



# Public Notice

U.S. Army Corps  
of Engineers

Baltimore District  
Pittsburgh District  
Philadelphia District

Date: March 20, 2017

## Special Public Notice # 17-17

**Subject:** Final Regional Conditions and Suspensions for the 2017 Nationwide Permits

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### NATIONWIDE PERMITS FOR THE COMMONWEALTH OF PENNSYLVANIA

**The purpose of this special public notice is to inform the general public of the issuance of the final regional conditions applicable to Nationwide Permit (NWP) activities and to announce the suspension of various NWPs in the Commonwealth of Pennsylvania.**

On January 6, 2017, the U.S. Army Corps of Engineers (Corps) announced the reissuance, with some modifications, of nationwide permits (NWPs) authorizing work in streams, wetlands, and other waters of the United States under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 in the *Federal Register* (82 FR 1860). The 2017 NWPs will take effect March 19, 2017, and replace the existing permits, which expire on March 18, 2017.

More information on the 2017 Nationwide Permits and the January 6, 2017 *Federal Register* notice is available on the Corps Headquarters website at: <http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>

The Baltimore, Pittsburgh, and Philadelphia Districts proposed suspensions and regional conditions for the 2017 NWPs, and solicited public comments thereon, in Special Public Notice #16-37, dated June 15, 2016. Regional conditions ensure that projects result in no more than minimal adverse impacts to the aquatic environment and address local resource concerns. In addition, the suspension of various 2017 NWPs eliminates redundancy with the Pennsylvania State Programmatic General Permit-5 which is administered jointly by the Corps and state agencies in Pennsylvania. Some NWP activities are suspended due to lack of use or impracticality (e.g., NWP 34, *Cranberry Production Activities*).

If the SPGPs become void, enjoined, suspended, revoked, or removed from effect for any reason, the Corps will consider reinstating some or all of the suspended NWPs for the purposes of efficiency and effectively protecting the aquatic environment, while maintaining an acceptable level of responsiveness to the regulated public.

The Great Lakes and Ohio River Division Commander has approved the 2017 NWP suspensions and regional conditions for the Commonwealth of Pennsylvania. These suspensions and regional conditions were effective on March 19, 2017.

The following enclosures to this special public notice provide the final suspensions and regional conditions for the 2017 NWP's:

**Enclosure 1** - Suspensions to the 2017 NWP's for the Commonwealth of Pennsylvania.

**Enclosure 2** - Regional Conditions to the 2017 NWP's for the Commonwealth of Pennsylvania

The final suspensions and regional conditions to the 2017 NWP's are also posted on the Baltimore District regulatory webpage at: <http://www.nab.usace.army.mil/Missions/Regulatory/Permit-Types-and-Process/>.

**Concurrences and Certifications:** Publication of the notice in the *Federal Register* announcing the reissuance of the 2017 NWP's began the 60-day Clean Water Act Section 401 Water Quality Certification (WQC) process and the 90-day Coastal Zone Management Act (CZMA) consistency determination process.

At the present time, we have not received WQC or CZMA consistency determinations from the Commonwealth of Pennsylvania.

Final positions must be taken on WQC and CZMA consistency for the 2017 NWP's within 60 and 90 days, respectively, following publication of the final NWP's in the January 6, 2017 *Federal Register*. After the 60-day period, the latest version of any written position taken by a state, Indian tribe, or Environmental Protection Agency (EPA) on its WQC for any of the NWP's will be accepted as the state's, Indian tribe's, or EPA's final position on those NWP's. If the state, Indian tribe, or EPA takes no action by March 7, 2017, the Corps will consider WQC waived for those NWP's. After the 90-day period, the latest version of any written position taken by a state on its CZMA consistency determination for any of the NWP's will be accepted as the state's final position on these NWP's. If the state takes no action by April 6, 2017, the Corps will presume CZMA consistency concurrence for those NWP's.

The proposed WQC published in the Pennsylvania Bulletin dated February 25, 2017 is considered the final position for the 2017 NWP's in the Commonwealth of Pennsylvania. Additional information on the proposed WQC can be found at the Pennsylvania Bulletin Online at: <http://www.pabulletin.com/secure/data/vol47/47-8/334.html>.

While Pennsylvania completes their CZMA consistency determination processes, the use of a NWP to authorize any activity within a state's coastal zone, or outside a state's coastal zone that will affect land or water used or natural resources of that state's coastal zone, is contingent upon obtaining an individual CZMA consistency determination, or a case-specific presumption of CZMA concurrence.

FOR THE DISTRICT ENGINEER

// SIGNED //

Scott Hans  
Chief, Regulatory Branch

## Enclosure 1

### **Final 2017 Nationwide Permit Suspensions for the Commonwealth of Pennsylvania.**

#### I. Commonwealth of Pennsylvania

A. The following NWP's are **suspended** in the Commonwealth of Pennsylvania, except in those areas and activities enumerated in Section I.B. below:

NWP 1: Aids to Navigation

NWP 4: Fish and Wildlife Harvesting, Enhancement, & Attraction Devices and Activities

NWP 5: Scientific Measurement Devices

NWP 7: Outfall Structures and Associated Intake Structures

NWP 10: Mooring Buoys

NWP 11: Temporary Recreational Structures

NWP 12: Utility Line Activities

NWP 13: Bank Stabilization

NWP 14: Linear Transportation Projects

NWP 15: U.S. Coast Guard Approved Bridges

NWP 18: Minor Discharges

NWP 19: Minor Dredging

NWP 20: Response Operations for Oil and Hazardous Substances

NWP 25: Structural Discharges

NWP 26: [Reserved]

NWP 29: Residential Developments

NWP 33: Temporary Construction, Access, and Dewatering

NWP 34: Cranberry Production Activities

NWP 36: Boat Ramps

NWP 37: Emergency Watershed Protection and Rehabilitation

NWP 39: Commercial and Institutional Developments

NWP 40: Agricultural Activities

NWP 41: Reshaping Existing Drainage Ditches

NWP 42: Recreational Facilities

NWP 43: Stormwater Management Facilities

NWP 45: Repair of Uplands Damaged by Discrete Events

NWP 46: Discharges in Ditches

NWP 47: [Reserved]

NWP 51: Land-Based Renewable Energy Generation Facilities

NWP 53: Removal of Low-Head Dams

NWP 54: Living Shorelines

B. This suspension of the NWP's listed in Part I.A of this Special Public Notice is **not applicable** within the Commonwealth of Pennsylvania geographic boundaries for the following:

a. Part III.A.5 of the PASPGP-5 lists certain ineligible waterways for which PASPGP authorization is not available. Therefore, consistent with the processes outlined in Part V.D of the PASPGP-5 (or its successor) and the NWP's, NWP authorization may be available for activities that include activities located channelward of the ordinary high water line (OHWL) on non-tidal waters and/or the mean high water line (MHWL) on tidal waters on the following water bodies in Pennsylvania):

1. The Delaware River, downstream of the U.S. Route 202 Bridge at New Hope, Pennsylvania;
2. The Schuylkill River downstream of the Fairmount Dam in Philadelphia, Pennsylvania;
3. All of the Ohio River;
4. All of the Beaver River;
5. All of the Little Beaver River;
6. All of the Mahoning River;
7. All of the Monongahela River;
8. The Youghiogony River, from its mouth at McKeesport, Pennsylvania to river mile 31.2 at Layton, Pennsylvania;
9. The Allegheny River, from its mouth in Pittsburgh, Pennsylvania to river mile 197.4 at Kinzua Dam, north of Warren, Pennsylvania;
10. The Kiskiminetas River, from its mouth near Freeport, Pennsylvania to river mile 26.8 at Saltsburg, Pennsylvania;
11. Tenmile Creek, from its mouth at Millsboro, Pennsylvania to river mile 2.7; and
12. Lake Erie activities which require submittal of a Pennsylvania Department of Environmental Protection (PADEP) Joint Permit Application (JPA) or Environmental Assessment (EA) to the PADEP. For Lake Erie, the OHWM is located at elevation 573.4.

b. Nationwide Permit Activities 7, 11, 12, 14, 15, 18, 19, 25, and 33 when the regulated activity or area of indirect impact (secondary impact) is not wholly located within the Commonwealth of Pennsylvania, i.e. the regulated activity extends across state boundaries.

II. Suspension will terminate the Corps' ability to verify any new projects under one of the suspended NWP's unless and until the Chief of Engineers or the appropriate District or Division Engineer makes a determination to the contrary pursuant to 33 C.F.R. § 330.4 or § 330.5.

For more information regarding the final regional conditions and the suspension of Nationwide Permits, contact Ms. Beth E. Bachur, CENAB-OP-R, at (410) 962-4336, or email at [Beth.Bachur@usace.army.mil](mailto:Beth.Bachur@usace.army.mil).

**ENCLOSURE 2****REGIONAL CONDITIONS TO THE 2017 NATIONWIDE PERMITS IN THE  
COMMONWEALTH OF PENNSYLVANIA****I. Regional Conditions Applicable to Specific Nationwide Permits within the  
Commonwealth of Pennsylvania:**

**A. Nationwide Permit #3 Maintenance:** Prior to commencing the activity, the permittee must submit a Pre-construction Notification (PCN) to the District Engineer (See General Condition 32 and Regional General Condition 32) for this Nationwide Permit (NWP), in the following circumstances:

1. For activities authorized by paragraph (a) of NWP 3, the permittee must submit a PCN to the District Engineer when the regulated discharge of dredged and/or fill material involves the use of equipment to remove material from or move material across a stream channel as part of the proposed activity for repair, rehabilitation, or replacement. The PCN must clearly describe any activity proposing the use of equipment to move material from or across a stream channel.
2. For activities in the Philadelphia District Regulatory boundary in Pennsylvania<sup>1</sup>, all PCNs where a one-way tide gate is proposed for replacement or maintenance a copy of the PCN must be sent to the National Marine Fisheries Service Habitat Conservation Division (NMFS HCD)<sup>2</sup>. The applicant, as part of the PCN, shall also demonstrate why it is not practicable to replace the tide gate with self-regulating tide gates.

**B. Nationwide Permit #5 Scientific Measurement Devices:**

1. Prior to doing the work, the permittee must submit a Pre-construction Notification to the District Engineer for any activity proposing the discharge of greater than 10 cubic yards of dredged and/or fill material for the construction of small weirs and flumes (see General Condition 32 and Regional General Conditions 32). Weirs and flumes cannot be constructed in a manner that would preclude the passage of anadromous fish.
2. The construction or installation of subaqueous turbines or similar facilities is not authorized by this Nationwide Permit.

**C. Nationwide Permit #6 Survey Activities:**

1. Use of in-water explosives is not authorized under this Nationwide Permit.

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<sup>1</sup> District Boundaries can be found at the weblinks listed in Special Note 2.

<sup>2</sup>The address can be found in Special Note 3.

2. The permittee shall ensure that all in-stream exploratory trenching is conducted under dry conditions.

**D. Nationwide Permit #7 *Outfall Structures and Associated Intake Structures*:** The following regional conditions are applicable only to the Philadelphia District Regulatory Boundary in Pennsylvania:

1. Any proposed intake structures must include “wedge wire” screening with mesh opening sizes of 2 millimeters (mm) or less and intake velocities equal to or less than 0.5 feet per second. This condition may be waived by the District Engineer if an applicant proposes to utilize new or improved technologies that meets or exceeds the “wedge wire” design technology.
2. The applicant shall also demonstrate that the intake structure will be located and constructed to maximize its design effectiveness to minimize impingement and entrainment of aquatic species. This would include efforts that result in stream velocities over, around or past the intake structure that exceed the velocities through the intake structure.
3. The intake structure shall be positioned to minimize impingement/entrainment of sensitive life stages of aquatic species (e.g., recessed away from the waterway, positioned perpendicular to the predominant direction of flow).

**E. Nationwide Permit #10 *Mooring Buoys*:**

1. Water depths in the mooring area must be sufficient so that any moored vessels float at all stages of the tide or low water.
2. Mooring buoys are prohibited in areas containing submerged aquatic vegetation.

**F. Nationwide Permit #11 *Temporary Recreational Structures*:** Prior to doing the work, the permittee must submit a Pre-construction Notification to the District Engineer. (See General Condition 32 and Regional General Condition 32)

1. Water depths in mooring areas must be sufficient so that any moored vessels float at all stages of the tide or low water.
2. This Nationwide Permit (NWP) does not authorize the placement of any temporary structures in any areas containing submerged aquatic vegetation.
3. For activities located in the Philadelphia District Regulatory Boundary in Pennsylvania, NWP #11 is applicable only to structures associated with discrete or specific events.

**G. Nationwide Permit #12 Utility Line Activities:** Prior to commencing the activity, the permittee shall submit a Pre-construction Notification (PCN) to the District Engineer. (See General Condition 32 and Regional General Condition 32)

1. This nationwide permit does not authorize the following activities:
  - a. The stockpiling or side-casting of excavated material in wetlands in excess of 30 days, unless a longer period of time is specifically reviewed and approved by the District Engineer. All excess or suitable dredged and/or excavated material not used as backfill over any cable or pipeline shall be disposed of in an upland area and shall be stabilized with straw bales, silt fence, or other methods deemed acceptable by the Corps, to prevent reentry into any waterway or wetland;
  - b. The permanent loss of more than 300 linear feet of stream bed for a single and complete project, unless for intermittent and ephemeral stream beds the District Engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects;
  - c. The placement of manholes in wetlands unless demonstrated to the satisfaction of the District Engineer that the placement is unavoidable; and
2. The PCN shall include the following additional information:
  - a. For all submerged utility lines across navigable waters of the United States, the PCN shall include a location map and cross-sectional view drawing showing the utility line crossing from bank to bank in relationship to the waterway bottom. In addition, the location and depth of any Federal navigation channel shall be shown in relation to the proposed utility line;
  - b. Where a utility line or additional road(s) is proposed in an existing subdivision, the PCN shall include information on additional impacts to waters and wetlands that may occur within the subdivision as a result of the proposed activity which may require additional Department of the Army authorization;
  - c. Any PCN to the District Engineer that proposes construction of a permanent access road must also justify, to the satisfaction of the District Engineer, that any such permanent fills are necessary, and that temporary access roads are not practicable;
  - d. With any PCN to District Engineer when directional drilling is not the proposed method of installation a narrative describing why it was not proposed must be included.

3. For the installation of utility lines, the following applies:
  - a. Utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed in/under dry conditions, using stream diversions other than earthen cofferdams, unless construction in/under dry conditions is demonstrated to the satisfaction of the District Engineer to be impracticable;
  - b. The utility line should make a direct or perpendicular crossing of a stream.;
  - c. Where a utility line is constructed, in jurisdictional waters or wetlands, parallel to a stream corridor, an undisturbed buffer shall be established between the utility line and the waterway to avoid or minimize potential future impacts to waters of the United States. Potential impacts include such issues as utility line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the District Engineer;
  - d. The top of any buried cable, encasement, or pipeline shall be located a minimum of four feet below the existing bottom elevation of the streambed and shall be backfilled with suitable heavy material to the preconstruction bottom elevation. Where the cable, encasement, or pipeline is placed on bedrock, a minimum depth of one foot from the lowest point in the natural contour of the streambed shall be maintained. For Federal navigational channels, the referenced minimum of four feet below the existing bottom elevation of the streambed applies except where the utility line is placed on bedrock then a minimum depth of two feet from the authorized depth of the navigation channel shall be maintained; and
  - e. Clay plugs, impervious membranes, or other state of the art methods shall be placed in trenches to ensure that the trench does not drain the water and/or wetland through which the utility line was installed. Photo-documentation of clay plugs or impervious material at each crossing must be included with the submitted "self-certification form."
4. There shall be no stockpiling or double handling of any excavated/dredged materials within any waterway, unless specifically reviewed and approved by the District Engineer as a part of any PCN. Further, all excess or unsuitable dredged or excavated material not used as backfill over any cable or pipeline shall be disposed at a disposal site approved by the District Engineer.
5. **Regional Conditions specific in the Philadelphia District Regulatory boundary in Pennsylvania:**
  - a. **For Buried Cables or Pipelines Across the Delaware River Federal Navigation Channel:** The top of the cable or pipeline crossing the Federal

navigation channel shall be located a minimum of **25** feet below the authorized navigation channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal navigation channel, the top of cable or pipeline shall be located a minimum of **15** feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

- b. **For Buried Cables or Pipelines Across the Schuylkill River Federal Navigation Channel:** The top of the cable or pipeline crossing the Federal navigation channel shall be located a minimum of **20** feet below the authorized navigation channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal navigation channel, the top of cable or pipeline shall be located a minimum of **10** feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.
- c. **For Buried Cables or Pipelines Across “ALL OTHER” Federal Navigation Channels:** The top of the cable or pipeline crossing the Federal navigation channel shall be located a minimum of **6** feet below the authorized navigation channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal navigation channel, the top of cable or pipeline shall be located a minimum of **4** feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.  
(<http://www.nap.usace.army.mil/Missions/Civil-Works/Surveys/Projects/>)

#### **H. Nationwide Permit #13 Bank Stabilization**

1. Any activity requiring a Pre-construction Notification to the District Engineer that does not utilize bioengineering, vegetative stabilization, or combinations of vegetative and structural bank stabilization methods must include an analysis demonstrating that such measures were not practicable and/or appropriate.
2. This Nationwide Permit may not be used to authorize any stabilization activity where no demonstrable erosion or threat of erosion is evident.

#### **I. Nationwide Permit #14 Linear Transportation Projects**

1. Prior to doing the work, the permittee shall submit a Pre-construction (PCN) to the District Engineer, (see General Condition 32 and Regional General Condition 32) if a Section 10 permit is required.
2. For activities located in the Philadelphia District Regulatory boundary in Pennsylvania, stream or open water crossings shall be designed to maintain continuity of existing benthic habitats and to maintain existing stream flow patterns. This can be achieved through the use of elevated structures, bottomless culverts, or

by depressing culverts below the stream bottom. This design requirement must include a site-specific evaluation of the particular stream or water body to determine if it is experiencing erosion or sedimentation rates that would alter the bottom elevation. Where a series of culverts are used, only those cells or culverts, which carry the base stream flow, shall be depressed. The bottom of any other culverts or cells shall be raised to pass and maintain existing and expected high flows. The dimension, pattern, and profile of the stream above and below the stream crossing shall not be permanently modified by changing the width or depth of the stream channel.

**J. Nationwide Permit #18 Minor Discharges:** Prior to doing the work, the permittee shall submit a PCN to the District Engineer. (See General Condition 32 and Regional General Condition 32)

**K. Nationwide Permit #19 Minor Dredging:** Prior to doing the work, the permittee shall submit a Pre-construction Notification to the District Engineer. (See General Condition 32 and Regional General Condition 32).

**L. Nationwide Permit #23 Approved Categorical Exclusions:** Prior to commencing the activity, the permittee shall submit a Pre-construction Notification to the District Engineer. (See General Condition 32 and Regional General Condition 32)

**M. Nationwide Permit #27 Aquatic Habitat Restoration, Establishment, and Enhancement Activities:** Prior to commencing the activity, the permittee shall submit a Pre-construction Notification (PCN) to the District Engineer. (See General Condition 32 and Regional General Condition 32).

1. Shellfish seeding activities are restricted to shellfish species that are native to that waterbody.
2. For activities in the Philadelphia District Regulatory boundary within Pennsylvania, a complete copy of any PCN submitted to the District Engineer shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division (NMFS). The applicant must provide evidence that this has been accomplished. The District Engineer will coordinate review of the PCN with the NMFS pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

**N. Nationwide Permit #28 Modifications of Existing Marinas:** Prior to doing the work, the permittee shall submit a Pre-construction Notification to the District Engineer. (See General Condition 32 and Regional General Condition 32).

1. The application must also include plans showing the configuration of existing structures. For projects located on a waterway containing an authorized Federal Navigation Channel, the permittee must also include the distance of the project from the edge of the authorized channel. The District Engineer will add special conditions, where necessary, to ensure those adverse navigation impacts are minimal.

2. For projects in the Philadelphia District Regulatory boundary in Pennsylvania, this Nationwide Permit is only applicable to those projects, which have been previously reviewed and approved by the District Engineer through the Standard Permit process.

**O. Nationwide Permit #30 Moist Soil Management for Wildlife:** Prior to commencing the activity, the permittee must submit a Pre-construction Notification to the District Engineer. (See General Condition 32 and Regional General Condition 32).

**P. Nationwide Permit #35 Maintenance Dredging of Existing Basins:** The permittee must submit a Pre-construction Notification to the District Engineer. (See General Condition 32 and Regional General Condition 32).

1. The application must include a drawing indicating existing depths for the project site and nearby channel, and a survey of submerged aquatic vegetation in the vicinity of the dredge site, and plans indicating the dimensions (width and depth) and the approximate date of the most recent authorized dredging, and identifying the location of the upland disposal site(s).
2. Maintenance dredging authorized by this nationwide permit shall be limited to the dimensions (width and depth) of previously authorized dredging.
3. For activities in the Philadelphia District Regulatory boundary in Pennsylvania, this Nationwide Permit is only applicable to those projects which have been previously reviewed and approved by the District Engineer through the standard permit process

**Q. Nationwide Permit #38 Cleanup of Hazardous and Toxic Waste**

1. For activities in the Philadelphia District Regulatory boundary in Pennsylvania, a complete copy of any Pre-construction Notification (PCN) submitted to the District Engineer shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division (NMFS). The applicant must provide evidence that this has been accomplished. The District Engineer will coordinate review of the PCN with the NMFS pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

**R. Nationwide Permit #48 Commercial Shellfish Aquaculture Activities:** For activities in the Philadelphia District Regulatory boundary in Pennsylvania, A Pre-construction Notification must be submitted to the District Engineer for all activities in waters of the United States

1. Any introduced shellfish must be indigenous to the area and must be certified under any State standards as being disease and parasite free.
2. Predator control devices (i.e., mesh fences, mesh nets, and mesh tents) suspended or erected vertically or obliquely in the water column to surround or enclose shellfish containment gear is prohibited.

3. All structures associated with the aquaculture activity must be removed from waters of the United States when/if the activity is abandoned.
4. Use of unsuitable materials for shellfish seeding (i.e., asphalt, bituminous concrete slag, tires, wallboard, plastic, wood, metal, crushed glass, and garbage) is prohibited.

**S. Nationwide Permit #52 *Water-Based Renewable Energy Generation Pilot Projects***

1. This Nationwide Permit does not authorize work or discharges associated with wind generation projects within Lake Erie.
2. For all submerged utility lines across navigable waters of the United States, the Pre-construction Notification (PCN) shall include a location map and cross-sectional view showing the utility line crossing from bank to bank. In addition, the location and depth of the Federal Project Channel shall be shown in relation to the proposed utility line.
3. All PCNs in the Philadelphia District Regulatory boundary within Pennsylvania shall be coordinated with the Federal and State resource agencies. As a part of the required PCN to the District Engineer of Engineers, the applicant shall provide evidence that a duplicate copy of the PCN has been submitted to and received by the other concerned Federal and State resource agencies (e.g., copy of certified/registered mail receipt). The addresses for these agencies can be found in Special Note 3 below.

**T. Nationwide Permit #53 *Removal of Low-Head Dams***

1. For activities in Philadelphia District Regulatory boundary within Pennsylvania, a complete copy of any Pre-construction Notification (PCN) submitted to the District Engineer shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division (NMFS HCD). The applicant must provide evidence that this has been accomplished. The District Engineer will coordinate review of the PCN with the NMFS HCD pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

**U. Nationwide Permit #54 *Living Shorelines***

1. For activities in the Philadelphia District Regulatory boundary within Pennsylvania, a complete copy of any Pre-construction Notification (PCN) submitted to the District Engineer shall also be forwarded directly to the National Marine Fisheries Service Habitat Conservation Division (NMFS HCD). The applicant must provide evidence that this has been accomplished. The District Engineer will coordinate review of the PCN with the NMFS HCD pursuant to the requirements of the Magnuson Stevens Fishery Conservation and Management Act.

## **II. Regional Conditions Applicable to ALL 2017 Nationwide Permits within the State of Pennsylvania**

**Note:** To qualify for Nationwide Permit (NWP) authorization, the permittee must comply with the following regional general conditions, as applicable, in addition to any specific NWP regional conditions identified above in Section I, the general conditions found in the 2017 NWPs published in the *Federal Register* on January 6, 2017 (82 FR 1860), and any case-specific special conditions imposed by the Corps.

### **A. Nationwide Permit Regional General Condition #2 Aquatic Life Movement**

1. For activities in the Philadelphia District Regulatory boundary, spawning activities, and EFH, in-water work shall be avoided in accordance to the following time of year restrictions:
  - a. To protect diadromous fish migrations and spawning, in the Delaware River mainstem from the Pennsylvania and Delaware State Borders to the U.S. Route 1 Bridge, in Morrisville, and ALL tributaries within this reach, in-water work shall be avoided from *March 1 to June 30*.
  - b. To protect diadromous fish migrations and spawning in the Delaware River mainstem above the U.S. Route 1 Bridge, in Morrisville, and ALL tributaries north of this point, in-water work shall be avoided from *March 1 to July 31*.
  - c. Work within cofferdams that fully enclose and dewater the project area can proceed any time during the year provided that the cofferdams are installed and removed outside of the seasonal work restriction and do not preclude the free movement of migrating and spawning aquatic species to ensure compliance with NWP General Condition 2 and 3.

### **B. Nationwide Permit Regional General Condition # 16 Wild and Scenic Rivers**

1. The designated National Wild and Scenic Rivers applicable to this regional general condition are:
  - a. Allegheny River, from the Kinzua Dam mile 197.2, downstream approximately 7 miles to US Route 6 Bridge, at mile 190.7, in Warren, then from the Buckaloons Recreation Area in Allegheny National Forest at mile 181.7 downstream 47 miles to Alcorn Island just north of Oil City at river mile 133.7, and then continuing from the Franklin Wastewater Treatment Plant at mile 122.7, downstream 31 miles to the refinery at Elmenton mile 90.7;
  - b. Clarion River from mile 91.1 in the Borough of Ridgeway, Elk County, Pennsylvania, at the National Forest and State Game Lands boundary to mile 39.4 at the normal pool elevation of Piney Dam;

- c. Upper Delaware Scenic and Recreational River, including the ¼ mile buffer from each bank, beginning at Hancock, New York, and continuing 73.4 river miles to Mill Rift, Pennsylvania;
  - d. Middle Delaware Scenic and Recreational River (from bank to bank) beginning approximately four miles below Port Jervis, extending downstream approximately to the boundary between Monroe and Northampton Counties in Pennsylvania (just below the Interstate 80 bridge);
  - e. Lower Delaware River beginning 7 river miles north of Belvidere, New Jersey, continuing to Washington Crossing, Pennsylvania, including Paunacussing Creek, within Solebury Township; all of the Tinicum Creek, including Rapp Creek and Beaver Creek Tributaries; and Tohickon Creek from the mouth to the Lake Nockamixon Dam, including a ¼ mile buffer from each bank. The towns of Belvidere, Phillipsburg, and Easton, as well as existing power plants, water supply intakes and wastewater outfalls are not included in the designated area; and
  - f. White Clay Creek watershed including all of its tributaries.
2. For activities in the Philadelphia District Regulatory boundary within Wild and Scenic Rivers, the permittee shall send a copy of the PCN to the National Park Service prior to performing an activity located within a Wild and Scenic River. A copy of the National Park Service approval shall be obtained for the project and forwarded to the Corps of Engineers as part of the PCN prior to the permittee receiving Nationwide Permit verification. The appropriate addresses for the National Park Service are provided below:
    - a. For all projects, the applicant shall notify: National Park Service, 15 State Street, Boston Massachusetts, 02109.
    - b. If the proposed project is located in the Upper Delaware River, notification shall also be sent to Upper Delaware National Scenic and Recreational River, R.R. 2, Box 2428, Beach Lake, Pennsylvania, 18405-9737.
  3. For activities in the Pittsburgh District Regulatory boundary within Wild and Scenic Rivers, the permittee shall send an extra copy of the PCN to the Corps so the PCN may be coordinate with the U.S. Forest Service prior to the permittee performing any activity located within a Wild and Scenic River. Forest Service approval shall be obtained for the project by the Pittsburgh District prior to the permittee receiving Nationwide Permit verification.

**C. Nationwide Permit Regional General Condition #18 *Endangered Species*****1. U.S. Fish and Wildlife Service (USFWS) Endangered Species Act (ESA) Requirements:**

- a. Prior to commencing the activity, the applicant must complete a Pennsylvania Natural Diversity Inventory (PNDI) project screening for federally listed threatened and endangered species. The PNDI Environmental Review Tool is located at: <http://www.naturalheritage.state.pa.us>. If the PNDI receipt identifies a “Potential Impact” or “Avoidance Measure” relevant to a listed or eligible for listing USFWS species then the applicant must submit a PCN to the District Engineer, and concurrently forwarded to the USFWS (see General Condition 32 and Regional General Condition 32), prior to doing work. **(See Addresses in Special Note 3 below)**. The applicant shall provide evidence that a duplicate copy of the PCN has been submitted to, and received by the USFWS (e.g., copy of certified/registered mail receipt or email). A USFWS letter (issued pursuant to the ESA) serves as evidence that the permittee has contacted the USFWS.
- b. Prior to any work within the **Delaware River** whereby the regulated activities extend across State Boundaries (PA/NJ), the applicant shall document that they have followed the consultation guidance published on the U.S. Fish and Wildlife Service New Jersey Field Office website <http://www.fws.gov/northeast/njfieldoffice/Endangered/consultation.html> to determine if a proposed NWP activity may affect a listed species. A list of federally listed species for your action area shall be generated using the U.S. Fish and Wildlife Service, Information for Project Planning and Conservation (IPaC) at the following website <https://ecos.fws.gov/ipac/>. Upon your review of IPaC, if the proposed activity is within a municipality that supports a federally listed species and the project site supports habitat for a federally listed species, the applicant shall follow the guidance provided on the U.S. Fish and Wildlife Service New Jersey Field Office website. If necessary, contact the U.S. Fish and Wildlife Service New Jersey Field Office for further coordination prior to applying to the District Engineer for an NWP verification.
- c. A PCN shall be submitted to the District Engineer for any proposed activity which would result in impacts, temporary or permanent, to jurisdictional wetlands in the following Counties in Pennsylvania: Adams, Berks, Bucks, Carbon (Aquashicola Creek Watershed), Chester, Cumberland, Dauphin (only Swatara Creek Watershed), Delaware, Franklin (only Antietam Creek Watershed), Lancaster, Lebanon, Lehigh, Monroe, Montgomery, Northampton, Schuylkill (Swatara Creek Watershed), and York.

**2. National Marine Fisheries Service- Endangered Species Act Requirements (Applicable in the Philadelphia District Regulatory Boundary within Pennsylvania)**

- a. In coordination with the NMFS, the District Engineer has determined that the following NWP activities will have NO EFFECT on NMFS protected resources and no further consultation is required under the ESA: **2, 21, 29, 30, 34, 39, 41, 44, 45, 46, 49, 50 and 51**. A PCN shall be submitted to the District Engineer for ALL OTHER NWP activities in ALL tributaries and waterways except the following:
  - i. Delaware River mainstem above the U.S. Route 202 Bridge in New Hope, Pennsylvania; and
  - ii. ALL tributaries above the U.S. Route 202 Bridge in New Hope, Pennsylvania, located off of the Delaware River mainstem.
- b. Additional information on Listed Threatened and Endangered Species under the jurisdiction of the NMFS that may be present within the geographic area of the Philadelphia District is available at the following web sites:

<http://www.greateratlantic.fisheries.noaa.gov/protected/section7/guidance/maps/index.html>

<http://www.greateratlantic.fisheries.noaa.gov/protected/section7/index.html>

<http://www.nmfs.noaa.gov/pr/species/esa/>

#### **D. Nationwide Permit Regional General Condition #32 Pre-Construction Notification**

The following regional general conditions are incorporated as part of the terms and conditions of NWP General Condition 32, *Pre-Construction Notification*. These regional general conditions are applicable to all NWPs where a PCN is submitted to the District Engineer. This includes the following: (a) those NWPs that require a PCN, (b) those NWPs requiring notification to the District Engineer pursuant to NWP General Conditions 18 and 22, (c) those NWPs requiring notification to the District Engineer pursuant to a regional condition, and (d) any other pre-construction notifications to the District Engineer where an applicant has requested verification of an NWP authorization.

1. For activities in the Philadelphia District Regulatory boundary, in addition to the information requested below the permittee shall use application form (ENG Form 4345) and provide supplemental information as described in Philadelphia District – Environmental Questionnaire and NWP Application Checklist  
<http://www.nap.usace.army.mil/Portals/39/docs/regulatory/ip/enviroquest.pdf>
  - a. A PCN must be submitted to the District Engineer and NMFS for any NWP activity that is proposed within **50 feet** of SAV beds, or mapped SAV habitat.
2. A PCN shall be submitted for proposed construction and modification of docks, piers, and other structures that will occur along and/or within 150 feet of the horizontal limits of a federally authorized channel. In addition, a PCN is required for the

replacement of previously authorized, currently serviceable structures located along federally authorized channels that are destroyed by an act of nature or sudden event. All proposed work shall comply with the most current version of the setback guidance. As part of any PCN adjacent to a federally authorized channel, the permittee must provide the latitude and longitude of the channelward most point of the proposed structure.

3. All PCNs to the District Engineer shall be completed using the established District Engineer permit application procedures for that locality (e.g., Section II.D.1., above). Preferably all PCN information can be submitted electronically; alternatively, a hard copy may be sent to the Corps. The PCN shall include all activities that the applicant plans to undertake that are reasonably related to the same project. All PCNs to the District Engineer shall include the following information, where applicable, in addition to the information specified in the NWP conditions, including General Condition 32:
  - a. Work description: A narrative describing the proposed work and its associated impacts. If excavation is part of the proposed work, a detailed description of the method, sequence, and equipment to be used to conduct the work.
  - b. Plan(s) of the proposed work (if provided by hard copy no larger than 8-1/2 by 11 inch paper) which includes a location map; longitude and latitude; and plan view drawings clearly depicting the location, size, and dimensions of the proposed activity as well as the location of the delineated waters and/or wetlands, for the entire project area. The drawings shall contain the amount (in cubic yards) and the area (square feet) of dredged and/or fill material to be discharged in District Engineer jurisdiction, including both permanent and temporary structures. Plans should depict all proposed work, including areas proposed for filling, grading, excavation, drainage, and/or inundation and shall identify all delineated waters and wetlands. All drawings shall include the OHWM, or if in tidal waters, the mean high water mark and high tide line; existing water depths; cross-sectional plan; depth of any structure(s) below mean low water; height of any structure(s) above mean high water; the maximum distance that the structure(s) or fill will extend channelward of the existing shoreline; the width of the waterway at the project site; the location of any dredged material disposal area; the distance from the edge of any federal navigation channel and the location of any temporary work; structures, vessels, or fills required for construction; a copy of any previous federal or state approvals; and the location and nature of any SAV (e.g., eel grass, *Zostera marina*). The applicant should also refer to other reliable sources to comply with this condition.
  - c. At the discretion of the District Engineer, the PCN may be considered incomplete if it is determined that a field verification of the wetland and/or stream delineation is required.

- d. Numbered and dated pre-project color photographs showing all aquatic resources proposed to be impacted on the project site. The compass angle and position of each photograph shall be documented on the plan view drawing.
  - e. Evidence that the permittee has already contacted and received a response from the FWS concerning any federally listed Threatened and Endangered Species that may be affected by the proposed activity. Completion of the required screening identified in General Regional Conditions #18 Endangered Species and submission of the required documents of the PCN serves as compliance with this condition.
  - f. Evidence that the permittee has already contacted and received a response from the SHPO concerning historic properties that may be affected by the proposed activity.
  - g. Documentation from the appropriate state agency indicating whether the proposed project is located within a State Natural Heritage site, Outstanding National Resource Water, or National Estuarine Research Reserve. For further information, reference NWP General Condition 22.
  - h. A PCN shall include a written statement documenting the steps taken to avoid and minimize adverse impacts to waters of the United States, including jurisdictional wetlands.
4. When a PCN is required, the District Engineer review period shall commence with the receipt of a complete permit application by the Corps. The permittee shall not begin the activity until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed, if applicable.
  5. Any requests to waive the 300 linear foot limitation for the intermittent and ephemeral streams for NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, and 54, the 500 linear foot limitation along the bank for NWP 13, or the 20 foot width limitation for NWP 36, must include:
    - a. A narrative description of the stream. This should include known information on: volume and duration of flow; the approximate length, width, and depth of the waterbody and characteristics observed associated with the Ordinary High Water Mark (e.g., bed and bank, wrack line, or scour marks); a description of the adjacent vegetation community, including a statement as to if the area is upland or wetland; surrounding land use; water quality; issues related to cumulative impacts in the watershed, and; any other relevant information.
  6. Any compensatory mitigation required by special conditions of the NWP verification shall be completed before, or concurrent with commencement of construction of the authorized activity, except when specifically determined to be impracticable by the Corps. If the applicant is proposing to use a mitigation bank or in lieu fee program,

the PCN shall include identification of the bank/in lieu fee site and amount and type of credits to be purchased. If approved, proof of payment to the approved mitigation bank or in-lieu-fee program shall be submitted to the appropriate District Engineer district prior to commencement of construction of the authorized activity. The amount of compensatory mitigation required is expected to be sufficient to replace lost aquatic resource functions and services. A watershed approach to compensatory mitigation, which considers the importance of landscape position, resource type, and compensatory mitigation projects that address the sustainability of aquatic resource functions within the watershed should be used.

**E. Nationwide Permit Regional General Conditions A For Certain Activities in Navigable Waters**

1. The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the United States Coast Guard for new fixed bridges, in the vicinity of the proposed aerial transmission line. These clearances are based on the low point of the line under conditions producing the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code:

Nominal System Voltage (kV)	Minimum additional clearance (ft.) above clearance required for bridges
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750-765	45

- a. The PCN for aerial transmission lines over navigable waters must include the nominal system voltage and the additional clearance above low steel for bridges, if available, or above maximum high water elevation;
- b. District Engineer regulation ER 1110-2-4401 prescribes minimum vertical clearances for power communication lines over District Engineer lake projects. In instances where both this regional condition and ER 1110-2-4401 apply, the greater minimum clearance is required; and

- c. Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings must be a minimum of ten feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.
2. Within 60 days of completing an activity that involves an aerial transmission line, submerged cable, or submerged pipeline across a navigable water of the United States (i.e., Section 10 waters), the permittee shall furnish the District Engineer and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7317, 1315 East-West Highway, Silver Spring, Maryland, 20910 with professional, certified as-built drawings, to scale, with control (i.e., latitude/longitude, state plane coordinates), depicting the alignment and minimum clearance of the aerial wires above the mean high water line at the time of survey or depicting the elevations and alignment of the buried cable or pipeline across the navigable waterway.
3. Aids to Navigation: If the Corps or the U.S. Coast Guard determine that private aids to navigation are required to mark the project area, the permittee must prepare and provide for United States Coast Guard (USCG) approval (address below) a Private Aids to Navigation Application (CG-2554), and the approval must be received prior to commencement of the authorized work. The form can be found at this link: [http://www.uscg.mil/forms/cg/CG\\_2554.pdf](http://www.uscg.mil/forms/cg/CG_2554.pdf). Within 30 days of the date of receipt of the USCG approval, the permittee must provide a copy to the applicable Corps District.

**F. Nationwide Permit Regional General Condition B Poured Concrete into forms:**

1. Activities that involve the discharge of poured concrete must be contained within cells or watertight forms until the concrete is set.

**SPECIAL NOTES:**

1. Where the Commonwealth has denied 401 WQC and/or not concurred with the Corps' CZM consistency determination for a NWP authorization, the permittee should contact the Commonwealth to obtain an activity specific review and approval by the Commonwealth prior to submitting any required PCN to the District Engineer.
2. The Philadelphia District Boundary can be found at:  
<http://www.nap.usace.army.mil/Missions/Regulatory/District-Boundaries/>  
The Baltimore District Boundary can be found at:  
<http://www.nab.usace.army.mil/Missions/Regulatory/Baltimore-District-Regulatory-Boundary-Map/>  
The Pittsburg District Boundary can be found at:  
<http://www.lrp.usace.army.mil/Portals/72/docs/regulatory/RegulatoryBoundaries/regmap.pdf>
3. The following addresses shall be used for notification to those Federal and State agencies, where the review of the PCN must be coordinated by the District Engineer.

(1) Environmental Protection Agency  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

(2) U.S. Fish and Wildlife Service  
Pennsylvania Field Office  
110 Radnor Road, Suite 101  
State College, Pennsylvania 16801

(3) National Marine Fisheries Service  
Habitat Conservation Division  
74 Magruder Road  
Highlands, New Jersey 07732

(4) Pennsylvania Historical & Museum Commission  
Bureau of Historic Preservation  
Commonwealth Keystone Building, 2<sup>nd</sup>  
400 North Street  
Harrisburg, Pennsylvania 17120

(5) Pennsylvania Fish & Boat Commission  
North Central Law Enforcement  
595 Rolling Ridge Drive  
Bellefonte, Pennsylvania 16823-9616

(6) Pennsylvania Department of  
Environmental Protection  
Bureau of Waterways Engineering and Wetlands  
Division of Wetlands &  
Encroachments  
Rachel Carson State Office Building  
P.O. Box 8460  
Harrisburg, Pennsylvania 17105-8775

(7) Pennsylvania Game Commission  
2001 Elmerton Avenue  
Harrisburg, Pennsylvania 17110-9797