



**US Army Corps  
of Engineers**  
Louisville District

# Public Notice

Public Notice No.

LRL-2011-6-pgj

Expiration Date:

18 Mar 2017

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Louisville District

ATTN: Patricia A. Grace-Jarrett, CELRL-OP-FS

P.O. Box 59

Louisville, Kentucky 40201-0059

Phone: (502) 315-6687

## **PUBLIC NOTICE ANNOUNCING REGIONAL CONDITIONS AND WATER QUALITY CERTIFICATION FOR NATIONWIDE PERMITS**

On February 21, 2012, in *Federal Register* (72 FR 11092), the U.S. Army Corps of Engineers (Corps) announced the reissuance of 48 existing Nationwide Permits (NWP), general conditions, and definitions with some modifications. The Corps also issued two new NWPs, three new general conditions, and three new definitions. The NWPs became effective on March 19, 2012.

On March 19, 2012, the Great Lakes and Ohio River Division (LRD) Engineer approved Regional Conditions for the NWPs in Kentucky. These conditions apply to all activities authorized by NWPs. Regional Conditions provide additional protection for the aquatic environment by ensuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. The Regional Conditions for Kentucky are attached to this public notice. In addition, the Louisville District has posted its Regional Conditions for the NWPs under the Kentucky Section of the Internet home page at the Internet at

<http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/NationwidePermits.aspx>.

The Kentucky Division of Water (KDOW) denied the 401 Water Quality Certification (WQC) for NWPs 16, 17, 32, 38, 43, 44 and 52. An individual 401 WQC from KDOW will be required for any project authorized by one of the NWPs with a 401 WQC denial. The KDOW conditioned the 401 WQC for NWPs 3, 5, 7, 12, 13, 14, 15, 18, 19, 21, 23, 25, 27, 29, 30, 31, 33, 36, 37, 39, 42, 45, 46, 49, 50, and 51. An individual 401 WQC will be required by KDOW under certain conditions. The full text of the Water Quality Certifications issued by KDOW is available on our web site under the link listed above.

Applicants and consultants are reminded of the requirements to fully consider federally listed Threatened and Endangered Species, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, and Cultural Resources under the 2012 Nationwide Permit General Conditions, Nos. 18, 19, 20 and 21. Please also be advised that the Corps Districts in Kentucky generally require notification and mitigation for all impacts greater than 0.1 acre of "waters of the U.S."

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Questions concerning implementation of the new and modified NWP's and conditions or the Corps regional conditions should be sent to the Louisville District, Corps of Engineers, ATTN: Dr. Patricia Grace-Jarrett, Ph.D., CELRL-OP-FS, P.O. Box 59, Louisville, Kentucky 40201-0059.

**KENTUCKY REGIONAL GENERAL CONDITIONS**

These regional conditions are in addition to, but do not supersede, the requirements in the Federal Register (Volume 77 No. 34 of February 21, 2012)

Notifications for all Nationwide Permits (NWP) shall be in accordance with General Condition No. 31.

1. For activities that would result in a loss of Outstanding State or National Resource Waters (OSNRWs), Exceptional Waters (EWs), Coldwater Aquatic Habitat Waters (CAHs) and waters with Designated Critical Habitat (DCH) under the Endangered Species Act for the NWP listed below, a Pre-Construction Notification (PCN) will be required to the Corps. The Corps will coordinate with the appropriate resource agencies (see attached list) on these NWP for impacts to these waters.

NWP 3 (Maintenance)  
NWP 7 (Outfall Structures and Associated Intake Structures)  
NWP 12 (Utility Line Activities)  
NWP 14 (Linear Transportation Projects)  
NWP 29 (Residential Developments)  
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 44 (Mining Activities)  
NWP 51 (Land-Based Renewable Energy Generation Facilities)  
NWP 52 (Water-Based Renewable Energy Generation Pilot Projects)

2. In addition to the notification and agency coordination requirements in the NWP, for impacts greater than 0.25 acres in all “waters of the U.S.” for the NWP listed below, a PCN will be required to the Corps. The Corps will coordinate with the appropriate resource agencies (see attached list) on these NWP:

NWP 3 (Maintenance)  
NWP 7 (Outfall Structures and Associated Intake Structures)  
NWP 12 (Utility Line Activities)  
NWP 14 (Linear Transportation Projects)  
NWP 29 (Residential Developments)  
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 44 (Mining Activities)

NWP 51 (Land-Based Renewable Energy Generation Facilities)  
NWP 52 (Water-Based Renewable Energy Generation Pilot Projects)

3. For activities in all “waters of the U.S.” for the NWPs listed below, a PCN will be required to the Corps. The Corps will coordinate with the appropriate resource agencies (see attached list) on these NWPs:

NWP 21 (Surface Coal Mining Activities)  
NWP 27 (Aquatic Habitat Restoration, Establishment & Enhancement Activities)  
NWP 49 (Coal Remining Activities)  
NWP 50 (Underground Coal Mining Activities)

4. Nationwide Permit No. 14 – Linear Transportation Projects.

- (a) Activities in Section 10 navigable waters will require a PCN to the Corps.
- (b) New public road alignments or realignments are limited to a permanent loss of 500 linear feet of intermittent or perennial stream length at each crossing. Public road crossings with permanent losses greater than 500 linear feet of intermittent or perennial stream associated with new alignments or realignments will be evaluated as an individual permit i.e., a Letter of Permission or as a Standard Individual Permit.
- (c) All linear transportation project crossings resulting in the permanent loss of greater than 300 linear feet of intermittent or perennial stream will require mitigation to compensate for impacts to the “waters of the U.S.” The permanent loss of “waters of the U.S.” includes the linear feet of water that is permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity and not restored to pre-construction contours and elevations after construction. In addition to the notification requirements contained in NWP 14, the permittee must submit a PCN to the district engineer prior to commencing the activity for the permanent loss of greater than 300 feet of intermittent and perennial stream of all “waters of the U.S.”. (See General Condition 31 and the definition of "loss of waters of the United States" in the Nationwide Permits for further information.)

Further information:

Outstanding State or National Resource Water (OSNRWs), Exceptional Waters (EWs), and Coldwater Aquatic Habitat Waters (CAHs) are waters designated by the Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet. The list can be found at the following link: <http://eppcapp.ky.gov/spwaters/>

Designated Critical Habitat (DCH) under the Endangered Species Act is determined within the Commonwealth of Kentucky by the U.S. Fish and Wildlife Service. The current list of

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Kentucky's Threatened, Endangered, and Federal Candidate Species can be found at the following link: <http://www.fws.gov/frankfort/EndangeredSpecies.html>

Information on Pre-Construction Notification (PCN) can be found at NWP General Condition No. 31 (Federal Register, Volume 77, No. 34, Tuesday, February 21, 2012, pp 10286-10288).

Mitigation includes activities that avoid, minimize, and compensate for impacts.

### **COORDINATING RESOURCE AGENCIES**

Chief, Wetlands Regulatory Section  
U.S. Environmental Protection Agency  
Region IV  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

Supervisor  
U.S. Fish & Wildlife Service  
JC Watts Federal Building, Room 265  
330 West Broadway  
Frankfort, Kentucky 40601

Supervisor  
401 Water Quality Certification  
Kentucky Division of Water  
200 Fair Oaks Lane, 4<sup>th</sup> Floor  
Frankfort, Kentucky 40601

Commissioner  
Department of Fish and Wildlife Resources  
#1 Game Farm Road  
Frankfort, Kentucky 40601

Executive Director and State Historic Preservation Officer  
Kentucky Heritage Council  
300 Washington Street  
Frankfort, Kentucky 40601

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**ADDITIONAL COORDINATING RESOURCE AGENCY**  
**FOR NWPS 21, 49, AND 50**

Kentucky Department of Natural Resources  
Division of Mine Permits  
#2 Hudson Hollow  
Frankfort, Kentucky 40601