

## **NEW AND REVISED NATIONWIDE PERMITS FOR DREDGE AND FILL ACTIVITIES**

*February 22, 2012 by Robert Uram, Keith Garner, James Rusk, and Alex Merritt*

The Army Corps of Engineers last week released new and revised Nationwide Permits for certain activities that require authorization under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act. Nationwide Permits provide streamlined authorization for dredge and fill activities that the Corps has determined will have minimal adverse effects on the aquatic environment, individually and cumulatively. The Nationwide Permits will be published in the Federal Register later this month and will take effect on March 19, 2012.

The Corps last issued Nationwide Permits in 2007, and those permits are set to expire on March 18, 2012. However, under a grandfathering provision in the new permits, if projects have commenced or are under contract to commence activities by March 18, 2012, they will have an additional year to complete activities under the 2007 permits.

The 2012 Nationwide Permits include two new permits and 48 reissued permits, 25 of which contain revisions. The two new permits authorize construction of certain land-based and water-based renewable energy facilities. The permit revisions affect a variety of activities, including residential, commercial, and industrial development; flood control; stormwater management; mining; and agriculture and aquaculture.

The two new nationwide permits, NWP 51 and 52, provide an appropriate mechanism for quickly evaluating land-based and water-based renewable energy proposals in support of the Administration's clean energy initiatives. NWP 51 covers Land Based Renewable Energy General Facilities including facility construction, expansion or modification, including attendant features. NWP 52 covers Water Based Renewable Energy Generation Pilot Projects including water based wind or hydrokinetic proposals. Renewable energy facilities on both land and water may also continue to make full use of existing general permits to the full extent that they have previously done so.

NWP 39, covering residential, commercial, and industrial development, did not change significantly. The impact limits remain at 0.5 acre and 300 linear feet of stream bed, although waivers of the 300 linear foot limit for ephemeral and intermittent streams must now be justified in writing by the District Engineer and must be circulated to other federal agencies for consideration.

One permit that was significantly revised is NWP 21, covering Surface Coal Mining Activities. The updated permit limits stream impacts to 0.5 acre and 300 linear feet of stream bed, consistent with the other NWPs. These limits cannot be waived for perennial streams. The updated NWP 21 also prohibits valley fills. Previous versions of NWP 21 did not have any acreage or linear foot limits, and relied solely on the pre-construction notification review process and permit conditions to reduce adverse effects on the aquatic environment to satisfy the minimal adverse environmental effects requirement for general permits. Updated permits will only be necessary for new or expanded activities. Operators that relied upon previously verified surface coal mining authorizations, but have not yet completed work in waters of the U.S., may request re-verification under the 2012 NWP 21 of all previously authorized activities.

The Corps has also revised the General Conditions that apply to activities authorized by a Nationwide Permit. Among other things, the Corps extensively discussed the circumstances under which mitigation would or would not be required for NWPs under General Condition 23. Regulated parties should be aware that individual Army Corps districts may impose additional, regional conditions on activities authorized under the Nationwide Permits.

More information about the new and revised Nationwide Permits, including the text of the final rule adopting the permits, is available at the [Army Corps' website](#).