

404 Nationwide Permits/Clean Water Act: U.S. Corps of Engineers Finalizes Revisions/Renewal of Certain NWP



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The United States Army Corps of Engineers (“Corps”) issued on August 3rd a final rule revising and renewing certain Nationwide Permits (“NWP”) under Section 404 of the Clean Water Act.

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, a 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 the existing permits, the Corps also typically takes this opportunity to revise or add certain NWPs.

By way of summary, the final rule replaces 12 of the existing NWPs. The replaced NWPs include:

- 12. Oil or Natural Gas Pipeline Activities
- 21. Surface Coal Mining Activities
- 29. Residential Developments
- 39. Commercial and Institutional Developments
- 40. Agricultural Activities
- 42. Recreational Facilities
- 43. Stormwater Management Facilities
- 44. Mining Activities
- 48. Commercial Shellfish Mariculture Activities
- 50. Underground Coal Mining Activities
- 51. Land-Based Renewable Energy Generation Facilities
- 52. Water-Based Renewable Energy Generation Pilot Projects

Four new NWPs are established:

- 55. Seaweed Mariculture Activities
- 56. Finfish Mariculture Activities
- 57. Electric Utility Line and Telecommunications Activities
- 58. Utility Line Activities for Water and Other Substances

The final rule also reissues general conditions and definitions (with some changes) for the previously referenced 16 NWPs.

The Corps is not reissuing or modifying the remaining 40 NWPs included in a 2020 proposal. Instead, they will remain in place as previously published as a final rule on January 6, 2017.

A link to a pre-publication version of the rule can be downloaded [here](#). Also a summary of the 2021 and 2017 NWPs prepared by the Corps can be downloaded [here](#).