

THE PIPELINERS ASSOCIATION OF HOUSTON MEETING

Prepared by Kristi N. McMillan
Galveston District
Regulatory Division
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TOPICS

- Overview of Program
- Nationwide Permit Program
- 2021 Nationwide Permit Program
 - Phase 1 – 16 NWP
 - Phase 2 – 41 NWP
- Regional Conditions for the Nationwide permits
- Regional Permits
- Outer Continental shelf (OCS)
- Regulatory Program Look Ahead



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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.



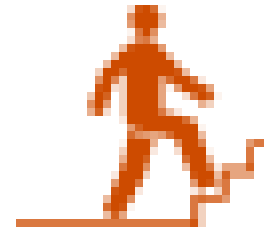
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PERMIT TYPES

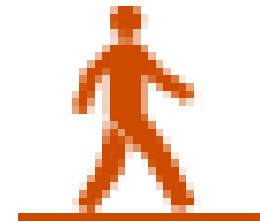
- **Individual Permits**

- Standard Permits
- Letters of Permission



- **General Permits**

- Nationwide Permits
- Regional General Permits
- Programmatic General Permits



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NATIONWIDE PERMITS

- Phase 1
 - 16 NWPs were renewed March 15, 2021
 - NWPs 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, 58
 - 32 General Conditions and Definitions
 - Construction under verifications under the 2017 versions of the 12 NWPs reissued will expire March 15, 2022.
- Phase 2 – Coming Soon (before March 2022)
 - 41 NWPs
- Goal: Phase 1 and 2 NWPs will expire in March 2026



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PIPELINE NWP CHANGES

Split Previous Utility Line NWP into 3 Separate NWPs:

- NWP 12 – Oil or Natural Gas Pipelines
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances



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NATIONWIDE PERMITS PRE-CONSTRUCTION NOTIFICATION (PCN)

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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2021 NATIONWIDE PERMITS AND GENERAL CONDITIONS HIGHLIGHTS



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NWP 3 – MAINTENANCE

- (a) Authorizes the repair, rehabilitation, replacement, or removal of previously authorized structures or fills
- Limits:
 - Minor changes to conform to current construction practices, materials, current construction codes, and regulatory requirements



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NWP 12 – OIL OR NATURAL GAS PIPELINES

- Authorizes crossings of jurisdictional waters and wetlands for oil and natural gas pipelines and associated facilities
- Limits Regarding Loss of Waters of US:
 - 1/2-acre limit for each single and complete project
 - 1/2-acre of non-tidal waters for substations
 - 1/2-acre of non-tidal waters for access road crossings



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NWP 57 – ELECTRIC UTILITY LINE AND TELECOMMUNICATIONS ACTIVITIES

- Authorizes crossings of jurisdictional waters and wetlands for electric utility lines, telecommunication lines, and facilities
- Limits Regarding Loss of Waters of US:
 - 1/2-acre limit for each single and complete project
 - 1/2-acre of non-tidal waters for substations
 - 1/2-acre of non-tidal waters for access road crossings



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NWP 58 – UTILITY LINE ACTIVITIES FOR WATER AND OTHER SUBSTANCES

- Authorizes crossings of jurisdictional waters and wetlands for utility lines for water and other substances, and facilities
- Limits Regarding Loss of Waters of US:
 - 1/2-acre limit for each single and complete project
 - 1/2-acre of non-tidal waters for substations
 - 1/2-acre of non-tidal waters for access road crossings



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UTILITY LINE PCN

NWP 12, 57, 58:

- A section 10 permit is required

NWP 12, 57, 58:

- The discharge will result in the loss of greater than 1/10 - acre of waters of the United States

NWP 12:

- Overall project that is greater than 250 miles in length and the project purpose is to install new pipeline



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PRE-AMBLE – OIL/NATURAL GAS VS OTHER SUBSTANCES

Oil or Natural gas pipeline: Considers the wide variety of products that may be derived from oil or natural gas and transported in these pipelines, such as: gasoline, jet fuel, diesel fuel, heating oil, petrochemical feedstocks, waxes, lubricating oils, and asphalt.

Nationwide permit 58 can be used to authorize pipeline activities that require DA authorization and are used to convey hydrogen, methanated hydrogen, or carbon dioxide.



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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



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

- 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

- Corps' review process
 - Retained 30-day completeness review period
 - Retained 45-day verification decision period
- 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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REGIONAL CONDITIONS FOR THE NATIONWIDE PERMITS



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REGIONAL CONDITIONS FOR NWP

Phase 1 – 2021-A Texas Regional Conditions

- 16 NWPs: 12, 21, 29, 39, 40, 42, 43, 44, 48, 50, 51, 52, 55, 56, 57, 58
- Issued: March 15, 2021

Phase 2 – 2021-Combined Texas Regional Conditions

- All NWPs
- Coming Soon

<https://www.swg.usace.army.mil/Missions/Regulatory/Permits/Nationwide-General-Permits/>



Galveston District Regional General Permits



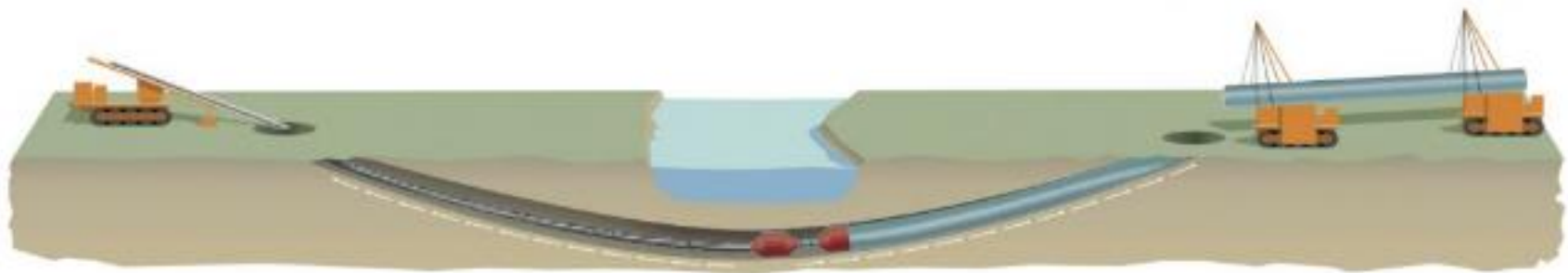
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REGIONAL GENERAL PERMIT - HDD

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

- May require Sec 408 review
- Perpendicular crossings of water bodies
- Sets desired pipeline depths



River Crossing – HDD Method



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REGIONAL GENERAL PERMIT – FEDERAL CHANNEL IMPROVEMENT PROJECT - PIPELINE REMOVALS

SWG-2019-00315 - Corpus Christi Ship Channel and adjacent affected bay systems

SWG-2020-00837 – Sabine-Neches Water Way Channel

SWG-2020-00228 – Houston Ship Channel

- Work in navigable waters of the US to facilitate the removal of utility lines affecting Federally Authorized projects
- May require Sec 408 review



OUTER CONTINENTAL SHELF (OCS)



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OUTER CONTINENTAL SHELF (OCS)

Section 10 of the Rivers and Harbor Act

The authority of the Secretary of the Army to prevent obstructions to navigation in navigable waters of the United States was extended to artificial islands, installations, and other devices located on the seabed, to the seaward limit of the outer continental shelf, by section 4(f) of the Outer Continental Shelf Lands Act of 1953 as amended (43 U.S.C. 1333(e)).



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OUTER CONTINENTAL SHELF (OCS) CONT.

NWP 8. Oil and Gas Structures on the Outer Continental Shelf. Structures for the exploration, production, and transportation of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of the Interior, Bureau of Ocean Energy Management.

NWP 12, 57, and 58

Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.



OUTER CONTINENTAL SHELF (OCS) CONT.

- Galveston District Rescinded Pipeline Abandonment Policy
 - Now accepting applications to amend permits for decommissioning pipelines.
- Pipeline Decommissioning on the OCS
 - Tying BSEE & Corps Reviews.
- Pipeline Decommissioning on State Waters
 - Tying State Agencies & Corps Reviews.



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Regulatory Program Look Ahead



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PROGRAM

- Regulatory Division Staffing
 - 9 Vacancies
 - Ongoing efforts to fill some of these vacancies
- Upcoming Regulation Changes
 - NEPA
 - ESA
 - Clean Water Act – Section 401 Rule
 - Clean Water Act – Definition of waters of US



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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

<https://www.swg.usace.army.mil/Missions/Regulatory/>

Ask a Regulator!

Galveston District Regulatory Hotline

409-766-3869



QUESTIONS?



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Kristi N. McMillan, 409-939-9842 or Kristi.N.McMillan@usace.army.mil



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