



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, CHARLESTON DISTRICT
69A HAGOOD AVENUE
CHARLESTON, SOUTH CAROLINA 29403-5107

FINAL REGIONAL CONDITIONS FOR 16 NATIONWIDE PERMITS IN CHARLESTON DISTRICT (SAC)

Effective Date: March 15, 2021
Expiration Date: March 14, 2026

A. BACKGROUND/APPLICABILITY

1. The following regional conditions have been approved by the Division Engineer for the South Atlantic Division (SAD) for use in the Charleston District for the Nationwide Permits (NWP) published in the January 13, 2021, Federal Register (86 FR 2744) announcing the reissuance of 12 existing (NWP) and four new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. These 16 NWP will go into effect on March 15, 2021, and will expire on March 14, 2026:
 - NWP 12 – Oil or Natural Gas Pipeline Activities
 - NWP 21 – Surface Coal Mining Activities
 - NWP 29 – Residential Developments
 - NWP 39 – Commercial and Institutional Developments
 - NWP 40 – Agricultural Activities
 - NWP 42 – Recreational Facilities
 - NWP 43 – Stormwater Management Facilities
 - NWP 44 – Mining Activities
 - NWP 48 – Commercial Shellfish Mariculture Activities
 - NWP 50 – Underground Coal Mining Activities
 - NWP 51 – Land-Based Renewable Energy Generation Facilities
 - NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
 - NWP 55 – Seaweed Mariculture Activities
 - NWP 56 – Finfish Mariculture Activities
 - NWP 57 – Electric Utility Line and Telecommunications Activities
 - NWP 58 – Utility Line Activities for Water and Other Substances
2. These regional conditions will provide additional protection for the aquatic environment and will help ensure that the NWP authorize only those activities with no more than minimal adverse environmental effects.
3. These regional conditions are not applicable to the remaining 40 existing NWP (NWP 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, 54 (at this time

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NWPs 26 and 47 are reserved)) that were not reissued or modified by the January 13, 2021 final rule. Any proposed regional conditions that would have applied to these 40 NWPs are indicated as “Reserved” below and will be included in a revised regional condition document when reissued. These 40 NWPs were published in the January 6, 2017, issue of the Federal Register (82 FR 1860) and these NWPs remain in effect until the Corps issues a final rule reissuing those NWPs or March 18, 2022, whichever comes first. The regional conditions for these 40 NWPs that were approved by Division Engineer in 2017 remain in effect while these 2017 NWPs remain in effect.

4. As specified, under NWP General Condition 27, Regional and Case-By-Case Conditions: The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its Section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.
5. Note: The acronym “PCN” used throughout this document refers to *Pre-Construction Notification* as further defined in NWP General Condition 32.

B. EXCLUDED WATERS AND/OR AREAS

Not applicable.

C. REGIONAL CONDITIONS APPLICABLE TO ALL 16 NWPs

1. Use of nationwide permits does not preclude requirements to obtain all other applicable Federal, State, county, and local government authorizations.
2. NWP activities are not authorized in areas known or suspected to have sediment contamination.
3. For all proposed activities that would be located within a FEMA designated floodway, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition 32.
4. For all NWPs, the prospective permittee must submit a PCN to the District Engineer in accordance with General Conditions 31 and 32, for any activity that would be located in or adjacent to an authorized USACE Civil Works project, including Federal Navigation projects. The USACE Civil Works projects include Buck Creek, North Carolina and South Carolina, 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. Federal Navigation projects include Adams Creek, Ashley River (0.5 miles east of Hwy 7 bridge downstream to the Atlantic Intracoastal Waterway (AIWW)), Brookgreen Garden Canal,

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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 Creek, Town Creek McClellanville (i.e., Five Fathoms Creek, AWW to Bulls Bay), and Village Creek.

5. For all proposed activities that would be located in or adjacent to an authorized Federal Navigation project, as referenced in Regional Condition C.4, the project drawings must 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.

D. REGIONAL CONDITIONS APPLICABLE TO SPECIFIC NWPs

1. Reserved.
2. Reserved.
3. For NWPs 12, 57 and 58, temporary structures, fills, and/or work, including the use of temporary mats, are authorized for the minimum amount of time necessary to accomplish the work, which shall not exceed a period of 180 days without additional Corps approval. The temporary structures, fills, and/or work, including the use of temporary mats, shall be removed as soon as the work is complete and the disturbed areas be restored to pre-construction contours and conditions. The temporary mats include timber mats, metal, synthetic and/or artificial mats, or other materials that may serve the purpose of mats. The discharge of material resulting from trench excavation that is temporarily sidecast into waters of the United States that is authorized by NWPs 12, 57 or 58 is excluded from this Regional Condition.
4. For NWPs 12, 57 and 58 that require PCNs and that involve temporary structures, fills, and/or work, including the use of temporary mats, the PCN should include the following information: (1) a written description and/or drawings of the proposed temporary activities that will be used during project construction; (2) the timeframe that the proposed temporary activities will be in place; and (3) specifications of how pre-construction contours will be re-established and verified after construction. Temporary mats include timber mats, metal, synthetic and/or artificial mats.
5. For NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57 and 58 in accordance with General Condition 22(a), the ACE Basin National Estuarine Research Reserve and the North Inlet Winyah Bay National Estuarine Research Reserve are Designated Critical Resource Waters. Activities described in the NWPs listed

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herein are subject to the limitations and/or PCN requirements listed in General Condition 22(a).

6. For NWP 58, the associated intake structure must be screened to prevent entrainment of juvenile and larval organisms, and the inflow velocity of the associated intake structures cannot exceed 0.5 feet/second.
7. For NWPs 12, 57 and 58 activities that involve horizontal directional drilling beneath navigable waters of the United States (i.e., section 10 waters), the PCN should include a proposed remediation plan (i.e., frac-out plan).
8. For NWPs 12, 29, 39, 51, 52, 57 and 58 that involve crossings, all culverts must be adequately sized to maintain flow. For these activities that require submittal of a PCN, the PCN should include the minimum size of and number of culvert/pipes that are proposed.
9. For NWPs 12, 43, 51, 57 and 58, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition 32, for activities that involve the loss of greater than 0.005 acre of intermittent and/or perennial stream bed.
10. For NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57 and 58 that involve the loss of greater than 0.005 acre of intermittent and/or perennial stream bed, compensatory mitigation will be required and the PCN should include compensatory mitigation plan.
11. For NWPs 12, 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 57 and 58, the discharge cannot cause the loss of greater than 0.05 acre of intermittent and/or perennial stream bed.
12. For NWPs 29 and 39, the discharges of dredged or fill material for the construction of stormwater management facilities in perennial streams are not authorized.
13. Reserved.
14. For existing NWP 48 activities that involve changing from bottom culture to floating or suspended culture OR new NWP 48 activities that involve floating or suspended culture, the prospective permittee must submit a PCN to the District Engineer in accordance with General Condition 32.
15. For new NWP 48 activities involving floating or suspended culture and/or NWPs 55 and 56 activities that will occur adjacent to property that is not owned by the prospective permittee, the PCN should include the following information:

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- a. A map or depiction that shows the adjacent property(ies) and adjacent property owners' contact information. Note: This information may be obtained online from the applicable county's tax information pages.
- b. A signed letter(s) of "no objection" to the proposed mariculture activity from each of the adjacent property owner(s). Each letter shall include the name, mailing address, property address, property Tax Map Parcel (TMS) number, and signature of the property owner. Or, if the prospective permittee is unable to obtain a letter(s) of "no objection", the Corps will notify the adjacent property owner(s) of the proposed project by letter wherein the adjacent property owner will be given 15 days to provide comments.

16. Reserved.

17. The prospective permittee is advised of the following for activities under any NWP for which (1) the 401 Water Quality Certifications (WQC) were denied (see F.1.a), and/or (2) activities under the NWP were found to be inconsistent with the S.C. Coastal Zone Management Program and, therefore, concurrence with the Coastal Zone Consistency determination was denied (see F.2.a), and/or (3) the proposed activity is located in one of the "Critical Areas" of the Coastal Zone (see F.3):

- a. For NWPs 12, 21, 29, 39, 44, 50, 57 and 58 where WQC was denied, the prospective permittee should:
 - 1) Request a pre-filing meeting with the South Carolina Department of Health and Environmental Control (SCDHEC);
 - 2) Submit their requests for WQC to SCDHEC and to the Corps concurrently; and
 - 3) Provide to the Corps a copy of the Individual WQC or evidence demonstrating a waiver was granted.
- b. For NWPs 12, 21, 29, 39, 42, 44, 50, 51, 55, 56, 57 and 58 where concurrence with the Coastal Zone Consistency was denied, the prospective permittee should provide to the Corps a copy of the Individual CZC Concurrence or presumed concurrence for the proposed activity.
- c. For all NWPs in any of the "Critical Areas" of the Coastal Zone, an Individual Critical Area permit is required (see F.3). Therefore, the prospective permittee should provide a copy of the Individual Critical Area permit to the Corps for the proposed activity.

Note: For WQC conditions on activities under NWPs 43, 51, and 52, see F.1.b. For Coastal Zone Consistency conditions on activities under NWPs 43 and 52, see F.2.b.

E. ACTIVITY SPECIFIC REGIONAL CONDITIONS

Not applicable.

F. SECTION 401 WATER QUALITY CERTIFICATION (WQC) AND/OR COASTAL ZONE MANAGEMENT ACT (CZMA) CONSISTENCY DETERMINATION SUMMARY AND APPLICABLE CONDITIONS

1. Water Quality Certification (WQC)

a. WQC Denied

The Water Quality Certifications (WQC) for the following NWPs are denied; therefore, an Individual WQC, or evidence demonstrating a waiver was granted, from the South Carolina Department of Health and Environmental Control (SCDHEC) will be required for authorization under these NWPs:

NWPs 12, 21, 29, 39, 44, 50, 57 and 58.

b. WQC Granted With Conditions

The following WQC Conditions, as stated in the SCDHEC's Notice of Department Decision dated November 25, 2020, are also considered 2021 NWP Regional Conditions:

1. For NWP 43, "Activities authorized by this certification are limited to maintenance of existing facilities, such as stormwater ponds, detention and retention basins, water control structures, outfall structures, emergency spillways, and existing ponds, that are proposed for use as water quantity or volume control. This NWP cannot be used for existing ponds that are proposed to be converted into water quality treatment facilities, such as sediment basins, sediment traps, or other similar structures."
2. For NWP 51, "This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed."
3. For NWP 52, "This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed."

c. WQC Granted Without Conditions

The WQCs for NWPs 40, 42 and 48 were granted without conditions.

d. No WQC Required

NWPs 55 and 56 do not require WQCs.

2. Coastal Zone Consistency (CZC)

a. CZC Concurrence Denied

The following NWPs were found to be inconsistent with the S.C. Coastal Zone Management Program; thus, the CZC concurrence is denied and an Individual CZC concurrence, or presumed concurrence for the proposed activity, will be required for these NWPs:

NWPs 12, 21, 29, 39, 42, 44, 50, 51, 55, 56, 57 and 58.

b. CZC Concurrence Granted With Conditions

The following CZC Conditions, as stated in the SCDHEC's Notice of Department Decision dated November 25, 2020, are also considered 2021 NWP Regional Conditions:

1. For NWP 43, "Activities authorized by this certification are limited to maintenance of existing facilities, such as stormwater ponds, detention and retention basins, water control structures, outfall structures, emergency spillways, and existing ponds that are proposed for use as water quantity or volume control. This NWP cannot be used for existing ponds that are proposed to be converted into water quality treatment facilities such as sediment basins, sediment traps, or other similar structures."
2. For NWP 52, "This NWP is not certified for activities that cause the loss of more than 300 linear feet of stream bed."

c. CZC Concurrence Granted Without Conditions

The CZCs for NWPs 40 and 48 were granted without conditions.

d. No CZC required

Not applicable.

3. Coastal Zone Consistency (CZC) General Condition

The following CZC General Condition, as stated in the SCDHEC 401/CZC Letter dated December 14, 2020, is considered a 2021 NWP Regional Condition:

For all 16 NWPs, "Activities in the Critical Areas (as defined in 48-39-10, R 30.1(D) and R 30.10) require a direct permit from SCDHEC OCRM. SCDHEC OCRM's action on direct critical areas permits will serve as the consistency determination for the critical area activity."

G. DISTRICT POINT OF CONTACT

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