

## 404 Nationwide Permits/Clean Water Act: U.S. Corps of Engineers Finalizes Renewal of 40 Permits



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The United States Army Corps of Engineers (“Corps”) published a final rule in the December 27th Federal Register renewing 40 nationwide permits (“NWPs”). See 86 Fed. Reg. 73522.

The Corps also developed one new NWP.

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 existing permits, the Corps also sometimes takes the opportunity to revise or add certain NWPs.

The NWPs in the final rule are stated to be intended to replace 2017 version of those NWPs. The NWPs addressed in the final rule have an effective date of February 25, 2022. Further, the Corps states that all activities authorized by the 40 reissued NWPs from 2017 will remain authorized until March 18, 2022, if the permittee has commenced construction or executed a contract for the NWP activity before February 25, 2022.

The final rule reissues the 40 existing NWPs previously issued in a January 6, 2017, final rule. See 82 Fed. Reg. 1860. These 40 NWPs were not finalized on January 13, 2021.

The final rule also issues a new NWP 59 for water reclamation and reuse facilities.

This NWP includes discharges of dredged or fill material into non-title waters of the United States for the construction, expansion, and maintenance of water reclamation and reuse facilities, including vegetated areas enhanced to include water infiltration and constructed wetlands to improve water quality. However, the discharge of dredged or fill material must not cause the loss of greater than one-half acre of waters of the United States.

The final rule does not address the 16 NWPs, general conditions, and definitions that the Corps previously finalized on January 13, 2021.

A copy of the Federal Register Notice can be downloaded [here](#).