

PUBLIC NOTICE



**US Army Corps
of Engineers
Kansas City District**

**Issue Date: September 30, 2020
Expiration Date: November 14, 2020**

45 Day Notice

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS - KANSAS

On September 15, 2020, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue the 52 existing nationwide permits (NWP) and issue five new NWP.

NWP are general permits issued on a nationwide basis to streamline the authorization of activities that result in no more than minimal individual and cumulative adverse environmental effects. Many of the proposed NWP require notification to the district engineer before commencing those activities to ensure that the activities authorized by those NWP cause no more than minimal individual and cumulative adverse environmental effects.

National Issues Concerning the Proposed NWP: The Federal Register notice is the public's opportunity to comment on the proposed NWP, general conditions, and definitions. Comments on national issues relating to these NWP should be submitted to docket number COE-2020-0002 at www.regulations.gov, or by email to nationwidepermits2020@usace.army.mil or by mail to Headquarters, U.S. Army Corps of Engineers, Directorate of Civil Works, ATTN: CECW-CO-R, 441 G Street, N.W., Washington, D.C. 20314-1000. Instructions for submitting comments are provided in the September 15, 2020 Federal Register notice. Comments on the proposed NWP are due by November 16, 2020.

Regional Issues Concerning the Proposed NWP, Including Regional Conditioning: Division Engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are an important mechanism to help ensure that the adverse environmental effects of activities authorized by the NWP are no more than minimal, both individually and cumulatively. Division Engineers may also suspend or revoke specific NWP in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where the adverse environmental effects caused by activities authorized by those NWP may be more than minimal.

Kansas is covered by two Corps of Engineers Districts (Kansas City and Tulsa). The Kansas City District, as the lead district for Kansas, and in coordination with the Tulsa District, is seeking comment on the proposed regional conditions (listed below), and is also seeking comment on the need for additional regional conditions to help ensure that the adverse environmental effects of activities authorized by the proposed NWP are no more than minimal, individually and cumulatively. Comments on Kansas regional issues relating to the proposed NWP and proposed regional conditions should be sent to the **Kansas City District, Kansas State Regulatory Office, 2710 NE Shady Creek Access Road, El Dorado, Kansas 67042, or**

by email to sarah.m.reznicek@usace.army.mil. Comments relating to regional conditions are due by November 16, 2020. Similar public notices proposing regional conditions in other regions or states are being published concurrently by other division or district offices. After the final NWP's are issued, the final regional conditions will be issued after they are approved by the Division Commander.

States, tribes, and other certifying authorities will make their Clean Water Act Section 401 water quality certification (WQC) decisions after reviewing the proposed NWP's.

Draft decision documents for each of the proposed NWP's, which include environmental documentation prepared for the purposes of the National Environmental Policy Act, have been written by Corps Headquarters. The decision documents will address compliance of the NWP's with the requirements for issuance under the Corps' general permit authority. These draft decision documents, as well as the proposed NWP's, are available for viewing at **www.regulations.gov**, docket number COE-2020-0002. Final decision documents will be prepared for the NWP's that are issued.

Enclosed is an index of the proposed NWP's and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP's through the Corps Home Page at **<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>**, at **www.regulations.gov** in docket number COE-2020-0002, or at the following Federal Register address:
<https://www.federalregister.gov/documents/2020/09/15/2020-17116/proposal-to-reissue-and-modify-nationwide-permits>.

Index of Proposed Nationwide Permits, Conditions, and Definitions

Nationwide Permits

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6. Survey Activities
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Nationwide Permit General Conditions

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16. Wild and Scenic Rivers
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21. Discovery of Previously Unknown Remains and Artifacts
22. Designated Critical Resource Waters
23. Mitigation
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28. Use of Multiple Nationwide Permits
29. Transfer of Nationwide Permit Verifications
30. Compliance Certification
31. Activities Affecting Structures or Works Built by the United States
32. Pre-Construction Notification

District Engineer's Decision

Further Information

Definitions

Best management practices (BMPs)
Compensatory mitigation
Currently serviceable
Direct effects
Discharge
Ecological reference
Enhancement
Establishment (creation)
High Tide Line
Historic property
Independent utility
Indirect effects
Loss of waters of the United States
Navigable waters
Non-tidal wetland
Open water
Ordinary high water mark
Perennial stream
Practicable
Pre-construction notification
Preservation
Re-establishment
Rehabilitation
Restoration
Riffle and pool complex
Riparian areas
Shellfish seeding
Single and complete linear project
Single and complete non-linear project

Stormwater management
Stormwater management facilities
Stream bed
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Structure
Tidal wetland
Tribal lands
Tribal rights
Vegetated shallows
Waterbody

Proposed Kansas Regional Conditions:

Applicable to All Nationwide Permits:

1. Stream Crossings. In addition to requirements of General Condition 2 and General Condition 9 of the Nationwide Permits, the following guidelines for stream crossings apply for regulated activities in waters of the United States. The General Guidelines for Stream Crossings document is enclosed below.

- Corps districts may waive Regional Condition 1 when project site geomorphology (i.e. bedrock, gradient) or existing alterations (i.e. adjacent impoundment, as part of a dry detention basin) creates conflict with the guidelines. The applicant must provide preconstruction notification (PCN) to the District Engineer for any waiver request.
- **Soil Savers.** A PCN is required for all Nationwide Permits that involve the construction/installation of culverts with soil savers. The PCN must include documentation (ex. photos, design plans, survey data etc.) showing that:
 - (1) the requirements of General Condition 9 (Management of Water Flows) and General Condition 12 (Erosion and Sediment Controls) are met;
 - (2) the addition of a soil saver in the design of the crossing will provide a greater overall environmental benefit;
 - (3) the soil saver will provide a benefit to downstream water quality by eliminating upstream stream channel incision and reduced downstream velocities when incorporated as part of a roadway culvert replacement; and
 - (4) the soil saver's use is limited to waters such as an ephemeral and/or upper intermittent tributary that has been manipulated upstream, downstream or both and where impacts to aquatic passage would be no more than minimal (examples of such manipulation includes farmed channel, diverted to road ditches, grassed waterways, etc.)
 - (5) the soil saver meets all other requirements of the permit (for example, in the case of NWP 14, the PCN must also establish that the addition of a soil saver is the minimum necessary to construct or protect the proposed project).

Note: As defined in the Kansas Department of Transportation Design Manual (3.12.9.9 Soil Saver), “a soil saver is a wall constructed across the stream bed at the end of the wings of the upstream entrance to the culvert. It provides a vertical drop in the stream bed. The soil saver functions as a grade control structure to aid in controlling erosion in the upstream drainage basin. In addition, the soil saver acts as a “Drop Inlet”. It allows a culvert that would otherwise be constructed on a steep slope, operating under inlet control with high exit velocities (> 15 ft./sec.); to be constructed on a flatter slope, operating under outlet control with reduced velocities”.

2. Suitable Material. In addition to the specific examples in General Condition 6 of the Nationwide Permits, the following materials are not suitable for fill activities in waters of the United States: garbage, tires, treated lumber products that do not comply with the Registration Documents issued by the U.S. Environmental Protection Agency (USEPA) under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) and that are not in accordance with standards issued by American Wood Protection Association of the International Code Council, liquid concrete not poured into forms, grouted riprap, bagged cement and sewage or organic waste.

Broken concrete used as bank stabilization must be reasonably well graded, consisting of pieces varying in size from 20 pounds up to and including at least 150 pound pieces to

withstand expected high flows. Applicants must break all large slabs to conform to the well graded requirement. Generally, the maximum weight of any piece should not be more than 500 pounds. Gravel and dirt should not exceed 15% of the total fill volume when using broken concrete as fill. All protruding reinforcement rods, trash, asphalt, and other extraneous materials must be removed from the broken concrete prior to placement in waters of the United States.

3. **Indian Country.** All Nationwide Permits requested by applicants other than the Tribal Authority for use within the reservation boundaries of Indian Country in Kansas require a PCN to the District Engineer and coordination with the Tribal Authority. All other terms and conditions of the Nationwide Permits and regional conditions apply in Indian Country regardless of the applicant.
4. **T&E species waters.** As required by General Condition 18, a PCN is required for any regulated activity in waters listed at: <https://cdm16021.contentdm.oclc.org/utis/getfile/collection/p16021coll11/id/2683>. For additional information on ESA listed species in Kansas contact the U.S. Fish and Wildlife Service at (785) 539-3474 (Manhattan office).
5. **Designated State Waters.** The applicant must provide a PCN to the District Engineer for any regulated activity in Outstanding National Resource Waters (ONRW), Exceptional State Waters (ESW), or Special Aquatic Life Use Waters (SALUW) as listed in the Kansas Surface Water Register. OUTSTANDING NATIONAL RESOURCE WATERS INCLUDE: 1) all surface waters within the boundaries of the Cimarron National Grasslands (Morton and Stevens), 2) Flint hills National Wildlife Refuge (Coffey), 3) Quivira Big Salt Marsh and Quivira Little Salt Marsh (Stafford) and 4) Cheyenne Bottoms (Barton). The list of special status waters requiring notification is available on request from the Corps and a map is located at: <https://cdm16021.contentdm.oclc.org/utis/getfile/collection/p16021coll11/id/2684>

General Guidelines for Stream Crossings Regional Condition 1

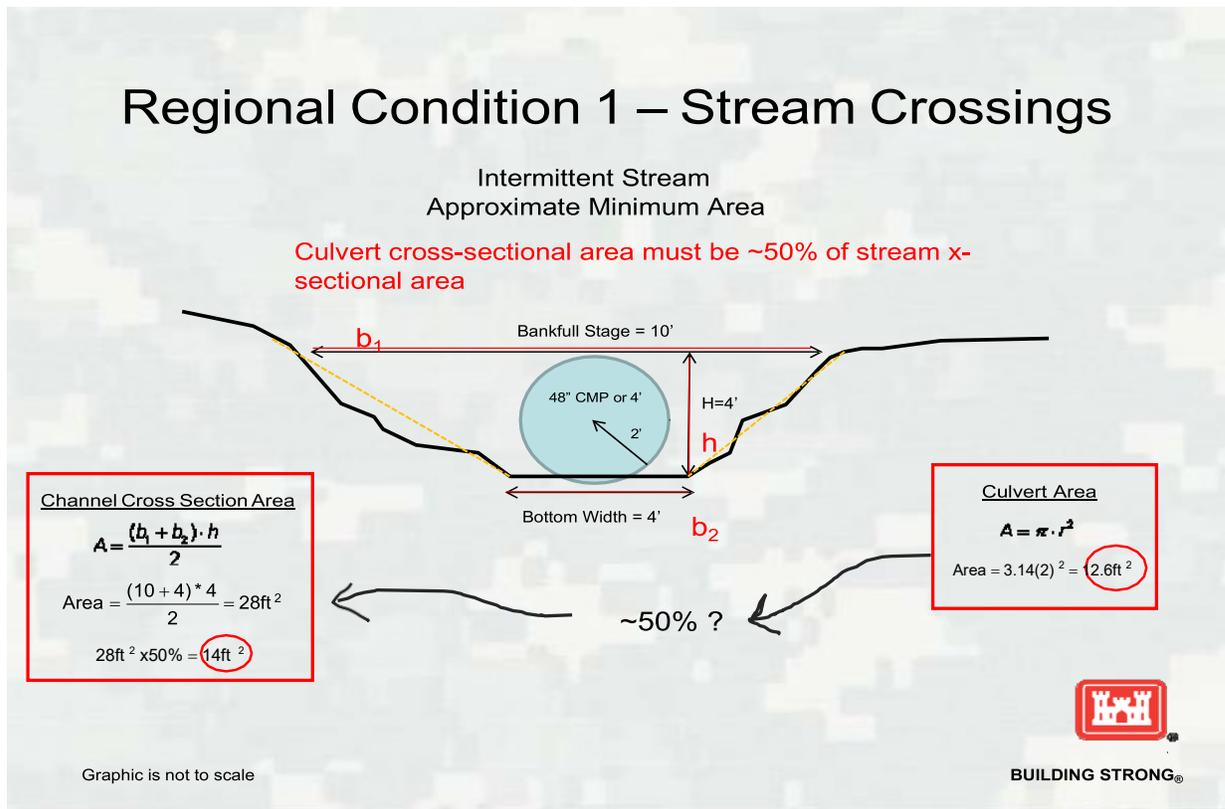
For all Nationwide Permits that involve the construction/installation of culverts and low water crossings, measures will be included in the construction, design, and installation that will allow for the passage of flows and promote the safe passage of fish and other aquatic organisms. The following General Guidelines are required to supplement General Condition (2) Aquatic Life Movements and General Condition (9) Management of Water Flows.

Culverts:

- New or replacement culverts (e.g., box or tubular, pipes, etc.) must be designed, sized, and placed correctly. Culverts perched above the grade of the stream are not allowed. This includes other in-stream structures placed at the inlet with the purpose to reduce sedimentation within the stream crossing. It is acceptable for a portion of the water to pass over the structure if it is designed to be overtopped. Culverts must be the shortest length necessary to meet the project purpose, and a single culvert is encouraged.
- Drop boxes or other structures placed at the inlet with the purpose to reduce sedimentation within the stream crossing are not allowed. Culvert must be the shortest length necessary to meet the project purpose.
- New or replacement culverts, in conjunction with the associated fill material, shall have an appropriately sized opening that allows water flow through and over the crossing that is relative to the bankfull area (See Image 1). For purposes of this regional condition, bankfull area is defined as the height and width of the stream channel within the project to the top of the high bank(s). In addition, if elevations differ on both sides of the stream the lowest elevation shall be used as the height. The following basic guidelines shall be used when designing new or replacement crossing projects:

Stream Type	% of crossing profile that shall remain open
Perennial	Designed to allow an 85% opening to include the culvert(s) and area above the crossing up to the bankfull area.
Intermittent	Designed to allow a 50% opening to include the culvert(s) and area above the crossing up to the bankfull area.

Image 1



- For permanent crossings, the culvert must be embedded and backfilled below the grade of the stream on both the upstream and downstream sides ≥ 1 foot for culverts >48 inches. On culverts ≤ 48 inches the bottom of the culvert must be placed at a depth below or at the natural stream bottom to provide for aquatic organism passage during low flow conditions. Culverts in streams with non-erodible beds (i.e. bedrock or stable clay) must be constructed flush with the stream bed, but do not need to be embedded. Culverts in streams with highly erodible beds must be embedded deeper to lessen the chance of future perching due to downstream degradation and may be accompanied with other grade control measures to prevent erosion while maintaining General Condition (2) Aquatic Life Movements.

Low Water Crossings:

- The applicant must notify the District Engineer when repairing, rehabilitating or replacing low water crossings when discharges of dredged or fill material would raise or lower the lowest elevation of the crossing.
- When replacing or removing low water crossings the applicant must propose and employ measures to mitigate for and minimize the potential of streambed headcutting where channel incision has occurred downstream of the structure and the structure is providing grade control that is preventing channel incision from migrating upstream.