

**U.S. Army Corps of Engineers - Charleston District  
Checklist for 2021 Nationwide Permit Review  
Nationwide Permit 38**

**Cleanup of Hazardous and Toxic Waste  
(10/404)**

SAC #: \_\_\_\_\_

Applicant Name: \_\_\_\_\_

Waterway/Location: \_\_\_\_\_

Project Name: \_\_\_\_\_

**The purpose of this Nationwide Permit (NWP) checklist is to assist with determining if a proposed activity qualifies for use of this NWP. The checklist will also assist with determining when a Pre-Construction Notification (PCN) is be required and/or if other actions that may be required during a PCN review.**

**A PCN is required for all activities authorized by NWP 38. Each question in Section A and B of the checklist refers to a specific 2021 NWP Regional Condition (RC). The 2021 NWP Regional Conditions can be found at <https://www.sac.usace.army.mil/Missions/Regulatory>**

**Complete Sections A-C**

**A. Water Quality Certification (WQC) and/or Coastal Zone Consistency (CZC) required from SCDHEC**

1. For proposed activities that are located within the Critical Area of the Coastal Zone, a Critical Area Permit (CAP), which also serves as the CZC, from SCDHEC is required. Has the prospective permittee obtained a CAP? (RC D.17 & AND F.3)

- Yes (If WQC was issued or waived, if required, Corps can verify NWP)**       **No (If WQC was issued or waived, if required, Corps can issue a provisional verification. CZC presumed concurrence or CAP is required prior to commencement of work).**       **N/A**

**B. Regional Conditions:**

1. Does the prospective permittee understand that use of the nationwide permits does not preclude requirements to obtain all other applicable Federal, State, county, and local government authorizations? (RC C.1)

Yes

2. Would the proposed activity occur in areas known or suspected to have sediment contamination? (RC C.2)

**Yes (If activity  
can be authorized by  
NWP 38)**                       **No**

3. Would the proposed activity, both temporary and permanent, be located in a FEMA designated floodway? (RC C.3)

**Yes (PCN required)**                       **No**

4. Would the proposed activity be located in or adjacent to an authorized USACE Civil Works project, including Federal Navigation projects, as listed below? (RC C.4)

- a. **USACE Civil Works projects:** Buck Creek in Horry County, Eagle Creek in Dorchester County, Kingstree Branch in Williamsburg County, Sawmill Branch in Berkeley and Dorchester Counties, Scotts Creek in Newberry County, Socastee Creek in Horry County and Turkey Creek in Sumter County, Wilson Branch in Chesterfield County, Edisto River in Orangeburg and Dorchester Counties, North Edisto River in Aitken and Orangeburg Counties, Folly Beach in Charleston County, Hunting Island Beach, waste water treatment plant and water line in Beaufort County, Myrtle Beach in Georgetown and Horry County, Pawleys Island Beach in Georgetown County, Edisto Island Beach in Charleston County, Crab Bank in Charleston County, Morris Island Lighthouse in Charleston County, Miller Corner Disposal area Phragmites Control in Georgetown County, Cape Marsh Management area (Santee Coastal Reserve) in Charleston County, Murphy Island in Charleston County, Pocotaligo River and Swamp in Clarendon and Sumter Counties, Pinopolis Dam in Berkeley County, Battery Pringle in Charleston County, Castle Pinckney in Charleston County, Pompion Hill Chapel along the Cooper River in Berkeley County, Drayton Hall in Charleston County, Indian Bluff in Orangeburg County, Singleton Swash at Shore Drive in Horry County, Turkey Creek Bridge at Pineview Drive in Lancaster, Big Dutchman Creek Bridge at West Oak Drive in Rock Hill, SC, Calabash Branch Bridge at Tom Joye Road in Clover, Blue Branch Bridge at

Fortanberry Road in Gaffney, Glenn Creek Bridge at Sulphur Springs Road in Spartanburg County, Cow Castle Creek (Bowman) in Orangeburg County, Cowpen Swamp at Simpson Creek in Horry County, Crabtree Swamp in Horry County, Saluda River (North, South, and Middle Fork) in Greenville County, Shot Pouch Creek in Sumter County, Simpson Creek in Horry County, and Todd Swamp in Horry County.

**Yes (PCN required)**                       No

- b. **Defined Federal Navigation projects:** Ashley River (0.5 miles east of Hwy 7 bridge downstream to the Atlantic Intracoastal Waterway (AIWW)), Atlantic Intracoastal Waterway ((AIWW) GA/SC line to SC/NC line), Brookgreen Garden Canal, Calabash Creek, Charleston Harbor (including the Cooper River, Town Creek, Shem Creek to Coleman Blvd and Mount Pleasant Channel), Folly River, Georgetown Harbor (Winyah Bay, Sampit River and Bypass Channel), Jeremy Creek, Little River Inlet, Murrells Inlet (Main Creek), Port Royal Harbor, Shipyard River, Savannah River (Below Augusta) and Town Creek McClellanville (i.e., Five Fathoms Creek, AIWW to Bulls Bay).

**Yes (PCN required)**                       No

- c. **Undefined Federal Navigation projects:** Adams Creek, Archers Creek (From intersection with Beaufort River for 2 miles), Edisto River (River mile 0.00 to 175.0), Great Pee Dee River (Waccamaw River via Bull Creek then to Smith Mills, then to Cheraw), Lynches River/Clark Creek (Clark Creek to Lynches River, River Mile 0.0 to 56.0), Mingo Creek (to Hemmingway Bridge), Salkehatchie River (5 miles above Toby's Bluff to Hickory Hill, River mile 20.4 to 62.3), Santee River (Closed to navigation at mile 87 (Santee Dam)), Waccamaw River (river mile 0.0 to 90 (state line)), Wateree River (Mouth to Camden), and Village Creek (Morgan River to Porpoise Fish Co., 2.2 miles).

**Yes (PCN required)**                       No

5. If the proposed activity would be located in or adjacent to an authorized Federal Navigation project, as referenced in Regional Condition C.4.b, does the project drawings include the following information: (1) State Plane Coordinates (NAD 1983) for a minimum of two corners of each structure or fill where it is closest to the Federal channel; (2) the distance from watermost edge of the proposed structure or fill to the nearest edge of the Federal channel; AND (3) Mean Low Water line and the Mean High Water line? (RC C.5)

N/A       **Yes (PCN required)**       **No (Revise the drawings to include this information)**

6. For all NWP's requiring a PCN AND when the activity involves the discharge of dredged or fill material into waters of the U.S. associated with mechanized land clearing that results in the permanent conversion of forested or scrub-shrub wetlands to herbaceous wetlands, does the PCN include the following information: (1) a written description and/or drawings of the proposed conversion activity and (2) acreage of the permanent conversion? (RC C.6)

Yes       **No (The PCN should be revised to include this information)**       N/A

7. Does the activity comply with all of the NWP General Conditions?

Yes       **No (Activity does not qualify for use of a NWP)**

8. For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38 and 54, activities, would the activities occur in the critical resource waters of the ACE Basin National Estuarine Research Reserve or the North Inlet Winyah Bay National Estuarine Research Reserve, including wetlands adjacent to these critical resource waters? (RC D.5)

**Yes (A PCN is required)**       No       N/A

**C. Nationwide Permit 38**

1. Is the proposed specific activity required to effect the containment, stabilization, or removal of hazardous or toxic waste materials?

- Yes       **No (Activity does not qualify for use of NWP 38)**

2. Is the specific activity being performed, ordered or sponsored by a government agency with established legal or regulatory authority, AND/OR is the specific activity a court ordered remedial action plan or related settlement?

- Yes       **No (Activity does not qualify for use of NWP 38)**

3. Does the proposed specific activity include the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste?

- Yes (Activity does not qualify for use of NWP 38)**       No

4. Are the activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA?

- Yes (permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act are not required for the activities.)**       No

Checklist Completed By: \_\_\_\_\_

Date: \_\_\_\_\_