



**US Army Corps
of Engineers**®
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PUBLIC NOTICE

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15-DAY PUBLIC NOTICE

SUSPENDING NATIONWIDE PERMITS IN NEW ENGLAND

Nationwide Permits (NWP) authorize certain activities under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899 that have no more than minimal individual and cumulative adverse environmental effects. In a proposed rule published in the September 15, 2020 issue of the Federal Register, the U.S. Army Corps of Engineers (USACE) proposed to reissue 52 existing NWPs and issue five new NWPs, plus the NWP general conditions and definitions. In a final rule published in the January 13, 2021 issue of the Federal Register, USACE reissued 12 of the 52 existing NWPs and four of the five new NWPs, as well as the NWP general conditions and definitions. In a final rule published in the December 27, 2021 Federal Register, USACE stated it is reissuing the remaining 40 existing NWPs and issuing the remaining one new NWP. The 41 NWPs in the December 27, 2021 final rule go into effect on February 25, 2022 and expire on March 14, 2026. More information is available at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits>.

While nationally USACE is acting on these NWPs, the USACE New England District proposes to again suspend the NWPs, this time the 41 NWPs mentioned above, in the six New England states. The New England District suspended the 12 reissued NWPs and four new NWPs mentioned above on April 7, 2021. The New England District most recently suspended all NWPs in the six New England States on March 13, 2017. In their place, the New England District would continue using regional general permits (GPs) in each New England state, which have been highly effective for over 20 years. The regional GPs are located at <http://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits>. The currently proposed suspension would remain in effect until the NWPs expire on March 14, 2026, unless rescinded by the North Atlantic Division Engineer.

Multiple goals will be realized as a result of again suspending the NWPs in New England:

(1) To provide consistency, simplification and streamlining in the regulatory process. Projects with minimal individual and cumulative effects on the aquatic environment are approved administratively under the GPs. Project eligibility for permitting under a GP fall into two categories defined using the regional criteria for (a) self-verification projects and (b) pre-construction notification (PCN) projects. Self-verified projects may proceed provided the

proponent verifies that the terms and conditions of the GPs are met and the Self-Verification Notification Form is submitted to USACE when applicable. Activities requiring a PCN to USACE are reviewed by USACE and Federal resource agencies (U.S. Fish Wildlife Service, U.S. Environmental Protection Agency and National Marine Fisheries Service), other Federal agencies, and state agencies such as wetland and waterway permitting agencies, when applicable. Through this coordination, USACE determines if individual and cumulative adverse environmental impacts are more than minimal or whether the project may proceed under the GPs. Projects that do not meet the terms and conditions of the GPs or those which are determined to have potential for greater than minimal adverse impact require an individual permit. The GPs don't alter the individual permit review procedures or Federal exemptions, which are not necessarily the same as the states' exemptions. In addition, GP authorizations are not valid until all other required Federal, state, and local permits and/or certifications are obtained.

(2) To continue broad coverage and increased environmental sensitivity. The GPs have broader upper limits, but allow USACE, in coordination with the states and Federal resource agencies, to review projects to determine if project impacts are more appropriately reviewed under individual permit procedures. In some cases, lower limits than the NWP provide USACE with the opportunity to review certain activities that could have greater environmental impacts, e.g., those occurring in environmentally sensitive areas. Additionally, the decision of ineligibility under the GPs will be much simpler and require less staff time than the discretionary authority procedures. However, USACE retains the right to implement discretionary authority for any project when it determines it is necessary and in the public interest to do so. The suspension of the NWPs will continue to allow maximum use of the GPs and result in a greatly simplified, flexible and expedited regulatory program in New England. Suspension will also increase efficiency and eliminate redundancy when certain aspects of the GPs are synchronized with in-place state regulatory programs. State GPs can be individually conditioned, as can NWPs, if it's necessary to restrict activities in order to protect the environment.

The USACE, New England District, is seeking comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties to consider and evaluate the impacts of this proposed activity. Comments are also used to determine the need for a public hearing and to determine the overall public interest. Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for a public hearing shall specifically state the reasons for holding a public hearing. The USACE holds public hearings for the purpose of obtaining public comments when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

If you have any questions or comments on this proposed NWP suspension, please contact Greg Penta at (978) 318-8862 or gregory.r.penta@usace.army.mil.

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