



**US Army Corps
of Engineers**
Wilmington District

PUBLIC NOTICE

Issue Date: June 5, 2007

Corps Action ID: SAW-2006-41003-5NC

PUBLIC NOTICE FINAL REGIONAL CONDITIONS FOR NATIONWIDE PERMITS

Purpose: The proposed Regional Conditions for Nationwide Permits in the Wilmington District are Final, as per approval by and signature of the South Atlantic Division Engineer, 1 June 2007. This Notice contains the Final Regional Conditions for Nationwide Permits in the Wilmington District (see Attachment 1).

Background: The Corps of Engineers reissued all the existing Nationwide Permits (NWP), General Conditions (GCs), and definitions, with some modifications, and added one new General Condition. In addition to the NWP general conditions, Corps Districts 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 ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. The Final NWPs, GCs, and associated definitions became effective on March 19, 2007. The Final Regional Conditions for the Wilmington District became effective on June 1, 2007.

The Wilmington District issued an initial public notice on October 19, 2006, soliciting comments on draft proposed Regional Conditions to accompany the original September 27, 2006, proposed Nationwide Permits, definitions and General Conditions. The Wilmington District also issued a public notice on March 15, 2007 for revised Regional Conditions, reflecting the comments received from the proposed conditions and incorporating changes needed due to the revisions made for the Final Nationwide Permits and General Conditions. The Wilmington District prepared Environmental Analyses for each of the Nationwide Permits with Regional Conditions for consideration by the South Atlantic Division Engineer.

In the analyses, the South Atlantic Division Engineer considered the public comments, the potential cumulative adverse effects on the aquatic environment that could result from the use of each NWP and the regional conditions, the exclusion of the NWPs from certain geographic areas or specific water bodies, and other required conditions to further ensure that each and all NWPs in the District shall not authorize activities that may exceed the minimal adverse effects threshold.

Concurrences and Certifications: The North Carolina Division of Water Quality (DWQ) is presently revising their general certifications for the NWPs. They have renewed and extended the existing general certifications for 6 months until September 7, 2007. Current status on 401 certifications is maintained on the North Carolina DWQ website

http://h2o.enr.state.nc.us/newetlands/rd_wetlands_certifications.htm). (As noted in these documents, DWQ has added General Conditions to the Corps NWP's and the District Regional Conditions.) The District has linked the nationwide permits to this web page to ensure that the public has access to the most current certification.

The United States Environmental Protection Agency approved Section 401 Water Quality Certification conditions for Nationwide Permits for waters within the tribal jurisdiction of the Eastern Band of the Cherokee Indians on May 8, 2007 (see Attachment 2).

The Coastal Zone Management Act consistency determination for the NWP's was issued on May 7, 2007 (see Attachment 3).

Final Regional Conditions for Nationwide Permits in the Wilmington District

The Corps has identified waters that will be excluded from the use of all NWP's during certain timeframes. These waters are:

1.1 Anadromous Fish Spawning Areas

Waters of the United States identified by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning areas are excluded during the period between February 15 and June 30, without prior written approval from NCDMF or NCWRC and the Corps.

1.2 Trout Waters Moratorium

Waters of the United States in the twenty-five designated trout counties of North Carolina are excluded during the period between October 15 and April 15 without prior written approval from the NCWRC. (see Section I. b. 7. for a list of the twenty-five trout counties).

1.3 Sturgeon Spawning Areas

Waters of the United States designated as sturgeon spawning areas are excluded during the period between February 1 and June 30, without prior written approval from the National Marine Fisheries Service (NMFS).

2.0 Waters Requiring Additional Notification

The Corps has identified waters that will be subject to additional notification requirements for activities authorized by all NWP's. These waters are:

2.1 Western NC Counties that Drain to Designated Critical Habitat

Waters of the U.S. that requires a Pre-Construction Notification pursuant to General Condition 27 (PCN) and located in the sixteen counties listed below, applicants must provide a copy of the PCN to the US Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28805. This PCN must be sent concurrently to the US Fish and Wildlife Service and the Corps Asheville Regulatory Field Office. Please see General Condition 17 for specific notification requirements related to Federally Endangered Species and the following website for information on the location of designated critical habitat.

Counties with tributaries that drain to designated critical habitat that require notification to the Asheville US Fish and Wildlife Service: Avery, Cherokee, Forsyth, Graham, Haywood, Henderson, Jackson, Macon Mecklenburg, Mitchell, Stokes, Surry, Swain, Transylvania, Union and Yancey.

Website and office addresses for Endangered Species Act Information:

The Wilmington District has developed the following website for applicants which provide guidelines on how to review linked websites and maps in order to fulfill NWP general condition 17 requirements.

<http://www.saw.usace.army.mil/wetlands/ESA>

Applicants who do not have internet access may contact the appropriate US Fish and Wildlife Service offices or the US Army Corps of Engineers office listed below.

US Fish and Wildlife Service
Asheville Field Office
160 Zillicoa Street
Asheville, NC 28801
Telephone: (828) 258-3939

Asheville US Fish and Wildlife Service Office counties: All counties west of and including Anson, Stanly, Davidson, Forsyth and Stokes Counties

US Fish and Wildlife Service
Raleigh Field Office
Post Office Box 33726
Raleigh, NC 27636-3726
Telephone: (919) 856-4520

Raleigh US Fish and Wildlife Service Office counties: all counties east of and including Richmond, Montgomery, Randolph, Guilford, and Rockingham Counties.

2.2 Special Designation Waters

Prior to the use of any NWP in any of the following North Carolina identified waters and contiguous wetlands, applicants must comply with Nationwide Permit General Condition 27 (PCN). The North Carolina waters and contiguous wetlands that require additional notification requirements are:

“Outstanding Resource Waters” (ORW) and “High Quality Waters” (HQW) (as designated by the North Carolina Environmental Management Commission), or “Inland Primary Nursery Areas” (IPNA) (as designated by the North Carolina Wildlife Resources Commission), or “Contiguous Wetlands” (as defined by the North Carolina Environmental Management Commission), or “Primary Nursery Areas” (PNA) (as designated by the North Carolina Marine Fisheries Commission).

2.3 Coastal Area Management Act (CAMA) Areas of Environmental Concern

Non-Federal applicants for any NWP in a designated “Area of Environmental Concern” (AEC) in the twenty (20) counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA), must also obtain the required CAMA permit. Construction activities for non-Federal projects may not commence until a copy of the approved CAMA permit is furnished to the appropriate Wilmington District Regulatory Field Office (Wilmington Field Office – P.O. Box 1890, Wilmington, NC 28402 or Washington Field Office – P.O. Box 1000, Washington, NC 27889).

2.4 Barrier Islands

Prior to the use of any NWP on a barrier island of North Carolina, applicants must comply with Nationwide Permit General Condition 27 (PCN).

2.5 Mountain or Piedmont Bogs

Prior to the use of any NWP in a “Mountain or Piedmont Bog” of North Carolina, applicants shall comply with Nationwide Permit General Condition 27 (PCN).

Note: The following wetland community types identified in the N.C. Natural Heritage Program document, “Classification of Natural communities of North Carolina (Michael P. Schafale and Alan S. Weakley, 1990), are subject to this regional condition.

Mountain Bogs	Piedmont Bogs
Swamp Forest-Bog Complex	Upland depression Swamp Forest
Swamp Forest-Bog Complex (Spruce Subtype)	
Southern Appalachian Bog (Northern Subtype)	
Southern Appalachian Bog (Southern Subtype)	
Southern Appalachian Fen	

2.6 Animal Waste Facilities

Prior to use of any NWP for construction of animal waste facilities in waters of the US, including wetlands, applicants shall comply with Nationwide Permit General Condition 27 (PCN).

2.7 Trout Waters

Prior to any discharge of dredge or fill material into streams or waterbodies within the twenty-five (25) designated trout counties of North Carolina, the applicant shall comply with Nationwide Permit General Condition 27 (PCN). The applicant shall also provide a copy of the notification to the appropriate NCWRC office to facilitate the determination

of any potential impacts to designated Trout Waters. Notification to the Corps of Engineers will include a statement with the name of the NCWRC biologist contacted, the date of the notification, the location of work, a delineation of wetlands, a discussion of alternatives to working in the mountain trout waters, why alternatives were not selected, and a plan to provide compensatory mitigation for all unavoidable adverse impacts to mountain trout waters.

NCWRC and NC Trout Counties

Mr. Ron Linville			
Western Piedmont Region Coordinator	Alleghany	Caldwell	Watauga
3855 Idlewild Road	Ashe	Mitchell	Wilkes
Kernersville, NC 27284-9180	Avery	Stokes	
Telephone: (336) 769-9453	Burke	Surry	

Mr. Dave McHenry			
Mountain Region Coordinator	Buncombe	Henderson	Polk
20830 Great Smoky Mtn. Expressway	Cherokee	Jackson	Rutherford
Waynesville, NC 28786	Clay	Macon	Swain
Telephone: (828) 452-2546	Graham	Madison	Transylvania
Fax: (828) 452-7772	Haywood	McDowell	Yancey

3.0 List of Corps Regional Conditions for All Nationwide Permits

The following conditions apply to all Nationwide Permits in the Wilmington District:

3.1. Limitation of Loss of Perennial Stream Bed

NWPs may not be used for activities that may result in the loss or degradation of greater than 300 total linear feet of perennial streams. The NWPs may not be used for activities that may result in the loss or degradation of greater than 300 total linear feet of ephemeral and intermittent streams that exhibit important aquatic function(s)* Loss of stream includes the linear feet of stream bed that is filled, excavated, or flooded by the proposed activity. The District Commander can waive the 300 linear foot limit for ephemeral and intermittent streams on a case-by-case basis if he determines that the proposed activity will result in minimal individual and cumulative adverse impacts to the aquatic environment. Waivers for the loss of ephemeral and intermittent streams must be in writing. This waiver only applies to the 300 linear feet threshold for NWPs. Mitigation may still be required for impacts to ephemeral and intermittent streams, on a case-by-case basis, depending on the impacts to the aquatic environment of the proposed project.

[*Note: The Corps uses the Stream Quality Assessment Worksheet, located with Permit Information on the Regulatory Program Web Site, to aid in the determination of aquatic function within the intermittent stream channel.]

3.2 Mitigation for Loss of Stream Bed Exceeding 150 Feet.

For any NWP that results in a loss of more than 150 linear feet of perennial and/or ephemeral/intermittent stream, the applicant shall provide a mitigation proposal to compensate for the loss of aquatic function associated with the proposed activity. For stream losses less than 150 linear feet, that require a PCN, the District Commander may determine, on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effect on the aquatic environment.

3.3 Pre-construction Notification for Loss of Streambed Exceeding 150 Feet.

Prior to use of any NWP for any activity which impacts more than 150 total linear feet of perennial stream or ephemeral/ intermittent stream, the applicant must comply with Nationwide Permit General Condition 27 (PCN). This applies to NWPs that do not have specific notification requirements. If a NWP has specific notification requirements, the requirements of the NWP should be followed.

3.4 Restriction on Use of Live Concrete

For all NWPs which allow the use of concrete as a building material, measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the state until the concrete has hardened.

3.5 Requirements for Using Riprap for Bank Stabilization

For all NWPs that allow for the use of riprap material for bank stabilization, the following measures shall be applied:

3.5.1. Filter cloth must be placed underneath the riprap as an additional requirement of its use in North Carolina waters.

3.5.2. The placement of riprap shall be limited to the areas depicted on submitted work plan drawings.

3.5.3. The riprap material shall be clean and free from loose dirt or any pollutant except in trace quantities that would not have an adverse environmental effect.

3.5.4. It shall be of a size sufficient to prevent its movement from the authorized alignment by natural forces under normal conditions.

3.5.5. The riprap material shall consist of clean rock or masonry material such as, but not limited to, granite, marl, or broken concrete.

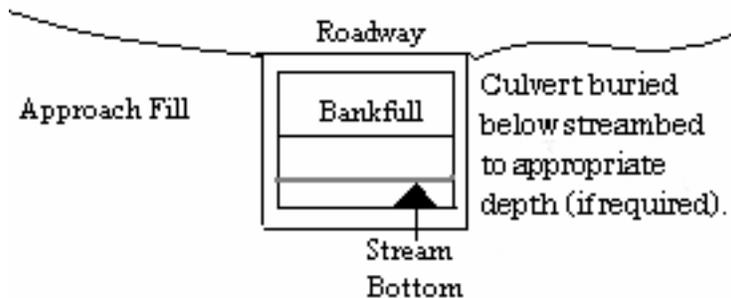
3.5.6. A waiver from the specifications in this Regional Condition may be requested in writing. The waiver will only be issued if it can be demonstrated that the impacts of

complying with this Regional condition would result in greater adverse impacts to the aquatic environment.

3.6 Safe Passage Requirements for Culvert Placement

For all NWP that involve the construction/installation of culverts, measures will be included in the construction/installation that will promote the safe passage of fish and other aquatic organisms. The dimension, pattern, and profile of the stream above and below a pipe or culvert should not be modified by widening the stream channel or by reducing the depth of the stream in connection with the construction activity. The width, height, and gradient of a proposed opening should be such as to pass the average historical low flow and spring flow without adversely altering flow velocity. Spring flow should be determined from gage data, if available. In the absence of such data, bankfull flow can be used as a comparable level.

In the twenty (20) counties of North Carolina designated as coastal counties by the Coastal Area Management Act (CAMA): All pipe and culvert bottoms shall be buried at least one foot below normal bed elevation when they are placed within the Public Trust Area of Environmental Concern (AEC) and/or the Estuarine Waters AEC as designated by CAMA, and/or all streams appearing as blue lines on United States Geological Survey (USGS) quad sheets.



In all other counties: Culverts greater than 48 inches in diameter will be buried at least one foot below the bed of the stream. Culverts 48 inches in diameter or less shall be buried or placed on the stream bed as practicable and appropriate to maintain aquatic passage, and every effort shall be made to maintain the existing channel slope. The bottom of the culvert must be placed at a depth below the natural stream bottom to provide for passage during drought or low flow conditions.

Destabilizing the channel and head cutting upstream should be considered in the placement of the culvert.

A waiver from the depth specifications in this condition may be requested in writing. The waiver will be issued if it can be demonstrated that the proposal would result in the least impacts to the aquatic environment.

All counties: Culverts placed in wetlands do not have to be buried.

3.7 Notification to NCDENR Shellfish Sanitation Section

Applicants shall notify the NCDENR Shellfish Sanitation Section prior to dredging in or removing sediment from an area closed to shell fishing where the effluent may be released to an area open for shell fishing or swimming in order to avoid contamination from the disposal area and cause a temporary shellfish closure to be made. Such notification shall also be provided to the appropriate Corps of Engineers Regulatory Field Office. Any disposal of sand to the ocean beach should occur between November 1 and April 30 when recreational usage is low. Only clean sand should be used and no dredged sand from closed shell fishing areas may be used. If beach disposal were to occur at times other than stated above or if sand from a closed shell fishing area is to be used, a swimming advisory shall be posted, and a press release shall be issued.

3.8 Preservation of Submerged Aquatic Vegetation

Adverse impacts to Submerged Aquatic Vegetation (SAV) are not authorized by any NWP within any of the twenty coastal counties defined by North Carolina's Coastal Area Management Act of 1974 (CAMA).

4.0 Additional Regional Conditions for Specific Nationwide Permits

4.1 NWP #5 – Scientific Measurement Devices

4.1.1. All weirs and flumes authorized by this NWP must be removed immediately upon completion of their intended use.

4.1.2. Weirs and flumes are not authorized by this NWP in areas identified by the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning areas, designated "Inland Primary Nursery Areas" or Public Trout Waters.

4.2 NWP #7 - Outfall Structures and Maintenance

4.2.1. The applicant must employ the best available means when using any associated intake structure, including determining its site, design, and technology (e.g., screening) in order to minimize entrainment or impingement of fish and other aquatic life.

4.2.2. This NWP cannot be used to authorize any ocean outfall structures unless the Corps receives written verification that the proposed project is consistent with the North Carolina Coastal Management Program or has received a CAMA permit.

4.3 NWP #12 - Utility Line Activities

4.3.1. Pipeline/utility line construction through jurisdictional waters and wetlands will be accomplished utilizing directional drilling/boring methods to the maximum extent practicable.

4.3.2. Temporary discharge of excavated or fill material into wetlands and waters of the United States will be for the absolute minimum period of time necessary to accomplish the work. Temporary discharges will be fully contained with appropriate erosion control or containment methods or otherwise such fills will consist of non-erodible materials.

4.3.3. The work area authorized by this permit, including temporary and/or permanent fills, will be minimized to the greatest extent practicable. Justification for work corridors exceeding forty (40) feet in width is required and will be based on pipeline diameter and length, size of equipment required to construct the utility line, and other construction information deemed necessary to support the request. The applicant is required to provide this information to the Corps with the initial notification package.

4.3.4. In areas where a sub-aqueous utility line is to cross a Federally maintained channel, (i.e., the Atlantic Intracoastal Waterway [AIWW]), the line will be buried at least six (6) feet below the depth of the authorized channel. For areas outside Federally-maintained channels, sub-aqueous lines must be installed at a minimum depth of two (2) feet below the substrate when such lines might interfere with navigation.

4.3.5. The minimum clearance for aerial communication lines, or any lines not transmitting electrical power, will be ten (10) feet above the clearance required for nearby stationary bridges as established by the U.S. Coast Guard. In the event the U.S. Coast Guard has not established a bridge clearance, minimum vertical clearances for power and aerial lines will not be less than required by Section 23, Rule 232, of the latest revision of the National Electrical Safety Code (ANSI C2). Clearances will not be less than shown in Table 232-1, Item 7, ANSI C2.

4.3.6. The clearance for an aerial line is based on the low point of the line under conditions that produce the greatest sag, taking into consideration temperature, load, wind, length or span and the type of supports. The minimum clearance for an aerial electrical power transmission line crossing navigable waters shall be governed by the system voltage, as indicated below:

Nominal System Voltage, kilovolt	Minimum Clearance
115 and below	Above Bridge Clearance (As Established by the U.S. Coast Guard) 20 feet
138	22
161	24
230	26
350	30
500	35

700	42
750 to 765	45

4.3.7. A plan to restore and re-vegetate wetland areas cleared for construction must be submitted with the required PCN. Cleared wetland areas shall be re-vegetated to the maximum extent practicable with native species of canopy, shrub, and herbaceous species. Fescue grass shall not be used.

4.3.8. For the purposes of this NWP, any permanently maintained corridor along the utility ROW shall be considered a permanent impact and a compensatory mitigation plan will be required for all such impacts associated with the requested activity.

4.3.9. Use of rip-rap or any other engineered structures to stabilize a stream bed should be avoided to the maximum extent possible.

4.4 NWP # 13 – Bank Stabilization

4.4.1. Unanchored trees, treetops, or debris may not be used as stream bank stabilization material.

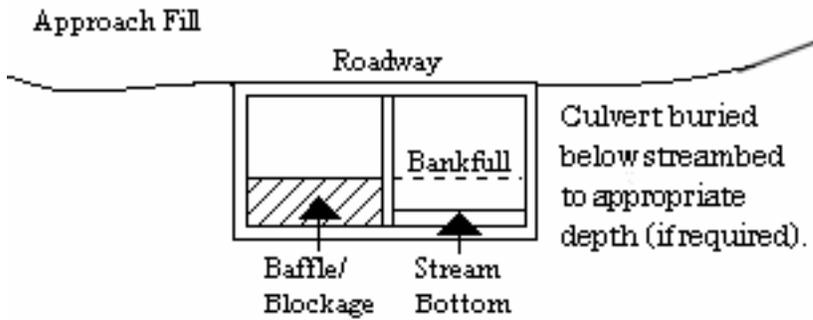
4.4.2. Properly anchored and cabled structural stabilization techniques, such as timber crib structures, revetments, and root wads, are acceptable materials to stabilize stream banks.

4.5 NWP #14 - Linear Transportation Crossings

4.5.1. Applicants shall employ natural channel design (see definition below) to the maximum extent practicable for stream relocations. In the event it is not practicable to employ natural channel design, any stream relocation shall be considered a permanent impact and the applicant shall provide a mitigation plan to compensate for the loss of aquatic function associated with the proposed activity.

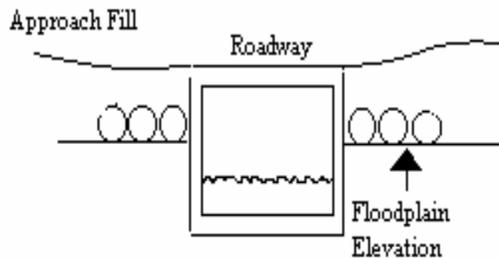
Natural Channel Design: A geomorphologic approach to stream restoration based on an understanding of valley type, general watershed conditions, dimension, pattern, profile, hydrology and sediment transport of natural, stable channels (reference condition) and applying this understanding to the reconstruction of a stable channel.

4.5.2. Bank-full flows (or less) shall be accommodated through maintenance of the existing bank-full channel cross sectional area. Additional culverts at such crossings shall be allowed only to receive flows exceeding bank-full.



4.5.3. Where adjacent floodplain is available, flows exceeding bank-full should be accommodated by installing culverts at the floodplain elevation.

4.5.4. This NWP authorizes only upland to upland crossings and cannot be used in



combination with Nationwide Permit 18 to create an upland within waters of the United States, including wetlands.

4.5.5. This NWP cannot be used for private projects located in tidal waters or tidal wetlands.

4.6 NWP #18 – Minor Discharges

This NWP may not be used in conjunction with NWP #14 to create upland.

4.7 NWP #23 – Approved Categorical Exclusions

No development activities authorized by this NWP may begin until the permittee obtains a consistency determination or a CAMA permit from the North Carolina Division of Coastal Management, if either required.

4.8 NWP #27 – Aquatic Habitat Restoration, Establishment, and Enhancement Activities.

If you are under contract to the North Carolina Ecosystem Enhancement Program (NCEEP) and are supplying a Pre-construction Notification (PCN) for impacts associated with a mitigation project that will be used to supply mitigation credits to EEP, the PCN

must include a cover letter from the NCEEP stating that they have reviewed and approved your restoration plan.

4.9 NWP #29-Residential Developments.

4.9.1. Discharges in wetlands and in perennial streams for stormwater management facilities are prohibited under this NWP.

4.9.2. Single-family recreational facilities are not authorized by this NWP. Recreational facilities that are incorporated into serving an entire residential development can be authorized by this NWP.

4.9.3. Discharges of dredged or fill material into waters of the US, including wetlands, within the floodway, resulting in permanent above-grade fills are not authorized by this NWP.

4.9.4. Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, below headwaters (i.e. \geq five cfs) resulting in permanent above-grade fills are not authorized by this NWP.

4.9.5. This NWP may not be used to authorize the discharges of dredged or fill material into waters of the United States that have been identified or designated by the State of North Carolina as:

Outstanding Resource Waters

High Quality Waters

Coastal Wetlands as defined by North Carolina's Coastal Area Management Act

Wetlands adjacent to these waters

4.10 NWP #33 – Temporary Construction, Access and Dewatering

The required restoration plan must include a timetable for restoration activities.

4.11 NWP #35 – Maintenance Dredging of Existing Basins

No excavation of special aquatic sites, such as submerged aquatic vegetation (SAV) areas and wetlands, is permitted.

4.12. NWP #36 – Boat Ramps

4.12.1. Boat ramps will not extend farther than twenty (20) feet waterward from the mean high water (MHW) elevation contour in tidal areas or from the normal water level elevation contour in nontidal areas.

4.12.2. Boat ramps will not be sited over areas of submerged aquatic vegetation, or sited in areas where boating activities may result in either direct or indirect disturbance or loss

of SAV. Applicants are encouraged to contact the NCDCCM, NCDMF or the NMFS for assistance in determining the presence of SAV.

4.13 NWP # 39 - Commercial, and Institutional Developments

4.13.1. Discharges in wetlands and in perennial streams for stormwater management facilities are prohibited under this NWP.

4.13.2. Recreational facilities, if they are incorporated into and serving an entire commercial or institutional development can be authorized by this NWP.

4.13.3. Discharges of dredged or fill material into waters of the US, including wetlands, within the floodway, resulting in permanent above-grade fills are not authorized by this NWP.

4.13.4. Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, below headwaters (i.e. \geq five CFS) resulting in permanent above-grade fills are not authorized by this NWP.

4.13.5. This NWP may not be used to authorize the discharges of dredged or fill material into waters of the United States that have been identified or designated by the State of North Carolina as:

Outstanding Resource Waters

High Quality Waters

Coastal Wetlands as defined by North Carolina's Coastal Area Management Act
Wetlands adjacent to these waters

4.14 NWP # 40 - Agricultural Activities

4.14.1. This NWP may not be used in channelized or natural streams.

4.14.2. Discharges of dredged or fill material into waters of the US, including wetlands, within the floodway, resulting in permanent above-grade fills are not authorized by this NWP.

4.14.3. Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, below headwaters (i.e. \geq five cfs) resulting in permanent above-grade fills are not authorized by this NWP.

4.14.4. This nationwide permit may not be used to authorize the discharges of dredged or fill material into waters of the United States that have been identified or designated by the State of North Carolina as:

Outstanding Resource Waters

High Quality Waters

Coastal Wetlands as defined by North Carolina's Coastal Area Management Act
Wetlands adjacent to these waters

4.15 NWP # 41 - Reshaping Existing Drainage Ditches

4.15.1. This NWP applies only to activities ordered by the State of North Carolina or a local government in response to noncompliance with the State's erosion and sedimentation control requirements, or as ordered by the United States Environmental Protection Agency or Corps of Engineers in response to noncompliance with any provision of the Clean Water Act.

4.15.2. Proponents must take all appropriate measures to avoid modifying the reach and circulation of waters within wetlands adjacent to the reshaped ditch.

4.15.3. This NWP does not apply to channelized streams or natural streams.

4.16 NWP # 42 – Recreational Facilities.

4.16.1. Discharges of dredged or fill material into waters of the US, including wetlands, within the floodway, resulting in permanent above-grade fills are not authorized by this NWP.

4.16.2. Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, below headwaters (i.e. \geq five cfs) resulting in permanent above-grade fills are not authorized by this NWP.

4.16.3. This NWP may not be used to authorize the discharges of dredged or fill material into waters of the United States that have been identified or designated by the State of North Carolina as:

Outstanding Resource Waters

High Quality Waters

Coastal Wetlands as defined by North Carolina's Coastal Area Management Act

Wetlands adjacent to these waters

4.17 NWP # 43 - Stormwater Management Facilities

4.17. 1. Discharges into wetlands and in perennial streams for stormwater management facilities are prohibited under this NWP.

4.17.2. Discharges of dredged or fill material into waters of the US, including wetlands, within the floodway, resulting in permanent above-grade fills are not authorized by this NWP.

4.17.3. Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, below headwaters (i.e. \geq five cfs) resulting in permanent above-grade fills are not authorized by this NWP.

4.18 NWP # 44 - Mining Activities

4.18.1. The pre-construction notification (PCN) must include a delineation of the affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes.

4.18.2. Discharges of dredged or fill material into waters of the US, including wetlands, within the floodway, resulting in permanent above-grade fills are not authorized by this NWP.

4.18.3. Discharges of dredged or fill material into waters of the US, including wetlands, within the mapped FEMA 100-year floodplain, below headwaters (i.e. \geq five cfs) resulting in permanent above-grade fills are not authorized by this NWP.

4.18.4. This NWP may not be used to authorize the discharges of dredged or fill material into waters of the United States that have been identified or designated by the State of North Carolina as:

Outstanding Resource Waters

High Quality Waters

Coastal Wetlands as defined by North Carolina's Coastal Area Management Act

Wetlands adjacent to these waters

4.19 NWP # 46 - Discharges into Ditches and Canals

4.19.1. The applicant must comply with NWP General Condition 27 (PCN) and receive authorization from the US Army Corps of Engineers before beginning work.

4.19.2. This NWP cannot be used to remove Section 404 of the Clean Water Act jurisdiction upstream of the project site by severing the hydrologic connection.

4.20 NWP # 47 - Office of Pipeline Safety Designated Time Sensitive Repairs

4.20.1. Pipeline/utility line repair, rehabilitation, or replacement through jurisdictional waters and wetlands will be accomplished utilizing directional drilling/boring methods to the maximum extent practicable.

4.20.2. Temporary discharge of excavated or fill material into wetlands and waters of the United States will be for the absolute minimum period of time necessary to accomplish the work. Temporary discharges will be fully contained with appropriate erosion control or containment methods or otherwise such fills will consist of non-erodible materials.

4.20.3. The area of waters of the United States to be disturbed will be limited to the minimum necessary to repair, rehabilitate, or replace the utility line. The work area authorized by this permit, including permanent fills, will be minimized to the greatest extent practicable.

4.20.4. In areas where the repair, rehabilitation, or replacement involves a sub-aqueous utility line across a Federally maintained channel, (i.e., the Atlantic Intracoastal Waterway [AIWW]), the line will be buried at least six (6) feet below the depth of the authorized channel. For areas outside Federally-maintained channels, sub-aqueous lines must be installed at a minimum depth of two (2) feet below the substrate when such lines might interfere with navigation.

4.20.5. Cleared wetland areas shall be re-vegetated to the maximum extent practicable with native species of canopy, shrub, and herbaceous species. Fescue grass shall not be used.

4.20 6. Use of rip-rap or any other engineered structures to stabilize a stream bed should be avoided to the maximum extent possible.

4.21 NWP # 48 -Commercial Shellfish Aquaculture Activities

4.21.1. No development activities authorized by this NWP may begin until the permittee obtains a consistency determination or a CAMA permit from the North Carolina Division of Coastal Management, if either required.

4.21.2. Prior to the use of this NWP the applicant must comply with NWP General Condition 27 (PCN).

4.21.3. This NWP does not authorize any activity which impacts Submerged Aquatic Vegetation.

4.21.4. This NWP does not authorize the discharge of any earthen fill material into any waters of the United States.

4.21.5. This NWP may not be used to authorize the discharges of dredged or fill material into wetlands, including Coastal Wetlands as defined by North Carolina's Coastal Area Management Act.

NC DIVISION OF WATER QUALITY - GENERAL CERTIFICATION CONDITIONS

For the most recent General Certification conditions, call the NC Division of Water Quality, Wetlands/401 Certification Unit at (919) 733-1786 or access the following website:

<http://h2o.enr.state.nc.us/ncwetlands/certs.html>

NC DIVISION OF COASTAL MANAGEMENT - STATE CONSISTENCY

Attachment 1

In a letter dated May 7, 2007, the North Carolina Division of Coastal Management found this NWP consistent with the North Carolina Coastal Zone Management Program. Updates on CAMA Consistency for NC can be found on the NC DCM web site at: <http://dcm2.enr.state.nc.us/Permits/consist.htm>

EASTERN BAND OF THE CHEROKEE INDIANS TRIBAL WATER QUALITY CERTIFICATIONS

In a letter dated May 8, 2007, US EPA, on behalf of the Eastern Band of Cherokee Indians, provided Tribal General Conditions for Nationwide Permits on Cherokee Indian Reservation. These Tribal General Conditions are located on the Corps website at: <http://www.saw.usace.army.mil/WETLANDS/NWP2007/EBCI-certs.html>

Citations:

2007 Nationwide Permits Public Notice for Final Issue Date: March 15, 2007

Correction Notice for Nationwide Permits, Federal Register / Vol. 72, No. 88 / Tuesday, May 8, 2007 / Notices p.26082

2007 SAW Regional Conditions – Authorized June 1, 2007

This and other information can be found on the Corps web site at: <http://www.saw.usace.army.mil/WETLANDS/NWP2007/nationwide-permits.html>



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAY 08 2007

Colonel John E. Pulliam, Jr.
District Engineer
ATTN: Mr. Henry Wicker
Wilmington District, Corps of Engineers
P.O. Box 1890
Wilmington, NC 28402-1890

SUBJ: Section 401 Water Quality Certification
Nationwide Permits Reissued on March 12, 2007

Dear Colonel Pulliam:

On behalf of the Eastern Band of Cherokee Indians, pursuant to Section 401 of the Federal Pollution Control Act (33 U.S.C. 1251, 1341), the United States Environmental Protection Agency (EPA), Region 4 issues this letter recommending general and specific regional conditions for the Nationwide Permits (NWP) reissued on March 12, 2007. The EPA has determined that no water quality standards are applicable to the lands of the Eastern Band of Cherokee Indians, and pursuant to 40 CFR 121.24, certification is not required. However, in accordance with 40 CFR 121.24, EPA recommends the conditions enclosed for each NWP, in order to achieve compliance with the purpose of the Clean Water Act.

Based on the information provided in the public notice and pursuant to Section 404 of the CWA, EPA has concluded that if the NWP incorporate the conditions listed in the enclosed pages for activities on the Cherokee Indian Reservation, no significant adverse impacts to water quality are expected to result from activities authorized under the reissued NWP. EPA had particular concerns regarding two of the NWP when they were reissued in 2002, specifically NWP 14 and NWP 43 and we continue to have the same concerns with the newly reissued NWP.

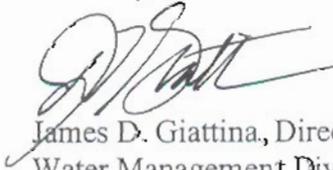
Because the 200 linear feet prohibition was removed from NWP 14 in 2002, EPA Region 4 recommended the Wilmington District Regional Conditions include a linear footage restriction for NWP 14, as well as the acreage restriction (specified in NWP 14). EPA is encouraged to see the Wilmington District general regional conditions state a NWP may not result in the loss or degradation of 300 linear feet of a perennial stream or 300 linear feet of ephemeral or intermittent streams that exhibit important aquatic functions. Since the Cherokee conditions must be submitted before the Wilmington District Regional Conditions are approved by the Division Engineer, we are also including this requirement in the recommended conditions for the Cherokee Reservation.

When the NWP's were reissued in 2002, EPA Region 4 recommended denial of NWP 43 by Wilmington District. We continue to have the same concerns about NWP 43. The legislative record and case history support that in many cases, the conversion of a waters of the U.S. to a water treatment system is inconsistent with the provisions of CWA Section 402, and that it may be difficult to permit when following the Section 404(b)(1) guidelines. Although Section 404 may allow the conversion of a water of the U.S. upon demonstration of compliance with Section 404(b)(1) guidelines (as such removing its designated use), Region 4 generally does not support such activities because of the broad definition and protection that has been given to waters of the U.S. by Congress and the courts. In addition, Region 4 believes it unacceptable to allow the potential occurrence of stretches of discontinuous waters of the U.S. which might occur with the approval of one or more in-stream treatment systems within a stream.

Region 4 understands that, on a case-by-case basis, certain circumstances may warrant consideration of an instream treatment system. However, if a control structure is placed, then the entire impounded area may no longer be waters of the U.S. (if it is converted to a treatment system), and should be adequately compensated through mitigation. We do not believe the use of streams for water treatment is a minor impact to the aquatic environment, and we stress it is inappropriate for a NWP to be used to authorize such activities. We are pleased to see the Wilmington District Regional Conditions for NWP 43 state that "discharges into wetlands and in perennial streams are prohibited under this NWP". EPA is also including this as a Cherokee condition for NWP 43 since we are submitting these conditions before final approval by the Division Engineer of Wilmington Conditions. We are also recommending the additional attached NWP 43 conditions for the Cherokee Reservation.

Staff of the Eastern Band of Cherokee Indians have been provided an opportunity to review these conditions. EPA submits the enclosed conditions for the EBCI for incorporation into the Regional Conditions for the reissued and new NWP's. If you have questions or would like to further discuss these conditions, please contact Becky Fox of my staff at (828) 497-3531 or fox.rebecca@epa.gov.

Sincerely,



James D. Giattina, Director
Water Management Division

Enclosure (1)

cc: Eastern Band of Cherokee Indians
NCDWQ/DENR, Raleigh
Bill Patton, EPA Region 4

NATIONWIDE PERMITS

Nationwide Permits are issued by the U.S. Army Corps of Engineers (Corps) to cover activities that are similar in nature, cause only minimal adverse environmental effects when performed separately, and have only a minimal cumulative adverse effect on the aquatic environment. Notification must be provided to the Corps when a NWP is used in the mountain trout counties, which includes all of the Eastern Band of Cherokee Indian (EBCI) lands. Upon review of the information in the notification, the Corps may use its discretionary authority to determine that adverse impacts will be more than minimal and to require an Individual Permit. Notification is also required to the EBCI's Environmental Planning Office. Use of these NWPs on EBCI lands requires compliance with the specific conditions of the NWP, the Regional Conditions of the Wilmington Corps District and the conditions of the EBCI (specified in this document.) The NWPs were finalized on March 12, 2007, and will replace the old NWPs. The effective date of the reissued NWPs is March 19, 2007. The states, Indian Tribes and EPA have a 60 day period after reissuance of the NWPs to complete the water quality certification process for the NWPs. The date for the water quality certification is May 11, 2007. The following is a list of the NWPs. Not all are applicable to the EBCI.

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Activities
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife

31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access and Dewatering
34. Cranberry Production Areas
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities

New Nationwides

45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
48. Existing Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities

**CONDITIONS APPLICABLE TO ALL
NATIONWIDE AND REGIONAL GENERAL PERMITS**

The following conditions will become effective on May 11, 2007, and will replace the conditions issued on March 18, 2002. These conditions are rescinded when the U.S. Army Corps of Engineers (Corps) reauthorizes the Nationwide Permits or when deemed appropriate by the U.S. Environmental Protection Agency (EPA).

1. Proposed fill or modifications of any amount of wetlands, streams or other waters of U.S. on lands of the Eastern Band of Cherokee Indians (EBCI), under a Nationwide (NWP) or Regional General Permit (GP), requires prior written notification to the EBCI. The written notification shall be provided to the following address at least 15 days prior to commencement of activities:

Eastern Band of Cherokee Indians
Environmental Planning Office
Tribal Utilities Building
P.O. Box 455
Cherokee, North Carolina 28719

2. No waste, spoil, solids or fill of any kind shall occur in wetlands, waters or riparian areas beyond the thresholds established for use of this NWP, or beyond the footprint of the impacts authorized by the NWP, including incidental impacts. All construction activities, including the design, installation, operation and maintenance of the sediment and erosion control Best Management Practices (BMPs) shall be performed so that no violations of water quality standards, statutes or rules occur.
3. NWPs may not be used for activities that may result in the loss or degradation or greater than 300 total linear feet of perennial, intermittent or ephemeral streams.
4. For all activities requiring realignment of streams, a stream relocation plan must be included for written EBCI approval. Relocated stream designs should include the same dimension, pattern and profile as the existing channel (or a stable reference reach if the existing channel is unstable), to the maximum extent practical. The new channel should be constructed under dry conditions and water shall not be turned into the new channel until the banks are stabilized. Vegetation used for bank stabilization shall be limited to native woody species, and should include establishment of a 30-foot wide wooded buffer on both sides of the relocated channel to the maximum extent practical. A transition phase incorporating coir fiber and seedling establishment is allowable. Rip-rap, A-Jacks, concrete, gabions or other hard structures may be allowed if it is necessary to maintain physical integrity of the stream, but the applicant must provide written justification and any calculations used to determine the extent of rip-rap coverage. Note that if the stream relocation is conducted as a stream restoration as defined in the *Stream Mitigation Guidelines* (U.S. Army Corps of Engineers, Wilmington District, April 2003) or any subsequent updates, the restored length can be used as compensatory mitigation for the impacts resulting from the relocation.

5. Appropriate sediment and erosion control practices shall be employed which equal or exceed those outlined in the most recent version of the Cherokee Soil Erosion and Sedimentation Ordinance or the North Carolina Sediment and Erosion Control Planning and Design Manual, whichever is more appropriate. Sufficient materials required for stabilization and/or repair of erosion control measures and stormwater routing and treatment shall be on site at all times.
6. Sediment and erosion control measures shall not be placed in wetlands or waters without prior approval of the EBCI. If placement of sediment and erosion control devices in wetlands or waters is unavoidable, then the design and placement of temporary erosion control measures shall not be conducted in a manner that may result in the disruption of the equilibrium of wetlands or stream beds or banks, adjacent to or upstream and downstream of the above structures. All sediment and erosion control devices shall be removed and the natural grade restored within two months after completion of the project. Culverts placed in wetlands do not have to be buried.

Any rip-rap required for normal pipe burial and stabilization shall be buried such that the original stream elevation is restored and maintained.

7. For the placement of culverts and other structures in waters, streams, and wetlands; the application must include plans with cross-sectional details in order to indicate that the current stability of the stream will be maintained or enhanced (i.e., not result in head cuts). Culverts shall be designed in such a manner that the original stream profiles are not altered and allow low-flow passage of aquatic life. Existing stream dimensions (including the cross-section dimension, pattern and longitudinal profile) must be maintained above and below locations of each culvert. Placement of culverts and other structures in waters and streams must be placed below the elevation of the streambed by one foot for all culverts with a diameter greater than 48 inches and 20 percent of the culvert diameter for culverts having a diameter of less than 48 inches to allow low flow passage of water and aquatic life. If site-specific topographic constraints preclude the ability to bury the culverts as described above and/or the applicant can demonstrate that burying the culvert would result in destabilization of the channel and head-cutting upstream, the EBCI will consider alternative design proposals.
8. Installation of culverts in wetlands must ensure continuity of water movement and be designed to adequately accommodate high water or flood conditions. Additionally, when roadways or other fill projects are constructed across Federal Emergency Management Agency (FEMA)-designated floodways or wetlands, openings such as culverts or bridges must be provided to maintain the natural hydrology of the system as well as prevent constrictions of the floodway that may result in destabilization of streams and wetlands.
9. Storm water management measures and structures shall be implemented for any project site in order to prevent degradation of downstream water quality or uses, including protection of downstream stream bed and bank stability. Such storm water management

measures shall not be constructed in wetlands or waters of the U.S. (Title 40 CFR 122.2, 40 CFR 122.26, CWA Sections 301 and 402)

10. If concrete is used during construction, then a dry work area should be maintained to prevent direct contact between curing concrete and stream water. Water that inadvertently contacts uncured concrete should not be discharged to surface waters due to the potential for elevated pH and possible aquatic life/fish kills.
11. All temporary fill and culverts shall be removed and the impacted area returned to the original grade, including each stream's original cross-sectional dimensions, planform pattern, and longitudinal bed and bed profile after construction is complete or within two months of the establishment of the crossing, whichever is sooner. The various sites shall be stabilized with native woody vegetation (except for the maintenance areas of permanent utility crossings) and restored to prevent erosion. If the crossings are not completely removed and restored as described above within the specified time above, then written approval from the EBCI must be obtained to modify this condition.
12. Annual and /or native species suitable for wet locations shall be planted within jurisdictional wetlands for soil and erosion control. Perennials, such as fescue, are prohibited.
13. A one time application of fertilizer to re-establish vegetation is allowed but is restricted to no closer than 10 feet (3 meters) of streams.
14. Herbicides can be applied in wetlands or other waters only when applied by a certified applicator, in strict accordance with product labeling. (40 CFR Part 156)
15. This permit does not relieve the applicant of the responsibility to comply with the requirements of the Tribal flood ordinance or any other applicable laws, regulations, or ordinances governing the Tribal lands.

The above general conditions apply to the use of any NWP or GP on lands of the EBCI. The following NWPs have specific conditions which must be complied with in addition to the general conditions:

12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
33. Temporary Construction, Access and Dewatering
37. Emergency Watershed Protection and Rehabilitation
43. Stormwater Management Facilities
45. Repair of Uplands Damaged by Discrete Events

**NATIONWIDE PERMIT NUMBER 12
(UTILITY LINE BACKFILL AND BEDDING)**

1. Construction corridors parallel to streams shall be placed at the furthest distance from the stream to the maximum extent practicable. In no case shall the edge of the construction corridor be installed parallel to and closer than 10 feet (3 meters) to a stream.
2. Utility lines shall not cross a stream channel at other than a near-perpendicular direction (i.e., stream channel crossings shall not be at an angle of less than 75-degrees or more than 105-degrees to the stream bank).
3. Any wastewater line that crosses any stream shown on the most recent version of the 1:24,000 USGS topographic map or NRCS County Soil Survey as permanent, intermittent or ephemeral, shall be installed either a) with no joints connected within the footprint of a stream channel or within two feet of the stream banks in the case of plastic or PVC pipes, or b) with properly bedded and supported ductile iron. Otherwise written approval from the EBCI is required.
4. Placement of rip-rap shall be restricted to the stream bottom and banks directly impacted by the placement of the utility line. Rip-rap shall only be used below the normal high water level. The stream berm must be restored to the original contour after construction. Placement of rip-rap or other materials shall not result in destabilization of the stream bed or banks upstream or downstream of the crossing. Any rip-rap required for normal pipe burial and stabilization shall be buried such that the original stream elevation is restored and maintained.
5. The construction corridor (including access roads and stockpiling of materials) is limited to 40 feet (12.2 meters) in width in wetlands and across stream channels, and must be minimized to the maximum extent practicable.
6. Permanent, maintained access corridors shall be restricted to the minimum width practicable and shall not exceed 10 feet (3 meters) in width, except at manhole locations. A 10-foot by 10-foot (3 meters by 3 meters) perpendicular vehicle turnaround must be spaced at least 500 feet (152.4 meters) apart.
7. An anti-seep collar shall be placed at the downstream (utility line gradient) wetland boundary and every 150 feet (47.5 meters) up gradient until the utility exits the wetland for buried utility lines. Anti-seep collars may be constructed with class B concrete, compacted clay, PVC pipe, or metal collars. Wetland crossings that are directionally drilled and perpendicular wetland crossings that are open cut and less than 150 feet (45.7 meters) long do not require anti-seep collars.
 - a) The compacted clay shall have a specific discharge of 1×10^{-5} cm/sec or less. A section and plan view diagram is attached for the anti-seep collars.
 - b) The following specification shall apply to class B concrete:

1. Minimum cement content, sacks per cubic yard with rounded coarse aggregate 5.0
 2. Minimum cement content, sacks per cubic yard with angular coarse aggregate 5.5
 3. Maximum water-cement ratio gallons per sack 6.8
 4. Slump range: 2-4"
 5. Minimum strength: 28 day psi = 2,500
8. The applicant shall have a specific plan for restoring wetland contours. Any excess material will be removed to a high ground disposal area.

**NATIONWIDE PERMIT NUMBER 13 (BANK STABILIZATION)
and
NATIONWIDE PERMIT NUMBER 27
(STREAM AND WETLAND RESTORATION ACTIVITIES)**

1. The use of rip-rap within the streambed is discouraged and will require written approval by the Corps. Any rip-rap shall be of such a size so as not to be able to be carried off by wave or current action and consist of clean rock or masonry material free of debris or toxic pollutants. Rip-rap shall not be installed in the streambed except in specific areas required for velocity control and to ensure structural integrity of bank stabilization measures. Rock vanes, wing deflectors, weirs and similar structures for grade control and bank protection are acceptable.
2. Activities shall meet the definitions, design and monitoring protocols specified within the U.S. Army Corps of Engineers Regulatory Guidance Letter (RGL) 02-02 and the *Stream Mitigation Guidelines* (April 2003) or any subsequent updates to these documents.
3. NWP 27 may be used for wetland and stream restoration activities. Stream restoration is defined as the process of converting an unstable, altered or degraded stream corridor including adjacent riparian zone and floodprone areas to its natural or referenced stable conditions, considering recent and future watershed conditions. The process also includes restoring the geomorphic dimension, pattern and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium.

**NATIONWIDE PERMIT NUMBER 14
(ROAD CROSSINGS)**

1. The width of the fill is limited to the minimum needed for the actual crossing.
2. The roadway width shall be minimized as much as practicable and there should be no other practicable alternative.
3. If this authorization is used to access building sites, all lots must be buildable without additional fill in wetlands or waters of the U.S., beyond that allowed under NWP authorizations. For road construction purposes, this NWP should only be utilized from natural high ground to natural high ground.

**NATIONWIDE PERMIT NUMBER 33
(TEMPORARY CONSTRUCTION, ACCESS AND DEWATERING)**

1. All temporary fill and culverts shall be removed and the impacted area returned to the original grade, including each stream's original cross sectional dimensions, planform pattern and longitudinal bed and bed profile after construction is complete or within two months of the establishment of the crossing, whichever is sooner. The various sites shall be stabilized with natural vegetation (except for the maintenance areas of permanent utility crossings) and restored to prevent erosion. If the crossings are not completely removed and restored, as described above, within the specified time above, then written approval from the EBCI must be obtained to modify this condition.
2. Pipes shall be installed under the road in all streams to carry at least the 25-year storm event as outlined in the most recent edition of the *North Carolina Sediment and Erosion Control Planning and Design Manual* so as not to restrict stream flow during the use of this NWP.

NATIONWIDE PERMIT NUMBER 37
(EMERGENCY WATERSHED PROTECTION AND REHABILITATION)
and
NATIONWIDE PERMIT NUMBER 45
(REPAIR OF UPLANDS DAMAGED BY DISCRETE EVENTS)

1. All work in or adjacent to stream waters shall be conducted in a dry work area. Approved best management practices from the most current version of the EBCI Sediment and Erosion Control Manual, such as sandbags, rock berms, cofferdams and other diversion structures shall be used to minimize excavation in flowing water. Channel realignments shall be constructed by excavating the new channel from downstream to upstream before connecting it to the existing channel.
2. Heavy equipment should be operated from the bank whenever possible. All mechanized equipment operated near surface waters should be inspected and maintained regularly to prevent contamination of stream waters from fuel, lubricants, hydraulic fluids or other toxic materials. Equipment used in stream channels must be clean, new or low-hour equipment. Construction must be staged in order to minimize the exposure of equipment to surface waters to the maximum extent practicable.
3. Natural channel design should be used to restore the stream to a more stable dimension, pattern and profile. Upstream and downstream portions shall not be altered by widening the stream channel or modifying its depth. Under no circumstances, should river rock, sand or other materials be dredged from the stream channel under authorization of this NWP, as this has detrimental effects on aquatic life and downstream channel stability.
4. Stabilization measures should only be applied on or near existing erosion sites, leaving other stable stream bank areas in a natural condition. Grading and backfilling should be minimized and tree and shrub growth should be retained where possible to ensure long-term availability of stream bank cover for wildlife and aquatic organisms. Backfill materials should be obtained from upland sites; streambed materials shall not be removed. Berms are not allowed as they constrict and accelerate flows, impede the floodplain and are subject to failure in general.
5. Only clean, large angular rock; large woody material; or other natural stream design materials and techniques should be used for bank stabilization. Rock shall not be placed in the stream channel in a manner that constricts stream flow or would impede aquatic life passage during low flow conditions. Filter cloth shall be placed behind large rock (for bank stabilization). Properly designed rock vanes shall be constructed where appropriate on bank stabilization and channel realignment stream reaches to improve channel stability and to improve aquatic habitat. Root wads shall be installed low enough in the bank so that at least one-third of the root wad is inundated during normal flows.
6. Disturbed stream banks and a 30-foot vegetated (buffer) zone, or the widest buffer that is practicable under the site conditions, shall be restored along the construction sites to

natural conditions using native trees and shrubs to provide long-term bank stability and stream shading. Cuttings should be planted randomly on 4-foot centers from the edge of water to the top of bank. Trees should be planted on 10-foot centers. Stream banks in these locations shall also be seeded with a temporary nursery crop of wheat, millet or other annual grain to stabilize the bank during tree/shrub establishment.

7. If pasture along the stream is used for grazing, the applicant must inform the adjacent landowners that cattle shall be prohibited from damaging riparian areas and destabilizing the stream banks and channel.
8. Projects authorized must be under construction or under contract for construction within one year of Corps authorization.

**NATIONWIDE PERMIT NUMBER 43
(STORMWATER MANAGEMENT FACILITIES)**

1. Discharges into wetlands and in perennial streams are not allowed under this NWP.
2. A facility remains waters of the U.S., unless the permit explicitly identifies it as an excluded waste treatment system. Therefore, applicable water quality standards must be met within the boundaries of the system, including the impoundment.
3. If a facility is explicitly identified in a permit as a treatment system, excluded from waters of the U.S., then the entire impounded area is no longer waters of the U.S. (it is converted to a treatment system), and should be adequately compensated through mitigation.



North Carolina Department of Environment and Natural Resources
Division of Coastal Management

Michael F. Easley, Governor

Charles S. Jones, Director

William G. Ross Jr., Secretary

May 7, 2007

John E. Pulliam, Jr.
District Commander
Wilmington District Office
US Army Corps of Engineers
P.O. Box 1890
Wilmington, NC 28402-1890

SUBJECT: CD07-025 Through CD07-072 - Consistency Concurrence for Proposed Reauthorization of the Existing Nationwide Permits, Approval of Six New Nationwide Permits, and the Approval of One New General Condition, Coastal, North Carolina (DCM#20060088 Through DCM#20060137)

Dear Col. Pulliam:

The Division of Coastal Management (DCM) received (October 19, 2006) a consistency determination from the US Army Corps of Engineers (Corps) finding that the proposed reauthorization of the existing forty-four nationwide permits, the addition of six new nationwide permits, the addition of two new general conditions, and thirteen new definitions would be consistent with the State's coastal management program. Due the size and complexity of the consistency submission, the deadline for completing the consistency review was extended on March 7, 2007 to June 15, 2007.

North Carolina's coastal zone management program consists of, but is not limited to, the Coastal Area Management Act, the State's Dredge and Fill Law, Chapter 7 of Title 15A of North Carolina's Administrative Code, and the land use plan of the County and/or local municipality in which the proposed project is located. It is the objective of the Division of Coastal Management (DCM) to manage the State's coastal resources to ensure that proposed Federal activities would be compatible with safeguarding and perpetuating the biological, social, economic, and aesthetic values of the State's coastal waters.

DCM has reviewed the submitted information pursuant to the management objectives and enforceable policies of Subchapters 15A NCAC 07H and 15A NCAC 07M of Chapter 7 of Title 15A of North Carolina's Administrative Code which are a part of the State's certified coastal management program and concurs, as conditioned below, that the proposed Federal activity is consistent, to the maximum extent practicable, with the enforceable policies of North Carolina's coastal management program.

- In order to be found consistent with North Carolina's coastal management program, as part of the process of issuing a nationwide permit for a proposed project in North Carolina, the

400 Commerce Avenue, Morehead City, North Carolina 28557-3421
Phone: 252-808-2808 \ FAX: 252-247-3330 \ Internet: www.nccoastalmanagement.net

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Corps shall require that the proposed project comply with “*The Wilmington District Regional Conditions for Nationwide Permits*”.

- In order to be found consistent with North Carolina’s coastal management program, the Corps will be required to obtain a supplemental consistency concurrence before making any changes to “*The Wilmington District Regional Conditions for Nationwide Permits*” document. Typographic corrections are exempted from this requirement.
- In order to be found consistent with North Carolina’s coastal management program and in keeping with a request from the Corps, this concurrence does **not** apply to Nationwide Permit 48 (Existing Commercial Shellfish Aquaculture Activities). Nationwide Permit 48 will be subject to a separate future consistency concurrence action.

The table below is a matrix for correlating the Corps nationwide permits with the respective DCM project numbers and consistency concurrences. Nationwide Permit #26 is a “*place holder*”.

Corps Nationwide Permit Matrix			
Nationwide Permit	DCM Project Number	DCM CD Number	Notes
1	20060088	CD07-025	
2	20060089	CD07-026	
3	20060090	CD07-027	
4	20060091	CD07-028	
5	20060092	CD07-029	
6	20060093	CD07-030	
7	20060094	CD07-031	
7	20060095	CD07-032	
9	20060096	CD07-033	
10	20060097	CD07-034	
11	20060098	CD07-035	
12	20060099	CD07-036	
13	20060100	CD07-037	
14	20060101	CD07-038	
15	20060102	CD07-039	
16	20060103	CD07-040	
17	20060104	CD07-041	
18	20060105	CD07-042	
19	20060106	CD07-043	
20	20060107	CD07-044	
21	20060108	CD07-045	
22	20060109	CD07-046	
23	20060110	CD07-047	
24	20060111	CD07-048	
25	20060112	CD07-049	
26	20060113	None	Reserved
27	20060114	CD07-050	
28	20060115	CD07-051	
29	20060116	CD07-052	
30	20060117	CD07-053	

Corps Nationwide Permit Matrix			
Nationwide Permit	DCM Project Number	DCM CD Number	Notes
31	20060118	CD07-054	
32	20060119	CD07-055	
33	20060120	CD07-056	
34	20060121	CD07-057	
35	20060122	CD07-058	
36	20060123	CD07-059	
37	20060124	CD07-060	
38	20060125	CD07-061	
39	20060126	CD07-062	
40	20060127	CD07-063	
41	20060128	CD07-064	
42	20060129	CD07-065	
43	20060130	CD07-066	
44	20060131	CD07-067	
45	20060132	CD07-068	
46	20060133	CD07-069	
47	20060134	CD07-070	
48	20060135	None	Consistency Concurrence Deferred
49	20060136	CD07-072	
50	20060137	CD07-073	

Should the proposed action be modified, a revised consistency determination could be necessary. This might take the form of either a supplemental consistency determination pursuant to 15 CFR 930.46, or a new consistency determination pursuant to 15 CFR 930.36. Likewise, if further project assessments reveal environmental effects not previously considered by the proposed development, a supplemental consistency certification may be required. If you have any questions, please contact Stephen Rynas at 252-808-2808. Thank you for your consideration of the North Carolina Coastal Management Program.

Sincerely,



Doug Huggett
 Manager, Major Permits and Consistency Unit

Cc: Mike Street, NC Division of Marine Fisheries
 Frank Jennings, Division of Coastal Management
 Terry Moore, Division of Coastal Management
 Tere Barrett, Division of Coastal Management
 Jim Gregson, Division of Coastal Management