

Summary of Changes to NWP 12 (Utility Lines) & NWP 14 (Linear Transportation) in 2017 Albuquerque, Galveston, Fort Worth, and Tulsa Districts (TEXAS ONLY)

The U.S. Army Corps of Engineers (USACE) announced the renewed nationwide permits (NWP) necessary for work in streams, wetlands, and other waters of the United States under Section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act. The new NWPs take effect March 19, 2017, and replace the existing permits, which expire on March 18, 2017.

Below are the highlights for the changes within USACE Albuquerque, Galveston, and Fort Worth Districts.

- Albuquerque/Fort Worth/Galveston – NWP-12 - any land clearing dominated by scrub-shrub wetlands now requires a PCN.

“For all activities proposed for authorization under NWP 12 that involve a discharge of fill material associated with mechanized land clearing of wetlands dominated by woody shrubs, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity. For the purpose of this regional condition, a shrub dominated wetland is characterized by woody vegetation less than 3.0 in. in diameter at breast height but greater than 3.2 ft in height, exclusive of woody vines, covering 20 % or more of the area.”

- Fort Worth – NWP-12 & 14 - temporary discharge of fill material into 1/2 acre or more of emergent wetlands or 1/10 acre of scrub-shrub wetlands now requires a PCN.

“For all activities proposed for authorization under NWPs 12, 14, and/or NWP 33 that involve a temporary discharge of fill material into 1/2 acre or more of emergent wetland OR 1/10 acre of scrub-shrub/forested wetland, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity.”

- Albuquerque – NWP-12 & 14 - any impacts to intermittent stream, perennial stream, or wetlands now requires a PCN.

“Dredge and Fill Activities in Intermittent and Perennial Streams, and Special Aquatic Sites: (a) For all activities subject to regulation under the Clean Water Act Section 404 in intermittent and perennial streams, and special aquatic sites (including wetlands, riffle and pool complexes, and sanctuaries and refuges), PCN to the District Engineer is required in accordance with General Condition 32.”

- Albuquerque – NWP-12 & 14 - a PCN is required if construction of a NWP-12 Project occurs within 100 feet of a natural spring.

“Springs. For all discharges of dredged or fill material within 100 feet of the point of groundwater discharge of natural springs, PCN is required to the Corps in accordance with General Condition 32. A natural spring is defined as any location where ground water emanates from a point in the ground and has a defined surface water connection to another waters of the United States. For purposes of this regional condition, springs do not include seeps or other groundwater discharges which lack a defined surface water connection.”

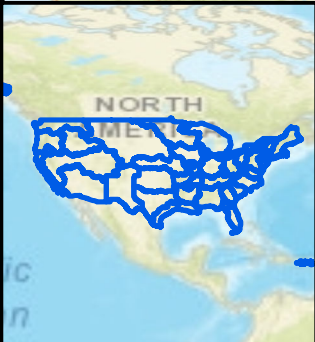
<http://www.swg.usace.army.mil/Portals/26/docs/regulatory/PN%20January/2017%20NWP%20RC.pdf?ver=2017-01-12-140117-117>

- The White House has approved these rules and they will be implemented as originally planned.

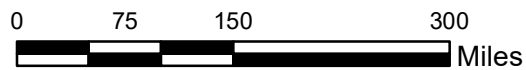
8 February 2017 - An exception from the regulatory freeze was granted by the Office of Management and Budget's Office of Information and Regulatory Affairs for the 2017 nationwide permits, which were published in the Federal Register on Jan. 6, 2017 (82 FR 1860). The final rule for the issuance of the 2017 nationwide permits was subject to the Jan. 20, 2017, White House Chief of Staff memorandum entitled "Regulatory Freeze Pending Review." The U.S. Army Corps of Engineers submitted documentation on Feb. 7 to the Office of Management and Budget to ask that that the 2017 nationwide permits be excepted from the regulatory freeze. The 2017 nationwide permits will go into effect on March 19, 2017, as originally scheduled.

<http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/>

Coordinate System: GCS WGS 1984
Datum: WGS 1984
Units: Degree



 USACE Civil Works District Boundaries



USACE District Map Texas

Prepared By: Wernicke

Date: 2/28/2017

Document Path: D:\My GIS\Texas Random\USACE.mxd

Service Layer Credits: Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

**2017 NATIONWIDE PERMIT (NWP) REGIONAL CONDITIONS
FOR THE STATE OF TEXAS**

The following regional conditions apply within the entire State of Texas:

1. For all discharges proposed for authorization under nationwide permits (NWP) 3, 6, 7, 12, 14, 18, 19, 21, 23, 25, 27, 29, 39, 40, 41, 42, 43, 44, 49, 51, and 52, into the following habitat types or specific areas, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32, Pre-Construction Notification (PCN). The Corps of Engineers (Corps) will coordinate with the resource agencies as specified in NWP General Condition 32(d) (PCN). The habitat types or areas are:

- a. Pitcher Plant Bogs: Wetlands typically characterized by an organic surface soil layer and include vegetation such as pitcher plants (*Sarracenia* spp.), sundews (*Drosera* spp.).
- b. Bald Cypress-Tupelo Swamps: Wetlands dominated by bald cypress (*Taxodium distichum*) and/or water tupelo (*Nyssa aquatic*).

2. For all activities proposed for authorization under NWP in Palustrine and Lacustrine aquatic resource types, best management practices (BMPs) are required to reduce the risk of transferring zebra mussels to or from project sites. The following BMPs, as a minimum, will be required:

- a. Clean: Clean both the inside and outside of equipment and gear, by removing all plants, animals, and mud and thoroughly washing the equipment using a high pressure spray nozzle. Equipment operated or stored in a water body on the Texas list of zebra mussel (*Dreissena polymorpha*) infected water bodies shall be decontaminated in accordance with State of Texas law prior to relocation.
- b. Drain: Drain all water from receptacles before leaving the area, including livewells, bilges, ballast, and engine cooling water on boats.
- c. Dry: Allow time for your equipment to dry completely before relocating in other waters. Minimum drying time is one week. Equipment operated or stored in a water body on the Texas list of zebra mussel (*Dreissena polymorpha*) infected water bodies shall be dried a minimum of 20 days prior to relocation. High temperature pressure washing (greater than or equal to 140F) or professional cleaning may be substituted for drying time.

3. For all activities proposed for authorization under NWP at sites approved as compensatory mitigation sites (either permittee-responsible, mitigation bank and/or in-lieu fee) under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and

Harbors Act of 1899, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity.

The following regional conditions apply within the Albuquerque, Fort Worth, and Galveston Districts:

4. For all activities proposed for authorization under NWP 12 that involve a discharge of fill material associated with mechanized land clearing of wetlands dominated by woody shrubs, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity. For the purpose of this regional condition, a shrub dominated wetland is characterized by woody vegetation less than 3.0 in. in diameter at breast height but greater than 3.2 ft in height, exclusive of woody vines, covering 20 % or more of the area.

The following regional conditions apply within the Albuquerque, District.

5. Nationwide Permit No. 23 – Approved Categorical Exclusions. A PCN to the District Engineer in accordance with General Condition 32 is required for all proposed activities under Nationwide Permit 23.

6. Nationwide Permit No. 27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities. For all proposed activities under Nationwide Permit 27 that require PCN, a monitoring plan commensurate with the scale of the proposed restoration project and the potential for risk to the aquatic environment must be submitted to the Corps. (See “NWP 27 Guidelines” at <http://www.spa.usace.army.mil/Missions/RegulatoryProgramandPermits/NWP.aspx>).

7. Channelization. General Condition 9 for Management of Water Flows is amended to add the following: Projects that would result in permanent channelization to previously un-channelized streams require PCN to the District Engineer in accordance with General Condition 32.

8. Dredge and Fill Activities in Intermittent and Perennial Streams, and Special Aquatic Sites: (a) For all activities subject to regulation under the Clean Water Act Section 404 in intermittent and perennial streams, and special aquatic sites (including wetlands, riffle and pool complexes, and sanctuaries and refuges), PCN to the District Engineer is required in accordance with General Condition 32.

9. Springs. For all discharges of dredged or fill material within 100 feet of the point of groundwater discharge of natural springs, PCN is required to the Corps in accordance with General Condition 32. A natural spring is defined as any location where ground water emanates from a point in the ground and has a defined surface water connection to another waters of the United States. For purposes of this regional condition, springs do not include seeps or other groundwater discharges which lack a defined surface water connection.

10. Suitable Fill. Use of broken concrete as fill or bank stabilization material is prohibited unless the applicant demonstrates that its use is the only practicable material (with respect to cost, existing technology, and logistics). Any applicant who wishes to use broken concrete as bank stabilization must provide notification to the District Engineer in accordance with General Condition 32 (Pre-Construction Notification) along with justification for such use. Use of broken concrete with rebar or used tires (loose or formed into bales) is prohibited in all waters of the United States.

The following regional conditions apply within the Fort Worth District.

11. For all discharges associated with the construction of water intake structures, the applicant shall notify the Fort Worth District Engineer in accordance with General Condition 32 (Pre-Construction Notification).

12. For all discharges proposed for authorization under all NWPs, into the area of Caddo Lake within Texas that is designated as a “Wetland of International Importance” under the Ramsar Convention, the applicant shall notify the Fort Worth District Engineer in accordance with the NWP General Condition 32. The Corps will coordinate with the resource agencies as specified in NWP General Condition 32(d) (Pre-Construction Notification).

13. Compensatory mitigation is required for all losses of waters of the United States that exceed 1/10 acre and for all losses to streams that exceed 300 linear feet. Mitigation thresholds are cumulative irrespective of aquatic resource type. Compensatory mitigation requirements will be determined in accordance with the appropriate district standard operating procedures and processes. The applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity.

14. For all activities proposed for authorization under NWPs 12, 14 and/or NWP 33 that involve a temporary discharge of fill material into 1/2 acre or more of emergent wetland OR 1/10 acre of scrub-shrub/forested wetland, the applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity.

15. For all discharges proposed for authorization under NWPs 51 and 52, the Corps will provide the PCN to the US Fish and Wildlife Service as specified in NWP General Condition 32(d)(2) for its review and comments.

The following regional conditions apply within the Galveston District.

16. No NWP's, except NWP 3, shall be used to authorize discharges into the habitat types or specific areas. The applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32, Pre-Construction Notification (PCN) prior to commencing the activity under NWP 3

a. Mangrove Marshes. For the purpose of this regional condition, Mangrove marches are those waters of the United States that are dominated by mangroves (*Avicennia spp.*, *Laguncularia spp.*, *Conocarpus spp.*, and *Rhizophora spp.*).

b. Coastal Dune Swales. For the purpose of this regional condition, coastal dune swales are wetlands and/or other waters of the United States located within the backshore and dune areas in the coastal zone of Texas. They are formed as depressions within and among multiple beach ridge barriers, dune complexes, or dune areas adjacent to beaches fronting tidal waters of the United States.

c. Columbia Bottomlands. For the purpose of this regional condition, Columbia bottomlands are defined as waters of the United States that are dominated by bottomland hardwoods in the Lower Brazos and San Bernard River basins

17. Compensatory mitigation is required for all special aquatic site losses that exceed 1/10 acre and for all losses to streams that exceed 200 linear feet. Compensatory mitigation requirements will be determined in accordance with the appropriate district standard operating procedures and processes. The applicant shall notify the appropriate District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification) prior to commencing the activity.

18. For all seismic testing activities proposed for authorization under NWP 6, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification). The pre-construction notification must state the time period for which the temporary fill is proposed, and must include a restoration plan for the special aquatic sites. For seismic testing under NWP 6 within the Cowardin Marine System, Subtidal Subsystem; as defined by the U.S. Fish and Wildlife, Classification of Wetlands and Deepwater Habitats of the United States, December 1979/Reprinted 1992, the Corps will coordinate with the resource agencies in accordance with NWP General Condition 32(d) (Pre-Construction Notification).

19. For all NWP's 10 and 11 located in vegetated shallows and coral reefs; as defined by 40 CFR 230.43 and 230.44 respectfully, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification). Examples include, but are not limited to: seagrass beds; oyster reefs; and coral reefs.

20. NWP 12 shall not be used to authorize discharges within 500 feet of vegetated shallows and coral reefs; as defined by 40 CFR 230.43 and 230.44 respectfully. Examples include, but are not limited to: seagrass beds; oyster reefs; and coral reefs.

21. For all activities proposed for authorization under NWP 12 that involve underground placement below a non-navigable river bed and/or perennial stream bed shall be installed with a minimum cover of a minimum of 48 inches (1,219 millimeters) in soil below the river and/or perennial stream thalweg.
22. For all discharges and work proposed below the high tide line under NWPs 14 and 18, the applicant shall notify the Galveston District Engineer in accordance with the NWP General Condition 32 (Pre-Construction Notification). The Corps will coordinate with the resource agencies in accordance with NWP General Condition 32(d) (Pre-Construction Notification).
23. For all activities proposed for authorization under NWP 33 the applicant shall notify the District Engineer in accordance with the NWP General Condition 32, PCN. The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. Activities causing the temporary loss of more than 0.5 acres of tidal waters and/or 200 linear feet of stream will be coordinated with the agencies in accordance with NWP General Condition 32(d)
24. No NWPs, except NWPs 3 and 16, shall be used to authorize discharges, structures, and/or fill within the standard setback and high hazard zones of the Sabine-Neches Waterway as defined in the *Standard Operating Procedure - Permit Setbacks along the Sabine-Neches Waterway*. The applicant shall notify the Galveston District Engineer in accordance with NWP General Condition 32 (Pre-Construction Notification) for all discharge, structures and/or work in medium hazard zones and all NWP 3 applications within the standard setback and high hazard zones of the Sabine-Neches Waterway.
25. No NWPs shall be used to authorize discharges, structures, and/or fill within the standard setback exemptions of the Gulf Intracoastal Waterway as defined in the *Standard Operating Procedure- Department of the Army Permit Evaluation Setbacks along the Gulf Intracoastal Waterway*. The applicant shall notify the Galveston District Engineer in accordance with NWP General Condition 32 (Pre-Construction Notification) for all discharge, structures and/or work within the standard setback, shoreward of the standard setback, and/or standard setback exemption zones.
26. The use of NWPs in the San Jacinto River Waste Pits Area of Concern are revoked.
27. The use of NWP 51 and 52 are revoked within the Galveston District boundaries.
28. NWP 53 will be coordinated with resource agencies as specified in NWP General Condition 32(d).
29. Stream losses exceeding 300 linear feet have more than minimal effect and will require and Individual Permit.

The following regional conditions apply within the Tulsa District.

30. Upland Disposal: Material disposed of in uplands shall be placed in a location and manner that prevents discharge of the material and/or return water into waters or wetlands unless otherwise authorized by the Tulsa District Engineer.

31. Major Rivers: The applicant shall notify the Tulsa District Engineer, in accordance with NWP General Condition 32, for all NWP 14 verifications that encompass activities, within the permit area, crossing major rivers within Tulsa District. For the purposes of this condition, major rivers include the following: Canadian River, Prairie Dog Fork of the Red River, and Red River.