

# NATIONWIDE PERMIT 20: RESPONSE OPERATIONS FOR OIL OR HAZARDOUS SUBSTANCES

Date: 11 December 2024  
Regional Response Team III Meeting

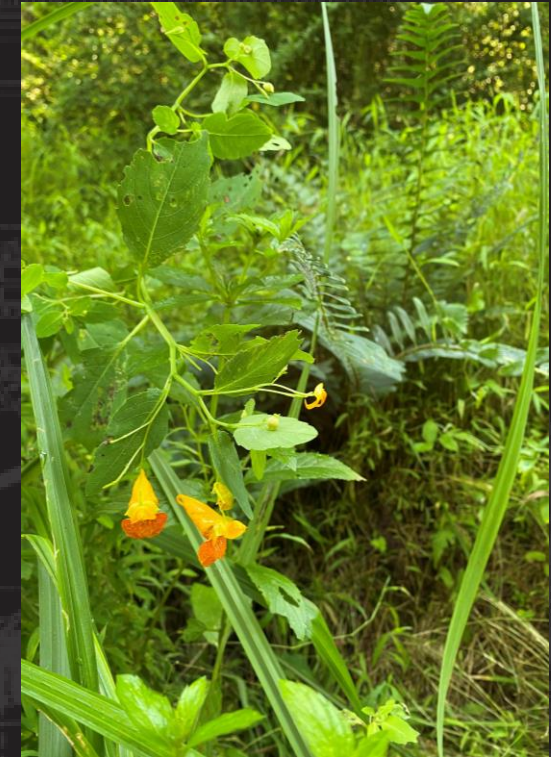
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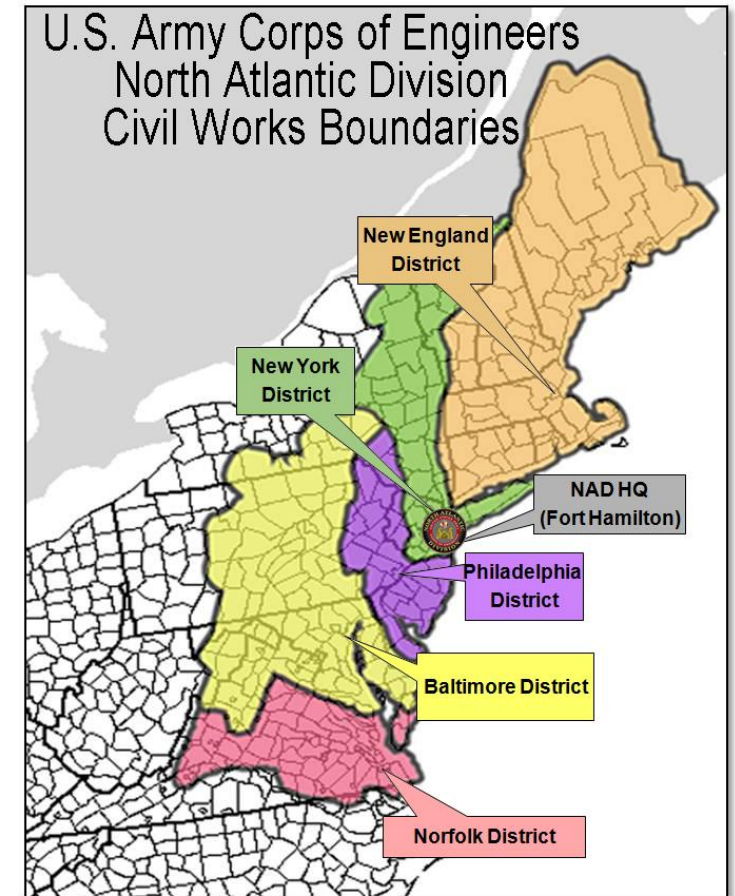
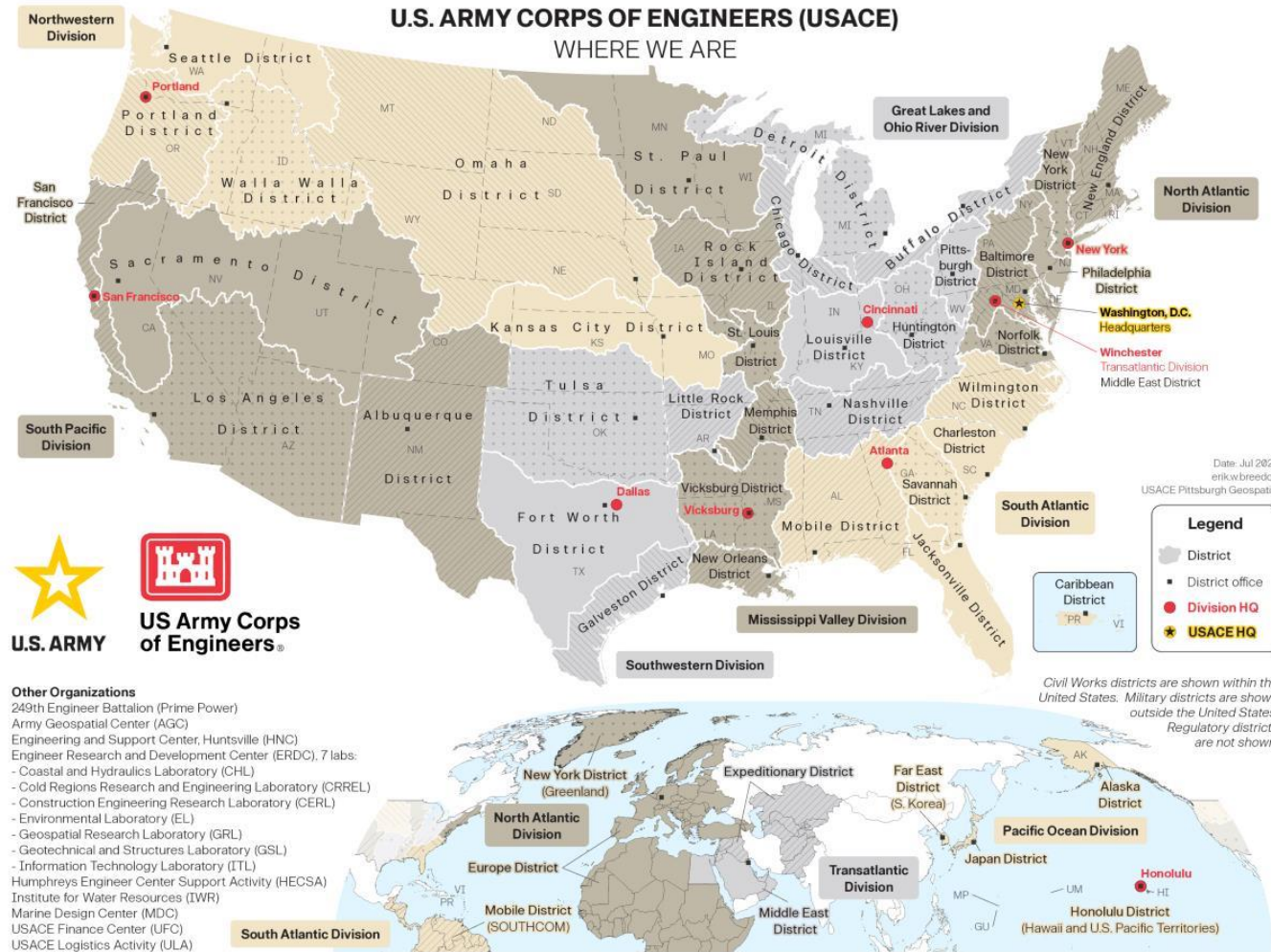




# U.S. ARMY CORPS OF ENGINEERS (USACE)

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Regulatory Mission (within US):  
8 Divisions, 38 Districts





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# BALTIMORE DISTRICT REGULATORY AREA OF RESPONSIBILITY

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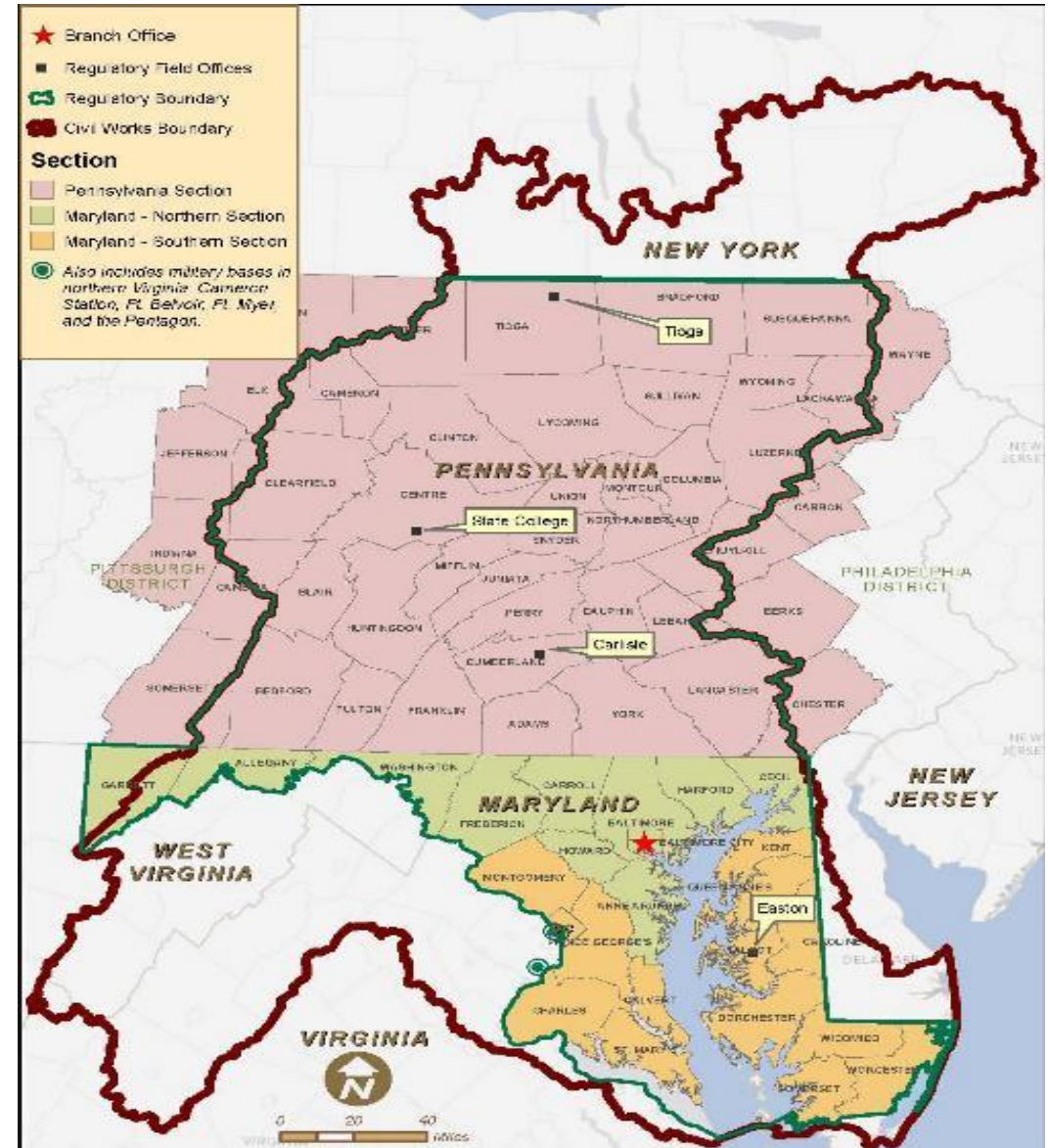
Maryland

Central Pennsylvania & Lead District in Pennsylvania

Washington, D.C., & Fort Belvoir, the Pentagon, and  
Fort Myer in Northern Virginia

3 permitting sections, 1 enforcement section

4 field offices (3 PA, 1 Easton MD)





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# NATIONWIDE PERMIT (NWP) BACKGROUND

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- General permits issued by USACE Headquarters to authorize activities across the country
  - Categories of activities with no more than minimal individual and cumulative adverse environmental effects
  - Reissuance process every 5 years
  - Rulemaking activity, with interagency review under EO 12866

<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>
- Authorize ~35,000 activities per year (reported) plus ~30,000 non-reporting activities
- First nationwide permits (NWPs) issued in 1977
- The nationwide permits are issued every five years
  - 57 existing 2021 NWPs
  - Current 2021 NWPs scheduled to expire on March 14, 2026





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# ENABLE EFFECTIVE REGULATORY PROGRAM DELIVERY



94% of all issued/verified permits in FY2024 were General Permits

- ~60% of all issued/verified permits in FY2024 were Nationwide Permits

6% of all issued/verified permits in FY2024 were Individual Permits

General Permits: an important environmental protection tool



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# NATIONWIDE PERMITS

- NWP are activity-specific.
- Regional conditions may be added to protect important regional concerns and resources
- NWPs may be suspended or revoked on regional basis to account for regional differences
- Any project proposal must meet all terms and conditions of the specific NWP, including regional conditions.
- If the proposed activity does not qualify for a NWP, then an alternative permit type will be necessary:
  - Regional General Permit
  - Individual Permit



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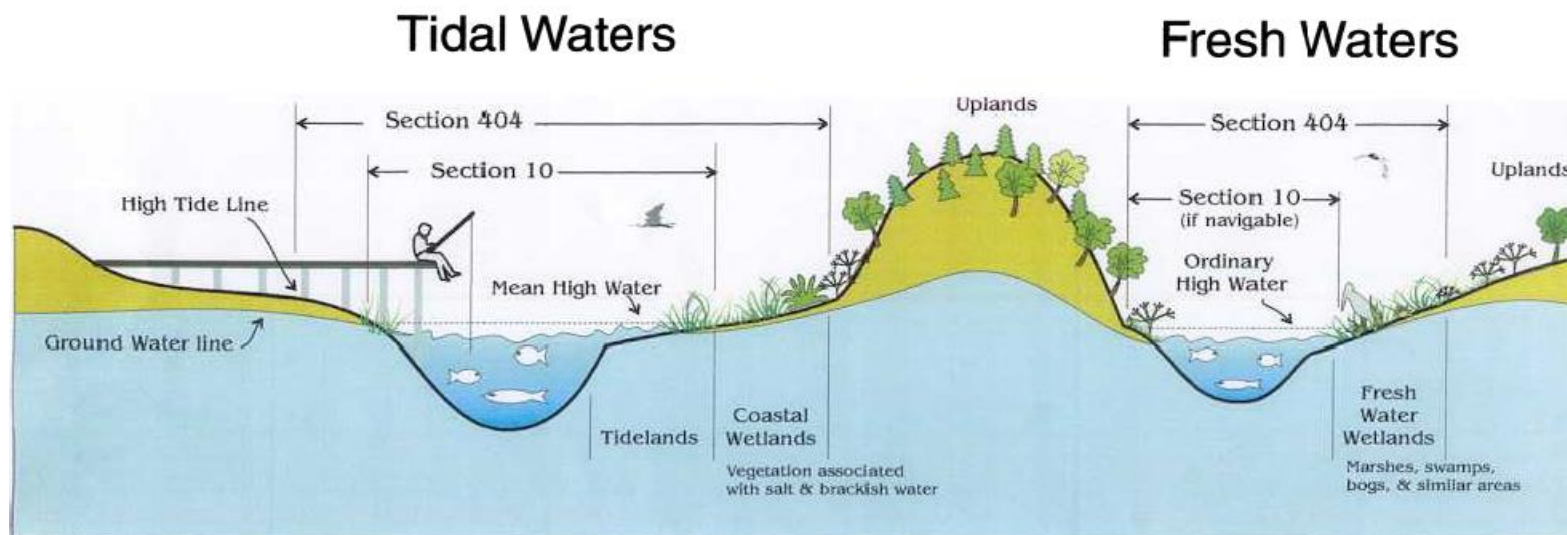
# NATIONWIDE PERMIT REGULATORY AUTHORITIES



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- Section 10 of the Rivers and Harbors Act of 1899
  - Permit is required for work in, over, or under a navigable water of the United States
  - Examples: all tidal waters, Chesapeake Bay, Susquehanna River, Potomac River
- Section 404 of the Clean Water Act General permits issued by Corps
  - Permit is required for discharges of dredged and/or fill material into waters of the United States, including wetlands
  - Examples: All navigable waters, streams, ponds, lakes, and wetlands

## CORPS OF ENGINEERS REGULATORY JURISDICTION





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# NATIONWIDE PERMIT 20 – RESPONSE OPERATIONS FOR OIL OR HAZARDOUS SUBSTANCES



- Activities conducted in response to a discharge or release of oil or hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), including containment, cleanup, and mitigation efforts, provided that the activities are done under either:
  - 1) The Spill Control and Countermeasure Plan required by 40 CFR 112.3
  - 2) The direction or oversight of the federal on-scene coordinator designated by 40 CFR part 300, or
  - 3) Any approved existing state, regional, or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts.





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# NATIONWIDE PERMIT 20 – RESPONSE OPERATIONS FOR OIL OR HAZARDOUS SUBSTANCES (CONT.)



- NWP 20 also authorizes activities required for the cleanup of oil releases in waters of the United States from electrical equipment that are governed by EPA's polychlorinated biphenyl spill response regulations at 40 CFR part 761.
- NWP 20 also authorizes the use of temporary structures and fills in waters of the United States for spill response training exercises.





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# NATIONWIDE PERMIT 20

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- Statutory Authority: Section 10/404
- Applicable Waters: All waters of the U.S.
- Temporary construction access work and fills (when not for a spill response training exercise) may be authorized by NWP 33 or regional general permits.
- Pre-Construction Notification (PCN) is not required for NWP 20 unless PCN is triggered by:
  - NWP General Conditions (e.g., ESA, 106, etc.)
  - District Regional Conditions
- Must refer to NWP 20 General Conditions and Regional Conditions to determine if a PCN is required



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# NATIONWIDE PERMIT CONDITIONS THAT MAY TRIGGER PCN

- General Condition #16 – *Wild and Scenic Rivers*
  - <https://www.rivers.gov/>
- General Condition #18 – *Endangered Species* (Section 7 ESA)
  - “Information, Planning and Conservation System” (IPaC): <http://ecos.fws.gov/ipac/>
  - <https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-consultations-greater-atlantic-region>
- General Condition #20 – *Historic Properties* (Section 106)
  - State Historic Preservation Office (SHPO) and/or Tribal Historic Preservation Office (THPO)
- General Condition #31 – *Activities Affecting Structures or Works Built by the United States*
  - <https://www.usace.army.mil/Missions/Civil-Works/Section408/>
- Federal permittees (other federal agencies) must provide documentation demonstrating compliance with Section 7 ESA and Section 106
- PCN requirements may also be added through regional conditions





- NWP General Condition #32 *Pre-Construction Notification (PCN)* outlines the PCN process and includes information regarding:
  - Timing – review timeframes of the PCN
  - Contents of PCN – PCN must be in writing and include specific information listed and described for a complete PCN
  - Form of PCN – Form ENG 6082, unless other joint permit application procedures with State
  - Agency Coordination
- In order to qualify for use under NWP 20, the activity must:
  1. Meet the activity-specific terms of NWP 20
  2. Meet the general conditions of the NWPs
  3. Meet the regional conditions of the NWP, including 401 WQC (CZMA, as applicable)
- If the activity does not meet all of these requirements, it does not qualify for authorization under a NWP
- If you are unable to make this determination or would like verification that an activity qualifies for a specific NWP, you will need to submit a PCN.



# REQUESTING A PROJECT-SPECIFIC NWP 20 VERIFICATION

**Check the appropriate USACE district website for their permitting application procedures**

Many requests for permit actions can be completed online through the USACE's Regulatory Request System (RRS): A new national online application portal that includes electronic submission options for permit applications <https://rrs.usace.army.mil/rrs>

ENG Form 6082, Nationwide Permit Pre-Construction Notification (PCN)  
<https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Regulatory-Program-Forms/>

District-specific joint permit application procedures



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# NATIONWIDE PERMIT 20 – STATUS IN NORTH ATLANTIC DIVISION



- District NWP 20 Suspension:
  - Pennsylvania (except Pittsburgh District area of responsibility and certain water bodies)
  - Six New England states in New England District (CT, ME, MA, NH, RI, VT)
- NWP 20 is available for use in:
  - Maryland
  - District of Columbia
  - Virginia
  - Delaware
  - New Jersey- applicable in waters that have not been assumed by the State of New Jersey
  - New York
- General conditions of the NWPs are in the Federal Register notice(s) announcing the issuance of the 2021 NWPs (86 FR 2744 and 86 FR 73522).
- All activity-specific requirements, NWP general conditions, and district-specific regional general conditions apply





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# NATIONWIDE PERMIT SUSPENSIONS & REGIONAL CONDITIONS

Refer to the NWP Suspensions and/or Regional Conditions of the specific USACE District to determine if NWP 20 is applicable in the project location and whether a PCN is regionally required for NWP 20

Baltimore District:

<https://www.nab.usace.army.mil/Missions/Regulatory/Nationwide-Permits/>

Norfolk District:

<https://www.nao.usace.army.mil/Missions/Regulatory/Nationwide-Permit-Conditions/>

Philadelphia District:

<https://www.nap.usace.army.mil/Missions/Regulatory/Permits/NWP/>

New York District:

<https://www.nan.usace.army.mil/Missions/Regulatory/Nationwide-Permits/>



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# NWP 20 PROCESS WHEN NO PCN REQUIRED

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The project proponent may proceed under the authority of the NWP 20, provided all terms and conditions of the NWP, including all general and regional conditions, are met and the 401 WQC process is complete.

- If a general 401 WQC for the NWP 20 has been granted or waived, the project proponent may begin work as long as comply with all terms and conditions of NWP 20 and regional conditions, including WQC.
- If a general 401 WQC for the NWP 20 has not been granted or waived or the project proponent cannot comply with all the conditions of the general 401 WQC, the project proponent must contact the appropriate State/tribal/EPA authority(ies) prior to beginning work to obtain an individual 401 WQC. Project proponent may proceed with work under the terms and conditions of the NWP 20, provided 401 WQC process is completed.



# NWP 20 PROCESS WHEN PCN REQUIRED



1. Project proponent must submit PCN to the Corps.
2. Corps determines if PCN is complete within 30 days. If PCN is not complete, the project proponent is notified that the PCN is not complete and will be requested to submit additional information.
3. If PCN is complete, the Corps will determine if the activity qualifies for the NWP. If activity does not qualify for the NWP, the Corps will notify the project proponent within 30 days that the activity will need to be evaluated under another type of permit (RGP, LOP, or SP).
4. If activity qualifies for the NWP, the Corps will initiate any required consultations under Section 7 of the Endangered Species Act, Section 106 of the National Historic Preservation Act, including tribal coordination, Essential Fish Habitat, etc.
5. If general 401 WQC for the NWP 20 has not been granted or waived, the project proponent must request individual 401 WQC from the appropriate certifying authority.
6. Following completion of the 401 WQC process, tribal coordination, Endangered Species Act, Section 106, and 408 process (if applicable), the Corps will proceed to verify the use of the NWP 20 and will add any necessary special conditions to the NWP verification to ensure impacts to waters of the U.S. are no more than minimal individually and cumulatively to the environment.
7. **No work may be verified under a NWP until the 401 WQC process is complete.**
  - If general 401 WQC granted or waived - permittee may begin work once the Corps' NWP verification letter is received
  - If individual 401 WQC must be obtained - permittee cannot begin work until BOTH the Corps' NWP verification letter AND the individual 401 WQC (or waiver) is received





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# 401 Rule Process and Timeline

40 CFR 121

\*If no agreement, RPOT defaults to 6 months (121.6(c))

Applicant submits pre-filing meeting request to Certifying Authority (CA) at least 30 days prior to submitting request for certification (121.4)

Pre-filing meeting at CA's discretion.

Applicant submits Certification Request to CA with content required in 121.5\*. This is start date of reasonable period of time (RPOT).

\*CA can identify additional contents to require (121.5(c))

CA sends written confirmation to applicant and Corps of date that request for certification was received (121.6(a)).

Corps and CA **jointly agree** in writing to RPOT (NTE 1 year)\* (121.6(b)).

CA denies 401 (121.7(e)).

**Corps cannot issue permit.**

Corps may send provisional notification to applicant.

CA grants, or grants with conditions, 401 Certification (121.7(c-d)).

CA expressly waives (121.7(f)) or fails/refuses to act (121.9).

Can be waived or shortened by certifying authority.

= Corps steps

= Certifying authority/EPA steps

Within 30 days of Corps notice to EPA

Neighboring jurisdiction notifies EPA and Corps and requests public hearing (121.14).

Objects

Neighboring jurisdiction has 60 days to object.

No objection

EPA notifies neighboring jurisdiction, Corps, and applicant (121.13(b-c)).

EPA determines project may affect neighboring jurisdiction

EPA determines if project may affect neighboring jurisdiction's water quality (121.13).

EPA determines project would not affect neighboring jurisdiction

Corps sends written notification to EPA within 5 days of receiving application and certification or waiver (121.12(a)).

Waivers go through (a)(2) process.

Resolution of effects (i.e. public hearing, comments, special conditions...) (121.15)

Corps considers additional permit conditions, adds if necessary (121.15(d)).

Additional conditions cannot ensure compliance with neighboring jurisdiction's water quality requirements (121.15(e)).

**Corps can issue permit incorporating 401 certification conditions.**

**Corps cannot issue permit.**

## 401(a)(2) Process



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# SPECIAL CONDITIONS WHEN PCN REQUIRED

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The Corps districts may add conditions to site-specific NWP activities that require a PCN to ensure that those activities will result in no more than minimal individual and cumulative adverse environmental effects (33 CFR 330.5(d)).

Examples: time-of-year restrictions for construction, compliance with ESA/106/408, compensatory mitigation

Overall, most activities authorized by NWP 20 result in improved aquatic resource conditions through the containment and cleanup of oil and hazardous substances, in certain cases, compensatory mitigation could be required.

- Must comply with applicable provisions of Corps regulations at 33 CFR part 332
- Credits from approved mitigation banks or in-lieu fee programs may be used to satisfy compensatory mitigation requirements



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# WHAT WILL HAPPEN WHEN THE 2021 NWPS EXPIRE ON MARCH 14, 2026



Unless further modified, suspended, or revoked, the 2021 NWP 20 will be in effect until March 14, 2026. The new NWPs will replace the prior versions of those NWPs.

12-month grandfathering provision for previously verified activities:

1. If you have started construction, or are under contract to begin the authorized work in reliance upon a NWP before the 2021 NWP expiration date (March 14, 2026), you will have until March 14, 2027 to complete the activity under the terms and conditions of the 2021 NWPs, general conditions, and regional conditions (unless the Corps' verification letter specified a different expiration date).
2. If you will not commence or be under contract by March 14, 2026, must verify that the work in waters of the US continues to qualify for authorization under the modified or reissued 2026 NWPs terms, conditions, regional conditions and new WQC.
3. If you cannot complete the authorized activity by March 14, 2027, you must cease work until verification that the work qualifies for authorization under the modified or reissued 2026 NWPs is received, including new WQC



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# QUESTIONS

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