

**U.S. Army Corps of Engineers - Charleston District
Checklist for 2017 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, if a PCN is incomplete, and other actions that may be required during a PCN review.

A PCN is required for all activities authorized by NWP 38.

Complete Sections I and II.

I. Regional Conditions:

1. Will the proposed activity alter or temporarily occupy or use a USACE federally authorized Civil Works project (a "USACE" project") regulated by 33 U.S.C. 408?

Yes* (PCN required) No

2. If the proposed activity requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use USACE federally authorized "USACE" project, has the Charleston District issued the section 408 permission to alter, occupy, or use the USACE project?

N/A Yes No (Activity cannot be authorized by a NWP until 408 permission is issued)

3. If the proposed activity is located in or adjacent to an authorized Federal Navigation project, as listed in Regional Condition #18, does the PCN include project drawings that have the following information: a) location of the edges of the Federal channel; b) setback distances from the edge of the channel; c) the distance from watermost edge of the proposed structure or fill to the nearest edge of the channel and the Mean High and Mean Low water lines; and d) coordinates of both ends of the watermost edge of the proposed structure or fill (NAD 83 State Plane Coordinates in decimal degrees).

N/A Yes No (Incomplete PCN)

4. Is the proposed activity located in waters that are designated critical habitat under section 7 of the Endangered Species Act or waters that are proposed critical habitat? (Refer to the following National Oceanic and Atmospheric Administration (NOAA) Fisheries website for the most up-to-date information regarding Critical Habitat designations under the jurisdiction of the National Marine Fisheries Service (NMFS): http://sero.nmfs.noaa.gov/protected_resources/section_7/threatened_endangered/)

**Yes* (PCN required
–Corps PM to
determine if
coordination with
NMFS PRD is
necessary)** No

5. Is the proposed project located within a designated floodway within the FEMA Special Flood Hazard Area (SFHA)?

Yes (The permittee must comply with with Regional Condition #14.) No

6. Is the proposed project located within a designated FEMA Special Flood Hazard Area (SFHA)?

Yes (The permittee must comply with with Regional Condition #15.) No

7. Will the discharge of dredged or fill material into waters of the United States, associated with the proposed activity occur within or directly affecting Designated Critical Resource Waters, including wetlands adjacent to such waters? (Note: The ACE Basin National Estuarine Research Reserve and the North Inlet Winyah Bay National Estuarine Research Reserve are Designated Critical Resource Waters.)

N/A Yes* (PCN required) No

8. Does the proposed activity comply with the Regional Conditions #1-#9?

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

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

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

10. Does the PCN include ALL of the following information: a) documentation that the specific activities are required to effect the containment, stabilization, or removal of hazardous or toxic waste materials as performed, ordered, or sponsored by a government agency with established legal or regulatory authority; b) a narrative description indicating the size and location of the areas to be restored, the work involved and a description of the anticipated results from the restoration; and c) a plan for the monitoring, operation, or maintenance of the restored area?

Yes* (PCN required) No (Incomplete PCN)

II. Nationwide Permit 38

A is required for all activities authorized by NWP 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: _____