

CLEAN WATER ACT PERMITTING

BEST PRACTICES AND COMMUNICATION GUIDANCE

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WILDLIFE & ENERGY

INTERACTION SYMPOSIUM

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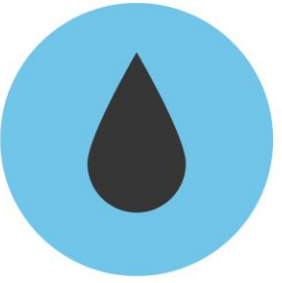
Brian Donahue
Regulatory Project Manager





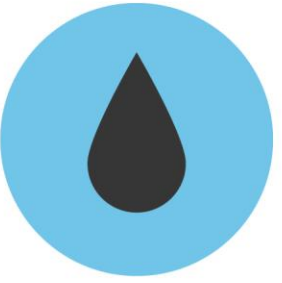
Overview of the Nationwide Permitting Program

History of Nationwide Permit Program



- First issued in 1977 as part of Clean Water Act
 - Consisted of permits for **15** different activities
 - **15** general conditions.
- Current nationwide permits issued on January 6, 2017
 - Consist of permits for **54** different activities
 - **32** general conditions
- Starting in 2012, permits could be transferred.

Nationwide Permits Issued Under Sections 10/404



- Activities vetted nationally every 5 years to fulfill the NEPA process. Front-loaded program authorizing work by anyone subject to conditions of the permit.
- Corps determines type of permit needed sequentially, starting with the least burdensome process to the applicant (and Corps!) first.
- Only valid with State, Tribal or EPA water quality certification, (Section 401).

INTENT: To reduce paperwork burden & streamline permit process for categories of work having only minimal impact to the environment.

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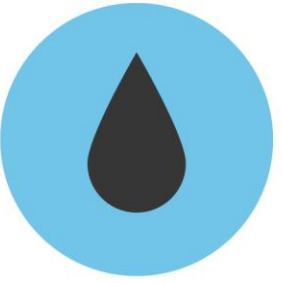
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Nationwide Permits in Practice

- Basic thresholds for NWP:
 - 0.5 acres or less of **permanent** wetland impacts
 - 300 linear feet or less of **permanent** stream impacts
 - Linear limits **can** be waived, (exceeded) **if** requested.
 - Some have few or no acreage or linear limits such as maintenance (NWP 3) and Wildlife Habitat activities (NWP 27)



Regulatory Review Process

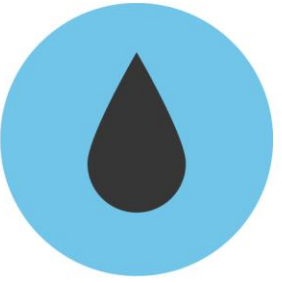


- Pre-Construction notification, (PCN) required for some projects. Condition 32,(PCN): If PCN is required for one linear crossing, all crossings must be identified.
- If verified with letter, compliance of activity with ESA, NEPA and Section 106 is performed by the Corps unless there is a different federal lead agency (Federal Highways, FEMA, etc.).
- Wetland impacts exceeding 1/10 acre must be mitigated and generally so too, all stream impact if a waiver to permanently impact more than 300-500 feet is granted.
- If required, mitigation for resource loss is assessed using stream /wetland assessment methods or wetland ratio as applicable.



Best Practices

Notification

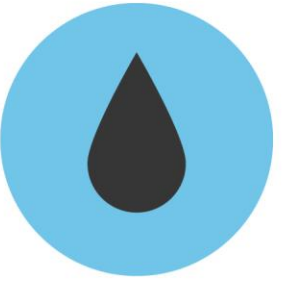


When do I notify the Corps?

If required by the activity. Some NWP require it for all work others “only if” certain thresholds are triggered.

Triggers to look for: endangered species, historic or tribal resources, certain watersheds of concern (water quality), outstanding and/or exceptional waters or special aquatic life waters

Example 1:



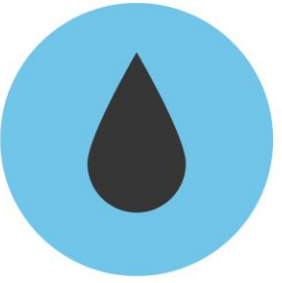
My project may impact a significant cultural resource. Do I have to notify the USACE?

Example 2:



My project needs to clear forested areas. Do I need to notify the USACE?

Notification (continued)

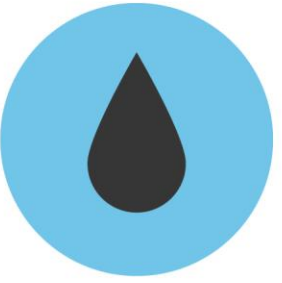


Other Notification Questions:

- Informal Notification – will the USACE respond?
- When are pre-application meetings necessary?



Which Permit Do I Apply For?



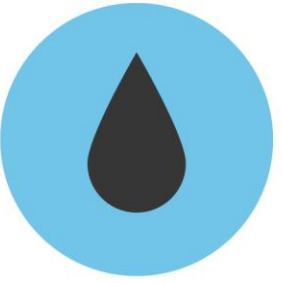
- NWP 3 – Maintenance
- NWP 12 – Utilities
- NWP 14 – Roads
- NWP 18 – Minor Fill
- NWP 33 – Temporary Construction
- NWP 39 – Commercial & Institutional Developments
- NWP 51 – Land Based Renewable Energy Projects

Example 3:



There is a small impact on my wind project from an access road. Do I submit a NWP 51 for the entire project or a NWP 14 for a road crossing?

Example 4:



- There is a wetland impact on my substation site. Do I submit a NWP 12 or a NWP 39?

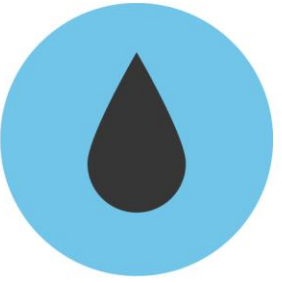


Endangered Species Communication

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Endangered Species Communication



The Endangered Species Act: Section 7 v. Section 10

- Section 10: No other federal agency involved. USFWS SHOULD LEAD
- Section 7: Normally informal consultation, by a **lead federal agency**.
(Often the Corps is the lead and only other federal agency.)

THANK YOU

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