404 Nationwide Permits/Clean Water Act: U.S. Army Corps of Engineers Proposed Rulemaking/Renewal

Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

06/20/2025

The United States Army Corps of Engineers ("Corps") published a Notice of Proposed Rulemaking in the June 18th Federal Register that addresses various Nationwide Permits ("NWPs"). See 90 Fed. Reg. 26100.

The Corps' proposed rulemaking includes:

- Reissuing its existing NWPs and associated general conditions and definitions (with some modifications).
- Issuance of one new NWP (authorizing activities to improve the passage of fish and other aquatic organisms through aquatic ecosystems).
- Modifying certain NWPs to provide simplification/clarification (to reduce burdens on the regulated public/comply with the statutory requirement that NWPs authorize only activities with no more than minimal individual/cumulative adverse effect).
- Modify two of the 2021 NWPs (i.e., NWP 48 for commercial shellfish mariculture activities and NWP 56 for finfish mariculture activities) to address litigation on those NWPs.

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, an 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 existing permits, the Corps also sometimes takes the opportunity to revise or add certain NWPs.

A copy of the Federal Register Notice can be downloaded here.