are reasonably certain to occur
- Clarified that other federal agencies are responsible for their own compliance with the Endangered Species Act
- District engineer may add permit conditions for Endangered Species Act compliance
- May use ESA section 10(a)(1)(B) incidental take permit to fulfill requirements of this general condition and the ESA



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GC 20 – HISTORIC PROPERTIES

- Revised text of general condition to be more consistent with threshold for National Historic Preservation Act section 106 consultation:
 - “May have the potential to cause effects to historic properties”
- Added designated tribal representative to list of sources for assistance for obtaining information on the potential presence of historic properties
- Clarified when section 106 consultation is conducted:
 - NWP activities where there are “no historic properties affected,” or that have “no adverse effects” or “adverse effects” on historic properties



GC 23 – MITIGATION

- Reorganized text to clarify mitigation requirements for NWPs and their relationship to the Corps' 2008 mitigation rule
- Preference for use of mitigation bank or in-lieu fee program credits to fulfill compensatory mitigation requirements imposed by district engineers
 - Does not preclude the use of permittee-responsible mitigation, where appropriate (or where credits are not available)



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GC 23 – MITIGATION

- Added provision stating that if compensatory mitigation is required, then the amount must be sufficient to ensure the NWP activity causes no more than minimal individual and cumulative adverse environmental effects
- Clarified that compensatory mitigation may be required to ensure no more than minimal adverse environmental effects if a regulated activity results in the loss of certain aquatic resource functions and services (e.g., the conversion of forested wetlands to emergent wetlands)



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GC 31 – ACTIVITIES AFFECTING STRUCTURES OR WORKS BUILT BY THE UNITED STATES

- New general condition
- Any NWP activity that also requires a Section 408 permission from the Corps requires notification to the Corps district
- Activity is not authorized by NWP until after the Corps issues the 408 permission, and the district issues the NWP verification



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GC 32 – PRE-CONSTRUCTION NOTIFICATION

- No changes to the Corps' review process
 - Retained 30-day completeness review period
 - Retained 45-day verification decision period
- Changes to content of pre-construction notification:
 - Specify the NWP(s) the project proponent wants to use
 - Describe mitigation measures intended to reduce adverse environmental effects
 - For linear projects, clarify that notification must identify other crossings of waters of the United States that require Corps authorization, including those authorized by general permit that do not require pre-construction notification
 - For linear projects, the notification must also include the quantity of losses of aquatic resources for each single and complete crossing of those waters and wetlands



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DISTRICT ENGINEER'S DECISION (SECTION D)

- Criteria for determining whether a proposed NWP activity will result in no more than minimal individual or cumulative adverse environmental effects or any public interest review factor
 - For waiver requests, written determination of no more than minimal adverse environmental effects
 - Consider the direct and indirect effects caused by the NWP activity
 - Consider cumulative effects of NWP use on a regional basis
 - Regions may be watersheds, ecoregions, county, or other types of geographic areas
 - Non-linear projects – single watershed or region
 - Linear projects that cross multiple watersheds or regions – consider cumulative effects in each watershed or region



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DISTRICT ENGINEER'S DECISION (SECTION D)

- Is mitigation, including compensatory mitigation, required to ensure no more than minimal effects?
 - ▶ Add activity-specific conditions requiring avoidance and minimization measures, such as:
 - Construction or management practices that reduce effects on aquatic environment
 - Time-of-year restrictions
 - ▶ If compensatory mitigation required, add activity-specific conditions
 - Use of mitigation bank or in-lieu fee program credits
 - Permittee-responsible mitigation, including approval of mitigation plan
 - ▷ Conceptual or detailed plan to issue NWP verification



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MINIMAL EFFECTS DETERMINATIONS

- Factors considered by district engineers:
 - Environmental setting in the vicinity of the NWP activity
 - Type of resource that will be affected
 - Functions provided by the affected aquatic resources
 - Degree or magnitude to which the aquatic resources perform those functions
 - Extent that aquatic resource functions will be lost (e.g., partial or complete loss)
 - Duration of the adverse effects (temporary or permanent)
 - Importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and
 - Mitigation required by the district engineer



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CONDITIONS FOR THE NATIONWIDE PERMITS



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REGIONAL AND ACTIVITY-SPECIFIC CONDITIONS FOR NWPS

- Texas Regional Conditions
 - 30 Conditions Total
 - Entire Texas – 3
 - Galveston District – 15
- Louisiana Regional Conditions
 - 61 Conditions Total
 - All NWP's – 7
 - Per NWP

<http://www.swg.usace.army.mil/Business-With-Us/Regulatory/Permits/Nationwide-General-Permits/>



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TRANSITION FROM 2012 NWP's TO 2017 NWP's



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PROCESSING REQUESTS FOR MODIFICATIONS OF 2012 NWP ACTIVITIES

- If activity verified under 2012 NWP and NWP activity has commenced or is under contract to commence prior to March 18, 2017
 - One year to complete NWP activity (33 CFR 330.6(b))
- If district issued verification under 2012 NWP (or 45-day default authorization occurred) and permittee wants re-verification under 2017 NWP
 - Can re-verify under 2017 NWP if no project modifications and activity still qualifies
 - If project modification, then permittee needs to amend PCN for review under 2017 NWP
- If permittee unsure whether modified NWP activity will be completed in one year, can process re-verification under 2017 NWP (if it qualifies)



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Galveston District Regional General Permit



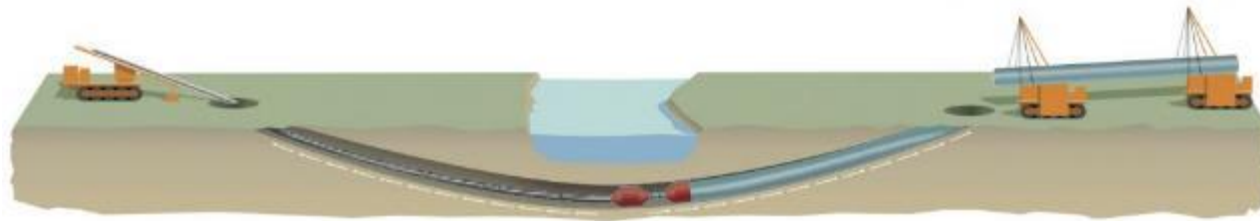
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REGIONAL GENERAL PERMIT

SWG-1998-02413 – Installation of Pipelines by Directional Drilling

- To install below navigable waters, including wetlands, pipelines by directional drilling. Specific depth requirements are dependent on the type of water.
- Deep Draft Federal Channels: 20 feet
- Shallow Draft Federal Channels: 10 feet
- Private Channels and Open Bay: 5 feet
- Navigable Rivers & Streams without Maintained Channels: 10 feet



River Crossing – HDD Method

<http://www.swg.usace.army.mil/Portals/26/docs/regulatory/GPs/RGP.2413.pdf>



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HOT TOPICS

- Galveston District Rescinded Pipeline Abandonment Policy
 - Now accepting applications to amend permits for decommissioning pipelines.
- Pipeline Decommissioning on the Outer Continental Shelf
 - Tying BSEE & Corps Reviews
- Exposed Pipelines Along/Within Waterways
 - When to armor? Vs When to remove and relocate?
- New Information Requirement for PCN
 - Disclosure of All Crossings
 - Clarify if requesting verification of both No PCN and PCN or only PCN.
 - Impact Tables
 - Please use ORM upload tables.



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WANT TO KNOW MORE?

Regulatory HQ HomePage

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx>

- Links to Regulations, Policies, MOAs and MOUs
- Video Library that provides more detailed overviews of aspects of the review process
- Avatar for finding Regulatory offices
- And so Much More!

Galveston District HomePage

<http://www.swg.usace.army.mil/Business-With-Us/Regulatory/>

Ask a Regulator!

Galveston District Regulatory Hotline

409-766-3869



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QUESTIONS?

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