Nationwide Permits/Clean Water Act: American Association of State Highway and Transportation Officials Comments on US Army Corp of Engineers Solicitation of Input on Potential for Future Changes

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The American Association of State Highway and Transportation Officials ("AASHTO") submitted May 15 Comments to the United States Army Corp of Engineers ("Corp") regarding the federal register notice seeking input on ways to increase efficiencies in the Clean Water Act Nationwide Permit ("NWP") program. See 91 Fed. Reg. 1259 (March 16, 2026).

The Corps stated it would consider input from commenters and future rulemaking related to NWPs.

Section 404 of the Clean Water Act requires Corps authorization for discharges of dredged or fill material into waters of the United States. 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 pre-authorized permission for activities that conform with the standards of the NWP. Certain nationwide permits 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. Pursuant to its regulations, anyone may, at any time, suggest to the Chief of Engineers that he or she consider any new NWPs or conditions for issuance or changes to existing NWPs. Input is therefore sought on a number of specified issues and also posed six questions for stakeholder input related to NWPs.

AASHTO describes itself as a:

… nonprofit, nonpartisan association representing the state transportation departments (state DOTs) in the 50 states, the District of Columbia, and Puerto Rico, with the mission to support state DOTs in connecting America with the transportation system of today and tomorrow.

Further, the organization states that it and the state DOTs have a long history of successful partnership and collaboration with the Corps. References are made to its members being frequent applicants under the NWP program, and therefore relying on:

…the clarity, predictability, and efficiency that NWPs provide to deliver critical infrastructure projects in a timely and environmentally responsible manner.

AASHTO comments address the following topics:

- Role and Effectiveness of Nationwide Permits (Recommends that when evaluating potential changes, the Corps consider whether the proposed changes preserve the distinction between nationwide and individual permits - maintaining a clear, efficient pathway for activities with minimal environmental impacts supports both environmental protection and national transportation priorities)
- Eliminating Added Administrative Burden (Recommends that the Corps ensure regional conditions remain targeted, transparent, and supported by clear resource specific needs and any added administrative burden is eliminated from regional conditions)
- Preconstruction Notification Requirements (Recommends that the Corps apply Preconstruction Notification Requirements thresholds that remain strictly tied to resource risk and that the agency carefully consider whether additional Preconstruction Notification Requirements triggers advance meaningful outcomes)
- Coordination with Other Federal Environmental Reviews (Encourages continued coordination between the Corps, Federal Highway Administration, and other federal partners to ensure that NWP requirements complement existing federal review processes and avoid redundancy)
- Consideration of Additional Nationwide Permits (recommends a dedicated NWP to cover borrow and waste area activities that impact Waters of the United States, including disposal of uncontaminated construction materials and excavation for construction use – stating that NWP 18 is too limited in scope and does not adequately address these common activities)

AASHTO also:

- Recommends a new NWP for stream channel improvements aimed at reducing flooding and embankment scour, especially where bioengineering features are included but where the project is not primarily stream restoration. Concern is expressed that NWPs, such as NWP 27, do not sufficiently cover these projects
- Notes that the U.S. House of Representatives-passed Promoting Efficient Review for Modern Infrastructure Today (H.R. 3898) calls for a new NWP for linear infrastructure projects impacting less than three acres of jurisdictional waters and states that this would improve upon the current NWP 14, which restricts impacts to one-half acre for non-tidal waters.

A copy of the comments can be found here.