

404 Nationwide Permits/Clean Water Act: U.S. Corps of Engineers Proposes Revisions/Renewal



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The United States Army Corps of Engineers ("Corps") issued on August 3rd a proposed revision and renewal of its Nationwide Permits ("NWP") under Section 404 of the Clean Water Act.

Certain NWPs are proposed to be revised.

The Corps issues two types of Clean Water Act Section 404 permits.

An individual permit 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 from or notice to the Corps prior to starting work.

The Corps is required to periodically renew expiring NWPs. However, besides renewing the existing permits, the Corps also typically takes this opportunity to revise or add certain NWPs.

The Corps proposal renews and revises its current 52 NWPs and adds five new ones. The new NWPs pertain to:

- Authorizing seaweed mariculture activities
- Finfish mariculture activities
- Utility line and telecommunication activities
- Utility line activities for water and other substances
- Water reclamation and reuse facilities

The new utility line NWPs represent the Corps splitting the existing NWP 12 into three categories. The idea is stated to be the benefits in structuring each of the NWPs to fit the different utilities that are constructed, maintained and removed.

NWP 12 has been the subject of litigation in which environmental groups have challenged the validity of the permit. For example, a United States District Court in Montana addressed a challenge to the Corps' issuance of an NWP 12. See Northern Plains Resource Council, et al. v. U.S. Army Corps of Engineers 2020 WL 1875455. That issue arose in the context of the Northern Plains Resource Council and other organizations' lawsuit opposing Keystone XL Pipeline. The plaintiffs had argued that the Corps' reissuance of NWP 12 in 2017 did not consider relevant impacts under the Endangered Species Act, National Environmental Policy Act, or Clean Water Act.

Other issues addressed include the proposed:

- removal of the 300 linear foot limit for losses of stream bed
- revisions to certain NWP's
- 3. Maintenance
- 17. Hydropower projects
- 21. Surface Coal Remining Activities
- 39. Commercial and institutional developments
- 49. Coal Remining Activities
- 50. Underground Coal Mining Activities
- 51. Land-based renewable energy generation projects
- 52. Water-based renewable energy generation pilot projects

A copy of the proposal can be downloaded [here](#).