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# Potential Actions to Reduce Regulatory Burdens on Domestic Energy Production: U.S. Army Corps of Engineers Announces Availability of Report

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The United States Army Corps of Engineers ("Corps") issued a November 28th Federal Register notice announcing the issuance of a report that examines:

... actions it could take to modify existing regulations that potentially burden the development and use of domestically produced energy resources, such as oil, natural gas, coal, and nuclear energy, as well as renewable energy.

See 82 Fed. Reg. 56192.

The Corps describes the report as identifying changes that could be made to several nationwide permits ("NWP") (i.e., NWPs associated with domestic energy production and use) that authorize activities under section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act.

The Corps developed the report pursuant to a March 31st mandate found in Executive Order 13783 (Promoting Energy Independence and Economic Growth). This Executive Order required all federal agencies to review existing regulations that may burden the development or use of domestically produced energy resources. They were also required to prepare a report with recommendations to revise regulations that could "reduce or eliminate burdens to domestic energy production."

By way of background, an individual Clean Water Act National Pollution Discharge Elimination System permit (as opposed to an NWP) authorizes specific activities on a case-by-case basis. In contrast, a NWP is a general permit that provides standing permission for all activities that fit the description of the permit. Such permits provide for preauthorized permission for activities that conform to the standards of the NWP. Certain NWPs do require some type of authorization after notice to the Corps and prior to starting work.

NWPs are intended to provide expedited review of the projects that have more limited impact on the aquatic environment. Examples include activities such as linear transportation projects, bank stabilization activities, navigation aids, and certain maintenance activities, etc. A number of groups, such as the construction and energy industries, have argued that it is important that the Corps maintain a streamlined program that avoids duplication with other federal and state regulatory agencies.

The Corps notes in its November 28th Federal Register notice that there are currently 52 NWP's. This set of NWP's went into effect on March 19, 2017 and expire on March 18, 2022. The Corps report is stated to have identified 12 NWP's that authorize activities associated with domestic energy production use. The report is stated to suggest modifications to nine of those NWP's to "reduce burdens on domestic energy producers."

The nine NWP's recommended for changes include:

- NWP 3 (Maintenance)
- NWP 12 (Utility Line Activities)
- NWP 17 (Hydropower Projects)
- NWP 21 (Surface Coal Mining Activities)
- NWP 39 ( commercial and Institutional Developments)
- NWP 49 (Coal Remining Activities)
- NWP 50 (Underground Coal Mining Activities)
- NWP 51 (Land-Based Renewable Energy Generation Projects)
- NWP 52 (Water-Based Renewable Energy Generation Pilot Projects)

The report was issued on October 25th and can be found at

[http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/NWP\\_13783\\_25sept2017\\_castle.pdf?ver=2017-10-25--92532-813](http://www.usace.army.mil/Portals/2/docs/civilworks/nwp/NWP_13783_25sept2017_castle.pdf?ver=2017-10-25--92532-813).

The Corps states it will coordinate with the Administration to determine if recommended changes of the report will be undertaken. Any changes to the NWP's would require notice and comment rulemaking.

[A copy of the Federal Register notice can be downloaded here.](#)