



In reply refer to:  
2024-FRA-63453

March 20, 2025

Rachel McCarty  
U.S. Army Corps of Engineers  
Huntington District – Energy Resource Branch  
502 8<sup>th</sup> Street  
Huntington, WV 25701  
rachel.a.mccarty@usace.army.mil

**RE: NCHP Phase 3B Project, Franklin County, Ohio (LRH-2025-00047-SCR-UNT Alum Creek)**

Ms. McCarty,

This letter is in response to correspondence received on February 25, 2025, and March 10, 2025, regarding the proposed NCHP Phase 3B Project located in Franklin County, Ohio. We appreciate the opportunity to comment on this project. The comments of the Ohio State Historic Preservation Office (SHPO) are made pursuant to Section 149.53 of the Ohio Revised Code and are also submitted in accordance with the provisions of Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. 306108 [36 CFR 800]).

The following comments pertain to the *Intensive Phase I Cultural Resources Investigation, Columbus, Franklin County, Ohio* by Jacob C. Spuck (Colliers Engineering & Design 2025). The proposed project involves the construction of an approximately 3.9-mile high-pressure natural gas pipeline and associated workspaces within Franklin County, Ohio. This 3.9-mile corridor, as shown in Figure 2 of the report, is the Area of Potential Effect (APE). A literature review, visual inspection, photographic documentation, and shovel test unit excavations were performed. Much of the APE is located within urban areas previously disturbed by commercial, residential, and industrial development. Portions of the APE have also been previously professionally surveyed for cultural resources. Previously surveyed and disturbed areas were not subjected to additional subsurface testing during the current investigations. There were no previously documented archaeological sites located within the APE and no new archaeological sites were encountered during these investigations. No additional archaeological survey is necessary.

Based on the information provided, our office concurs with the determination that the project, as proposed, will have no effect on historic properties. No further coordination is required for the project unless the scope of work changes or archaeological resources are discovered during the implementation of the project. In such a situation, this office should be contacted, as required by 36 CFR § 800.13. If you have any questions concerning this review, please contact me via email at [cgullett@ohiohistory.org](mailto:cgullett@ohiohistory.org). Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine Gullett".

Catherine Gullett, Project Reviews Coordinator - Archaeology  
Resource Protection and Review  
State Historic Preservation Office

cc: Jacob Spuck, Colliers Engineering & Design (via email)

RPR Serial Nos. 1107631 and 1107852

*"Please be advised that this is a Section 106 decision. This review decision may not extend to other SHPO programs."*



In reply refer to:  
2024-FRA-63453

February 18, 2025

Jacob Spuck  
Colliers Engineering & Design  
1501 Reedsdale Street, Suite 302  
Pittsburgh, PA 15233  
jacob.spuck@collierseng.com

RE: NCHP Phase 3B Mainline and Access Road Project, Franklin County, Ohio

Mr. Spuck,

This letter is in response to correspondence received on December 28, 2024, and February 4, 2025, regarding the proposed NCHP Phase 3B Mainline and Access Road Project located in Franklin County, Ohio. We appreciate the opportunity to comment on this project. The comments of the Ohio State Historic Preservation Office (SHPO) are submitted in accordance with the provisions of Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. 306108 [36 CFR 800]).

Per the submission, the proposed project involves the installation of approximately 39-miles (6.3-kilometers) of a 24-inch-high pressure steel mainline pipeline in Franklin County, Ohio. The project alignment begins near the intersection of W. Johnstown and James Roads, proceeds northward across Granville Street, parallels Agler Road westward, and terminates east of Woodland and Denune Avenues. A review of our records indicates that portions of the project corridor have been previously professionally surveyed. These prior surveys identified several archaeological sites in the vicinity, although none were located within the current corridor. Per a discussion on February 12, 2025, the proposed pipeline will be a replacement for an existing pipeline; therefore, disturbance from prior construction activities related to the existing pipeline and other utilities can be expected.

Based on this information, our office recommends a Phase I archaeological survey of any portions of the project corridor located outside the existing pipeline easement or boundaries of previously surveyed areas. This survey should include any new temporary or permanent right-of-way (ROW), as well as any access drives or workspaces. The survey results will allow for a more informed decision concerning the effects the project may have on historic properties. The survey must be conducted by a qualified consultant and a copy of the results of the survey must be submitted to the SHPO for review following our submission standards. If you have any questions concerning this review, please contact me by email at [cgullett@ohiohistory.org](mailto:cgullett@ohiohistory.org). Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Catherine Gullett".

Catherine Gullett, Project Reviews Coordinator - Archaeology  
Resource Protection and Review  
State Historic Preservation Office

cc: Scott Brown, NiSource (via email)

RPR Serial No. 1107246

*"Please be advised that this is a Section 106 decision. This review decision may not extend to other SHPO programs."*

**Environmental  
Protection  
Agency****EPA.Ohio.gov**

Mike DeWine, Governor Jim Tressel, Lt. Governor John Logue, Director

June 27, 2025

Columbia Gas of Ohio, Inc.  
Scott Brown  
101 Stoney Ridge Drive  
Monaca PA 15061

Re: Approval Under Ohio EPA National Pollutant Discharge Elimination System (NPDES) – Construction Site Stormwater General Permit – OHC000006

Dear Applicant,

Your NPDES Notice of Intent (NOI) application is approved for the following facility/site. Please use your Ohio EPA Facility Permit Number in all future correspondence.

|   |                                       |
|---|---------------------------------------|
| <b>Facility Name:</b>                   | NCHP Phase 3 (East Columbus) Pipeline |
| <b>Facility Location:</b>               | Woodland Avenue, Along Agler Road     |
| <b>City:</b>                            | Columbus                              |
| <b>County:</b>                          | Franklin                              |
| <b>Ohio EPA Facility Permit Number:</b> | 4GC10352*DG                           |
| <b>Permit Effective Date:</b>           | June 27, 2025                         |
| <b>Permit Expiration Date:</b>          | April 22, 2028                        |

Please read and review the permit carefully. The permit contains requirements and prohibitions with which you must comply. A copy of the general permit may be viewed or downloaded from [here](#). Coverage under this permit will remain in effect until a renewal of the permit is issued by the Ohio EPA.

If more than one operator (defined in the permit) will be engaged at the site, each operator shall seek coverage under the general permit. Additional operator(s) shall submit a Co-Permittee NOI to be covered under this permit. There is no fee associated with the Co-Permittee NOI form.

Please be aware that this letter only authorizes discharges in accordance with the above referenced General Permit. The placement to fill into regulated waters of the state may require a 401 Water Quality Certification and/or Isolated Wetlands Permit from Ohio EPA. Failure to obtain the required permits in advance is a violation of Ohio Revised Code 6111 and potentially subjects you to enforcement and civil penalties.

If you need assistance or have questions, please call (614) 644-2001 and ask for Construction Site Stormwater General Permit support or visit our website at [epa.ohio.gov](http://epa.ohio.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "JL", representing John Logue.

John Logue  
Director

**903 - Excavation Permit ATTACHMENT I**  
**ROW, Sidewalk and Street**

Right-of-Way Permit Section

111 N. Front Street, Columbus, Ohio 43215 Phone: 614-645-7497

**Status: Issued**

**Status Date: 05/21/2025**

**Permit Number: EP-24-05596**

**Issued to:**

**NPL Construction**

Stephen Castilow  
750 E Diehl Rd  
Naperville IL 60563  
Phone: 815-206-9927  
Email: scastilow@gonpl.com

**Columbia Gas**

Luka Papalko  
401 N. Front St.  
Columbus OH 43215  
Phone: 614-420-1376  
Email: lpapalko@nisource.com

For Organization : **Campos EPC LLC**

Contact Person / Email : **Jeremy Christoff /**  
**jeremy.christoff@camposepc.com**

Sitework Contact Person :  
**Michael Scott**

24hr Phone Number :  
**(740) 255-2999**

**LOCATION/ADDRESS OF PROPOSED WORK OR EVENT**

**Agler RD**  
**24-0084822-00**

**Purpose**

CLOSE LANES AS APPROVED TO INSTALL GAS MAIN(S) AS PER PLAN

**Paid parking to be removed from service. For parking enforcement related issues, please call the following:**

**7am-3pm: 614-301-1112 or 614-307-0474**

**3pm-10pm: 614-980-3483 or 614-515-3999**

**No paid parking to be removed**

**This permit shall be valid between hours of: 9:00AM - 4:00PM**  
**for a maximum period of 365 consecutive days from 05/21/2025 to 5/20/2026**

**SPECIAL INSTRUCTIONS:**

FOR REGULAR BUSINESS HOUR PROJECTS, THE PRIVATE DEVELOPMENT INSPECTION REQUEST FORM MUST BE COMPLETED IN FULL AND SUBMITTED BY AT LEAST 2PM ON THE WORKING DAY PRIOR TO THE DATE THAT THE INSPECTION IS NEEDED FOR THE INSPECTION TO MAKE IT ONTO THE SCHEDULE. FULLY COMPLETE FORMS SHOULD BE SUBMITTED BY EMAIL TO: PRIVATEDEVELOPMENT@COLUMBUS.GOV

**TO REPORT PLACEMENT OF STEEL PLATES AND LANE CLOSURES, SEE FINAL PAGE**

*Andrew Williams Jr.*

Assistant Director - Original signature in RED ink

Application Fee

**120.00**

**\$120.00**

THE ORIGINAL OF THIS FORM MUST BE AT THE JOB SITE  
MUST CONTACT DPS PERMIT OFFICE 24 HOURS PRIOR TO EXCAVATION (614-645-7497)

Unless alternate/specific instructions are listed above  
**See reverse side for additional instructions**

***ALL WORK PERFORMED UNDER THIS PERMIT SHALL BE DONE AS DESCRIBED UNDER COLUMBUS CITY CODE TITLE 9, CHAPTERS 903 and 905, AND ALL APPLICABLE SPECIFICATIONS AND STANDARD DRAWINGS (available upon request)***

**APPLICATION FEE, PROCESSING FEE, REISSUE FEE, AND INSPECTION FEES ARE NON-REFUNDABLE**

**UTILITY LOCATES REQUIRED** - Forty eight (48) hours prior to commencing any excavation, permit holders are required to contact the Ohio Utilities Protection Service (OUPS), and non-OUPS member City Divisions, to request the location of underground utilities within their proposed work limits. OUPS may be reached at (800) 362-2764, or by dialing 811.

**REQUIRED INSPECTION** - The City reserves the right to require on-site inspections of backfill operations and pavement restorations. Additional fees may apply for work requiring above average inspections levels. Anticipated inspection requirements and associated fees are delineated on your permit, see reverse side.

Excavations, and/or placement of materials, (whether new, replacement, or restoration) associated to this permit must be pre-approved by the City's designated Inspector(s) overseeing this permit's work. Any work performed, or materials installed, without pre-approval by the Inspector(s), shall be subject to removal at no cost to the City. In addition, fines and/or penalties may be imposed, as described under City Code Title 9. Any clarification regarding the inspection process can be obtained by calling our Permit Office at (614) 645-5550.

**PROPOSED CHANGES TO SCOPE OF WORK FOR PREVIOUSLY ISSUED PERMITS** - Permit holders may not make changes to the scale, scope and/or location of their work without specific pre-approval by the Permit Section.



All lane closures lasting for 1 hour or more, and steel plates placed in the ROW per City Code, **must** be reported in the CLOS application located online at: [Columbus.gov/close](http://Columbus.gov/close) or by scanning the QR code to the left. All Lane closures per City Code **must** be posted 3 days prior to the lane closures, and 5 days prior to full roadway closure. Approved traffic control devices shall be furnished, erected, maintained, and removed by the permit holder in accordance with the most recent edition of the Ohio Manual of Uniform Traffic Control Devices. Emergency No Parking Signs are to be posted 3 days prior to the start of the lane or roadway closure.

A Columbus Law Enforcement Officer(s) (L.E.O.) is required when working at signalized intersection(s), or as directed by the City of Columbus as a part of this permit, or the inspection thereof. To schedule an officer, call (614) 645-4795 at Columbus Police Department's Special Duty Office.

**PARKING** - Any impacts to parking must be pre-approved and specifically described and itemized in the permit application. Removal of parking is intended to accommodate the limits of the project and construction equipment only. Any non-construction related or personal vehicle parked within the closure shall be considered a violation and subject to a parking infraction. When removing paid and/or permit parking, the permit holder is required to post temporary Emergency No stopping signs 24 hours in advance of the start of the permit. In all other areas, temporary signs must be posted 72 hours in advance. Permit holders are required to submit pictures of the posted signs to [TEMPNSAT@columbus.gov](mailto:TEMPNSAT@columbus.gov). The permit holder is required to display their valid permit on the dash of each construction vehicle parked in the closure.

**NOTES**

- This permit is not valid within "NO STOPPING" zones, except when within a full closure area that has been approved as a part of this permit.
- When wheelchair ramp construction will be required, contact the City of Columbus ADA Coordinator at (614) 645-0285 for a determination of the type and location of ramp(s) prior to commencing that construction.
- Any work on a public tree, or within its Critical Root Zone (CRZ), requires a Forestry permit. Refer to the Columbus Tree Technical Manual for pruning, protection, removal and mitigation standards. Permit and mitigation fees may apply. Contact Forestry at (614) 645-6640 or [forestry@columbus.gov](mailto:forestry@columbus.gov).
- City of Columbus Chapter 905 Sidewalk and Driveway permits are valid for 90 days from the date of issuance. All other permits are as designated thereon.
- Permits are non-transferable

**Adam W. Fowler, P.E., P.S.****FRANKLIN COUNTY ENGINEER**DATE: 06/13/2025

PERMIT NO.

25-327

This permit is hereby granted to [Jeremy Christoff](#) representing [Columbia Gas of Ohio](#) accordance with Section 5571.16 and 5589.10 of the Ohio Revised Code. This permit is granted for the purpose: [This work is to replace a 24" Gas main to comply with PHMSA's Mega Rule. This work will also include replacement of a few small diameter laterals.](#)

FCEO Notes: Approval is only for the MOT shown at the signal of Agler Rd at Sunbury Rd/Sunbury Dr and Agler Rd between Sunbury Rd and Cassady Ave within the County's jurisdiction. Please contact Steve Brutsche [srutsche@franklincountyengineer.org](mailto:srutsche@franklincountyengineer.org) and 614-580-7113 at least 48 hours prior to the work that impacts FCEO's signal at Agler Rd/Sunbury Rd/Sunbury Dr.

Address or Location of work: [2613 Denune Ave Columbus OH](#)

The holder of this permit shall be responsible for the replacement of the pavement, shoulder, berms, drainage courses, pipes, guard rail, plant material and turf to an original or better condition, and shall properly maintain the pavement, berm, and storm drainage facilities until restored to its original condition.

All trenches excavated within the roadway will be backfilled with Item 613, Flowable Controlled Density Fill (FCDF) Type I or II, per the City of Columbus Construction and Material Specifications, or as otherwise specified in writing, to the satisfaction of the County Engineer. Full depth asphalt replacement will also be required. Follow City of Columbus Standard drawing 1441 with full depth asphalt.

All lane restrictions shall take place between the hours of 9:00 a.m. to 3:00 p.m. unless otherwise approved by the Franklin County Engineer's Office. The permit holder shall provide approved devices for the maintenance of traffic at all times per the approved plans or approved maintenance of traffic notes.

Furthermore, this permit holder shall provide and maintain at all excavations in the road, suitable barricades and safeguards including the display of steady burn, type "C" lights at night and shall at all times indemnify and save harmless the Board of County Commissioners and Franklin County against all claims from injury or damage to persons and property that may be asserted by any firm, person, or corporation arising out of the use and occupancy of any part of the road and/or right-of-way.

The contractor shall give notice to OHIO811 (Telephone 800-362-2764) 48 hours prior to construction and to the owners of the underground utilities who are not members of a registered underground protection service in accordance with Section 153.64 of the Revised Code.

This work is to begin on [06/02/2025](#) . You must call 614-525-6187 one day before actually starting work for the permit to be valid.

By: LIZ PYLES Utilities Department

We hereby agree to the terms of this permit:

Company Name: Campos EPC LLC Telephone Number (419) 601-3646

Person to Contact: Jeremy Christoff Telephone Number (419) 601-3646

Field Supervisor:

Stephen Castilow

Telephone Number

(815) 206-9927

E-Mail

jeremy.christoff@camposepc.cc



**DEPARTMENT OF THE ARMY**  
**U.S. ARMY CORPS OF ENGINEERS, HUNTINGTON DISTRICT**  
**502 8TH STREET**  
**HUNTINGTON, WV 25701-2018**

March 24, 2025

Regulatory Division  
Energy Resource Branch  
LRH-2025-00047-SCR-UNT Alum Creek

**NATIONWIDE PERMIT NO. 12 VERIFICATION**

Scott Brown  
NiSource, Inc.  
101 Stoney Ridge Drive  
Monaca, Pennsylvania 15061

Dear Mr. Brown:

I refer to the pre-construction notification (PCN) requesting a Department of the Army (DA) authorization for the discharge of dredged and/or fill material into waters of the United States (U.S.) in association with the construction of the NCHP Phase 3B Project. The project is located approximately five (5) miles north of Columbus, Franklin County, Ohio. The proposed activity extends from approximately 40.021989° N, 82.950258° W to approximately 40.018147° N, 82.882347° W. Your PCN has been assigned the following file number: LRH-2025-00047-SCR-UNT Alum Creek on all future correspondence related to this project.

The U. S. Army Corps of Engineers' (Corps) authority to regulate waters of the U. S. is based on the definitions and limits of jurisdiction contained in 33 CFR Part 328 and 33 CFR Part 329. Section 404 of the Clean Water Act (Section 404) requires a DA permit be obtained prior to discharging dredged and/or fill material into waters of the U. S., including wetlands. Section 10 of the Rivers and Harbors Act of 1899 (Section 10) requires a DA permit be obtained for any work in, on, over or under a navigable water.

The proposed project, as described in the submitted DA permit application, has been reviewed in accordance with Section 404 and Section 10. Based on your description of the proposed work, and other information available to us, it has been determined that the wetland crossing project would involve activities subject to the requirements of Section 404.

In the submitted PCN materials, you have requested a DA authorization for the temporary discharge of dredged and/or fill material into 264 linear feet (0.02 acre) of four (4) streams and 0.02 acre of one (1) wetland in association with construction of the NCHP Phase 3B Project. The proposed project would include the construction of approximately 3.75 miles of 24-inch diameter high pressure gas pipeline to replace the existing 24-inch and 20-inch-high pressure gas line. All work will be conducted in accordance with the PCN received in this office on January 8, 2025.



-2-

Based on the provided information, it has been determined proposed discharge of dredged and/or fill material into a water of the U.S. associated with the NCHP Phase 3B Project meets the criteria for Nationwide Permit (NWP) No. 12 (enclosed) under the January 13, 2021, Federal Register, Reissuance and Modification of NWPs (86 FR 2744) provided you comply with all terms and conditions of the enclosed material, the enclosed special conditions. The State of Ohio Section 401 Water Quality Certification has been waived for the 2021 NWPs.

This verification is valid until the expiration date of the NWPs, unless the NWP authorization is modified, suspended, or revoked. The verification will remain valid if the NWP authorization is reissued without modification or the activity complies with any subsequent modification of the NWP authorization. The 2021 NWPs are scheduled to be modified, reissued, or revoked on March 14, 2026. Prior to this date, it is not necessary to contact this office for re-verification of your project unless the plans for the proposed activity are modified. Furthermore, if you commence or under contract to commence this activity before March 14, 2026, you will have twelve (12) months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP.

Please be aware these NWP authorizations do not obviate the requirement to obtain other federal, state or local authorizations required by law. A copy of this NWP and verification letter must be supplied to your project engineer responsible for construction activities. A copy of the verification letter must be kept at the site during construction.

Upon completion of the work, the enclosed certification must be signed and returned to this office. If you have any questions concerning the above, please contact Ms. Rachel McCarty of the Energy Resource Branch at 304-807-0826, by mail at the above address, or by email at: [rachel.a.mccarty@usace.army.mil](mailto:rachel.a.mccarty@usace.army.mil).

Sincerely,

*Kimberly Courts-Brown*

Kimberly Courts-Brown  
Regulatory Project Manager  
Energy Resource Branch

Enclosures

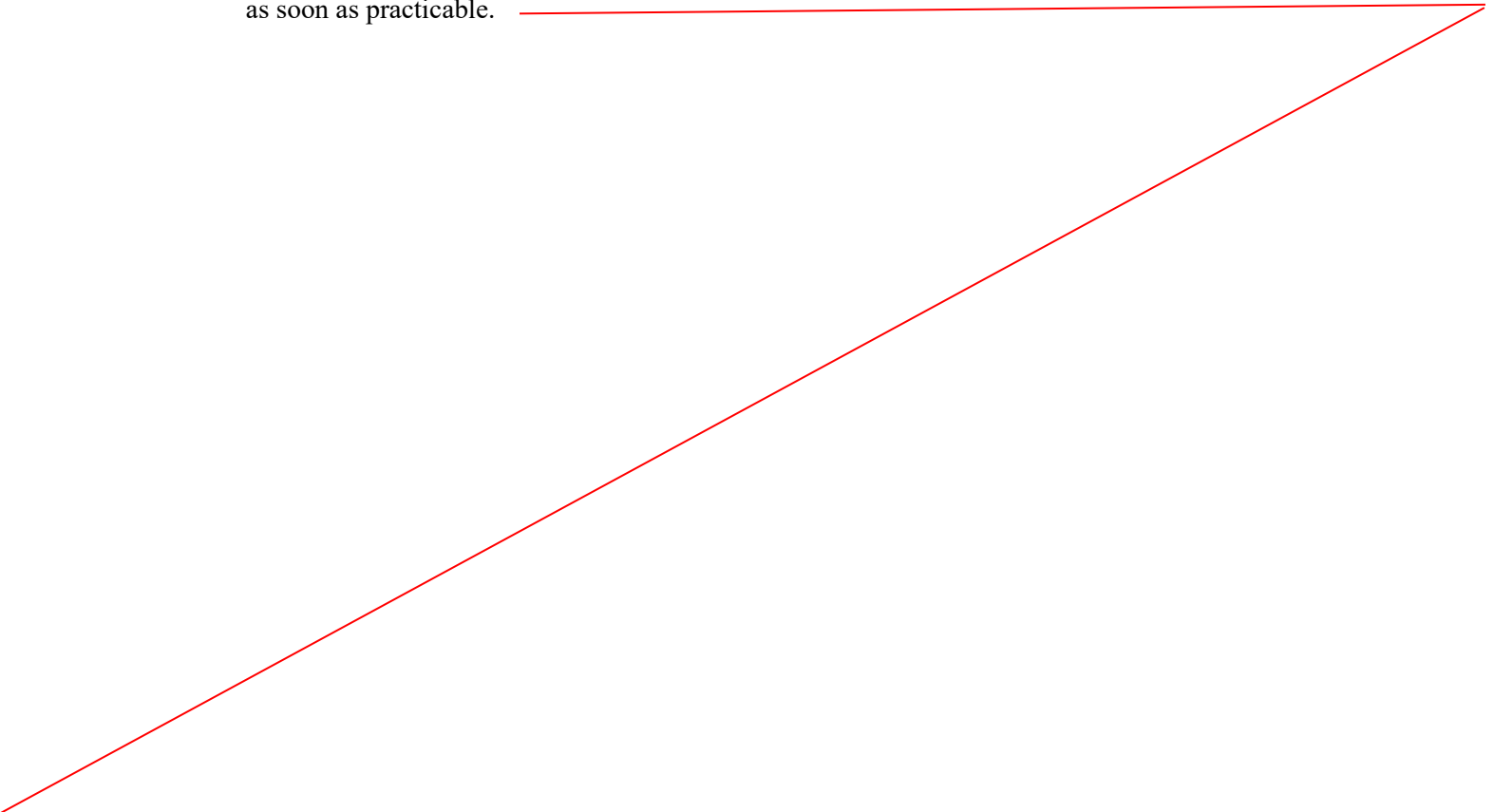
-3-

| <b>Table 1. Authorized discharge of dredged and/or fill material into waters of the U.S. in<br/>association with the NiSource, Inc. – NCHP Phase 3B Project<br/>LRH-2025-00047-SCR-UNT Alum Creek</b> |                                |  |                                 |                               |                             |  |
|---|--------------------------------|--|---------------------------------|-------------------------------|-----------------------------|--|
| <b>Single<br/>and<br/>Complete<br/>Crossing</b>   | <b>Aquatic<br/>Resource ID</b> | <b>Stream Flow<br/>Regime/Wetland<br/>Type</b> | <b>Fill<br/>Length<br/>(lf)</b> | <b>Fill<br/>Area<br/>(ac)</b> | <b>Duration<br/>of Fill</b> | <b>Description of<br/>Regulated<br/>Activity</b> |
| 1   | Stream S-4                     | Intermittent                                   | 73                              | 0.0059                        | Temporary                   | Open Cut Pipeline<br>Crossing                    |
| 2   | Stream S-5                     | Intermittent                                   | 77                              | 0.0062                        | Temporary                   | Open Cut Pipeline<br>Crossing                    |
| 3   | Stream S-6                     | Intermittent                                   | 79                              | 0.0063                        | Temporary                   | Open Cut Pipeline<br>Crossing                    |
| 4   | Wetland W-8                    | Forested                                       | N/A                             | 0.02                          | Temporary                   | Temporary<br>Access                              |
| 5   | Stream S-9                     | Perennial                                      | 35                              | 0.0028                        | Temporary                   | Open Cut Pipeline<br>Crossing                    |
| Total   |                                |  | 264                             | 0.0412                        |                             |  |

**Nationwide Permit No. 12 Verification Special Conditions for the  
NiSource, Inc. – NCHP Phase 3B Project  
LRH-2025-00047-SCR-UNT Alum Creek  
1 of 2**

1. All work will be conducted in accordance with the submitted pre-construction notification for the NCHP Phase 3B Project received in this office on January 8, 2025.
2. Enclosed is a copy of Nationwide Permit 12, which will be kept at the site during construction. A copy of the nationwide permit verification, special conditions, and the attached construction plans must be kept at the site during construction. The permittee will supply a copy of these documents to their project engineer responsible for construction activities.
3. Upon completion of the activity authorized by these Nationwide Permit 12 verifications, the enclosed certification must be signed and returned to this office along with as-built drawings showing the location and configuration, as well as all pertinent dimensions and elevations of the activity authorized under this Nationwide Permit verification.
4. Construction activities will be performed during low flow conditions to the maximum extent practicable. Additionally, appropriate site-specific best management practices for sediment and erosion control will be fully implemented during construction activities at the site.
5. No area for which grading has been completed will be unseeded or unmulched for longer than fourteen (14) days. All disturbed areas will be seeded and/or revegetated with native species and approved seed mixes (where practicable) after completion of construction activities for stabilization and to help preclude the establishment of non-native invasive species.
6. All water resources and their buffers, which are to be avoided on-site, must be clearly indicated on the site plans and drawings, demarcated in the field, and protected with suitable material prior to site disturbance. These materials must remain in place and be maintained throughout the construction process.
7. In the event any previously unknown historic or archaeological sites or human remains are uncovered while accomplishing the activity authorized by this nationwide permit authorization, the permittee must cease all work in waters of the U.S. immediately and contact local, state and county law enforcement offices (only contact law enforcement on findings of human remains), the Corps at 304-399-5610 and Ohio State Historic Preservation Office at 614-298-2000. The Corps will initiate the Federal, state and tribal coordination required to comply with the National Historic Preservation Act and applicable state and local laws and regulations. Federally recognized tribes are afforded a government-to-government status as sovereign nations and consultation is required under Executive Order 13175 and 36 CFR Part 800.
8. This Department of the Army Permit authorization does not authorize the “take” of a threatened or endangered species as defined under the Endangered Species Act (ESA). In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the United States Fish and Wildlife Service (USFWS), both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS or their World Wide Web page at <http://www.fws.gov/r9endspp/endspp.html>.

**Nationwide Permit No. 12 Verification Special Conditions for the  
NiSource, Inc. – NCHP Phase 3B Project  
LRH-2025-00047-SCR-UNT Alum Creek  
2 of 2**

9. The project site lies within the range of the Indiana bat (*Myotis sodalis*), a federally-listed endangered species. Several factors have contributed to the species decline, including habitat loss, fragmentation of habitat and the disease White Nose Syndrome. During winter, the bat species hibernate in caves and abandoned mines. Suitable summer habitat for the Indiana bats consists of a wide variety of forested/wooded habitats where they roost, forage, and travel and may also include some adjacent and interspersed non-forested habitats such as emergent wetlands and adjacent edges of agricultural fields, old fields and pastures. This includes forests and woodlots containing potential roosts (i.e., live trees and/or snags  $\geq 3$  inches diameter at breast height (dbh) that have any exfoliating bark, cracks, crevices, hollows and/or cavities), as well as linear features such as fencerows, riparian forests, and other wooded corridors. These wooded areas may be dense or loose aggregates of trees with variable amounts of canopy closure. Individual trees may be considered suitable habitat when they exhibit the characteristics of a potential roost tree and are located within 1,000 feet (305 meters) of other forested/wooded habitat. The permittee will preserve wooded/forested habitats exhibiting any of the characteristics listed above wherever possible. Should suitable habitat be present that cannot be saved during construction activities, any trees  $\geq$  three (3) inches dbh will only be cut between October 1 - March 31.
  10. Section 7 obligations under the ESA must be reconsidered if new information reveals impacts of the project that may affect Federally-listed species or critical habitat in a manner not previously considered, the proposed project is subsequently modified to include activities which were not considered during Section 7 consultation with the USFWS, or new species are listed or critical habitat designated that might be affected by the subject project.
  11. Should new information regarding the scope and/or impacts of the project become available that was not submitted to this office during our review of the proposal, the permittee will submit written information concerning proposed modification(s) to this office for review and evaluation, as soon as practicable.
- 

**NATIONWIDE PERMITS FOR THE STATE OF OHIO****U.S. ARMY CORPS OF ENGINEERS (CORPS) REGULATORY PROGRAM  
REISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS  
WITH OHIO DEPARTMENT OF NATURAL RESOURCES CONSISTENCY  
DETERMINATION UNDER THE COASTAL ZONE MANAGEMENT ACT AND  
WAIVED OHIO EPA 401 WATER QUALITY CERTIFICATION**

Final rule published in the *Federal Register* (86 FR 2744) on January 13, 2021

**NWP 12**

**NWP 12. *Oil or Natural Gas Pipeline Activities.*** Activities required for the construction, maintenance, repair, and removal of oil and natural gas pipelines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

**Oil or natural gas pipelines:** This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of oil and natural gas pipelines. There must be no change in pre-construction contours of waters of the United States. An “oil or natural gas pipeline” is defined as any pipe or pipeline for the transportation of any form of oil or natural gas, including products derived from oil or natural gas, such as gasoline, jet fuel, diesel fuel, heating oil, petrochemical feedstocks, waxes, lubricating oils, and asphalt.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

**Oil or natural gas pipeline substations:** This NWP authorizes the construction, maintenance, or expansion of substation facilities (e.g., oil or natural gas or gaseous fuel custody transfer stations, boosting stations, compression stations, metering stations, pressure regulating stations) associated with an oil or natural gas pipeline in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize

discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

**Foundations for above-ground oil or natural gas pipelines:** This NWP authorizes the construction or maintenance of foundations for aboveground oil or natural gas pipelines in all waters of the United States, provided the foundations are the minimum size necessary.

**Access roads:** This NWP authorizes the construction of access roads for the construction and maintenance of oil or natural gas pipelines, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize oil or natural gas pipelines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Oil or natural gas pipelines routed in, over, or under section 10 waters without a discharge of dredged or fill material may require a section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during horizontal directional drilling activities conducted for the purpose of installing or replacing oil or natural gas pipelines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the oil or natural gas pipeline activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety.

and the affected areas returned to preconstruction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) A section 10 permit is required; (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States; or (3) the proposed oil or natural gas pipeline activity is associated with an overall project that is greater than 250 miles in length and the project purpose is to install new pipeline (vs. conduct repair or maintenance activities) along the majority of the distance of the overall project length. If the proposed oil or gas pipeline is greater than 250 miles in length, the pre-construction notification must include the locations and proposed impacts (in acres or other appropriate unit of measure) for all crossings of waters of the United States that require DA authorization, including those crossings authorized by an NWP would not otherwise require preconstruction notification. (See general condition 32.) (Authorities: Sections 10 and 404)

**Note 1:** Where the oil or natural gas pipeline is constructed, installed, or maintained in navigable waters of the United States (i.e., section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the oil or natural gas pipeline to protect navigation.

**Note 2:** For oil or natural gas pipeline activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Oil or natural gas pipeline activities must comply with 33 CFR 330.6(d).

**Note 3:** Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the oil or natural gas pipeline must be removed upon completion of the work, in accordance with the requirements for temporary fills.

**Note 4:** Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such oil or natural gas pipelines will require a section 404 permit (see NWP 15).

**Note 5:** This NWP authorizes oil or natural gas pipeline maintenance and repair activities that do not qualify for the Clean Water Act section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

**Note 6:** For NWP 12 activities that require pre-construction notification, the PCN must include any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

### **Corps NWP 12 Specific Regional Conditions:**

- PCN in accordance with NWP General Condition 32 and Regional General Condition 6 is required for all permanent conversion of scrub/shrub and forested wetlands greater than 1/10 of an acre per single and complete project. Use of conversion in this regional condition relates to the change of a scrub/shrub and forested wetlands to a herbaceous state, but it would not result in a loss of waters of the United States as the wetland would continue to exist in the landscape.
- This NWP does not authorize the placement of manholes in wetlands.

### **Ohio Department of Natural Resources CZMA Federal Consistency Determination Condition:**

- For all activities located within or along the shore of Ohio's portion of Lake Erie, including Maumee Bay and Sandusky Bay, all applicable authorizations under the Ohio Coastal Management Program must be obtained.

### **Nationwide Permit General Conditions**

**Note:** To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

#### **1. Navigation.**



- a. No activity may cause more than a minimal adverse effect on navigation.
- b. Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.
- c. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his or her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

**2. Aquatic Life Movements.** No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

**3. Spawning Areas.** Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

**4. Migratory Bird Breeding Areas.** Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

**5. Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

**6. Suitable Material.** No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

**7. Water Supply Intakes.** No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

**8. Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

**9. Management of Water Flows.** To the maximum extent practicable, the preconstruction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below.

The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the preconstruction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

**10. Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

**11. Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

**12. Soil Erosion and Sediment Controls.** Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

**13. Removal of Temporary Structures and Fills.** Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. Temporary fills must be removed in their entirety and the affected areas returned to preconstruction elevations. The affected areas must be revegetated, as appropriate.

**14. Proper Maintenance.** Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

**15. Single and Complete Project.** The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

**16. Wild and Scenic Rivers.**

- a. No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.
- b. If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.
- c. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

**17. Tribal Rights.** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

**18. Endangered Species.**

- a. No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a
- b. species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which “may affect” a listed species or critical habitat, unless ESA section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of “effects of the action” for the purposes of ESA section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA section 7 regarding “activities that are reasonably certain to occur” and “consequences caused by the proposed action.”

- c. Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.
- d. Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. The district engineer will determine whether the proposed activity “may affect” or will have “no effect” to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps’ determination within 45 days of receipt of a complete pre-construction notification. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have “no effect” on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA section 7 consultation or conference has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.
- e. As a result of formal or informal consultation or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWP.
- f. Authorization of an activity by an NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a

Biological Opinion with “incidental take” provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word “harm” in the definition of “take” means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

- g. If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP
- h. activity or whether additional ESA section 7 consultation is required.
- i. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

**19. Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

## **20. Historic Properties.**

- a. No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register

- of Historic Places until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.
- b. Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)(1)). If preconstruction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.
  - c. Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the preconstruction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: No historic properties affected, no adverse effect, or adverse effect.
  - d. Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to

cause effects to historic properties or that NHPA section 106 consultation has been completed. For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

- e. Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

**21. Discovery of Previously Unknown Remains and Artifacts.** Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

**22. Designated Critical Resource Waters.** Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

- (a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50,

51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines that the impacts to the critical resource waters will be no more than minimal.

**23. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

- a. The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).
- b. Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.
- c. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require preconstruction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.
- d. Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-acre and require preconstruction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-acre or less that require preconstruction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult to-replace resources (see 33 CFR 332.3(e)(3)).



- e. Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.
- f. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.
  - 1. The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the
  - 2. district engineer may approve the use of permittee-responsible mitigation.
  - 3. The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)
  - 4. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option
  - 5. considered for permittee-responsible mitigation.
  - 6. If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A

conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)). If permittee responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

7. If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).
8. Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).
- g. Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.
- h. (h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

- i. Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

**24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state or federal, dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

**25. Water Quality.**

- a. Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA section 401, a CWA section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.
- b. If the NWP activity requires preconstruction notification and the certifying authority has not previously certified compliance of an NWP with CWA section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.
- c. The district engineer or certifying authority may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

**26. Coastal Zone Management.** In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. The district engineer or a state may

require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

**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 CWA section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

**28. Use of Multiple Nationwide Permits.** The use of more than one NWP for a single and complete project is authorized, subject to the following restrictions:

- a. If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.
- b. If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 acre.

**29. Transfer of Nationwide Permit Verifications.** If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

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(Transferee)

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(Date)

**30. Compliance Certification.** Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

- a. A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;
- b. A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and
- c. The signature of the permittee certifying the completion of the activity and mitigation. The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

**31. Activities Affecting Structures or Works Built by the United States.** If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a “USACE project”), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

**32. Pre-Construction Notification.**

- a. **Timing.** Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the

prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

1. He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
2. 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

**b. Contents of Pre-Construction Notification:** The PCN must be in writing and include the following information:

1. Name, address and telephone numbers of the prospective permittee;
2. Location of the proposed activity;
3. Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;
4.
  - i. A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s)

- used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.
- ii. For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.
  - iii. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker
  - iv. decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);
5. The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;
  6. If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

7. For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;
  8. For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;
  9. For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the “study river” (see general condition 16); and
  10. For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.
- c. **Form of Pre-Construction Notification:** The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.
- d. **Agency Coordination:**
1. The district engineer will consider any comments from Federal and state agencies concerning the proposed activity’s compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity’s adverse environmental effects so that they are no more than minimal.
  2. Agency coordination is required for:



- i. All NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States;
  - ii. NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and
  - iii. NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.
3. When agency coordination is required, the district engineer will immediately provide (e.g., via email, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or email that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the preconstruction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.
4. In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.
5. Applicants are encouraged to provide the Corps with either electronic files or multiple copies of preconstruction notifications to expedite agency coordination.

### **District Engineer's Decision**

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.
2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.
3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included

in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) That the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

### **Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

### **Nationwide Permit Definitions**

**Best management practices (BMPs):** Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural. Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

**Currently serviceable:** Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

**Direct effects:** Effects that are caused by the activity and occur at the same time and place.

**Discharge:** The term “discharge” means any discharge of dredged or fill material into waters of the United States.

**Ecological reference:** A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**Establishment (creation):** The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

**High Tide Line:** The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

**Historic Property:** Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

**Independent utility:** A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

**Indirect effects:** Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. The loss of stream bed includes the acres of stream bed that are permanently adversely affected by filling or excavation because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the

use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters or wetlands for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

**Navigable waters:** Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

**Non-tidal wetland:** A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Nontidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

**Open water:** For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

**Ordinary High Water Mark:** The term ordinary high water mark means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

**Perennial stream:** A perennial stream has surface water flowing continuously year-round during a typical year.

**Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**Pre-construction notification:** A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Preconstruction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where preconstruction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

**Preservation:** The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

**Re-establishment:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Reestablishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

**Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

**Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: Reestablishment and rehabilitation.

**Riffle and pool complex:** Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

**Riparian areas:** Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

**Shellfish seeding:** The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

**Single and complete linear project:** A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and

distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

**Single and complete non-linear project:** For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

**Stormwater management:** Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

**Stormwater management facilities:** Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

**Stream bed:** The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

**Stream channelization:** The manipulation of a stream’s course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized jurisdictional stream remains a water of the United States.

**Structure:** An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

**Tidal wetland:** A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of



the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

**Tribal lands:** Any lands title to which is either: (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

**Tribal rights:** Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

**Vegetated shallows:** Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

**Waterbody:** For purposes of the NWP, a waterbody is a “water of the United States.” If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)).

### **Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

### **Nationwide Permits Regional General Conditions For the State of Ohio**

1. NWPs shall not authorize any regulated activity which negatively impacts bogs and/or fens.
2. NWPs shall not authorize any regulated activity in Lake Erie which would result in diversion of water from the Great Lakes.

3. NWP's shall not authorize any regulated activity which has an adverse impact on littoral transport within Lake Erie.

**4. In-Water Work Exclusion Dates:** Any work associated with a regulated activity under a nationwide permit cannot take place during the restricted period of the following Ohio Department of Natural Resources (ODNR), Division of Wildlife (DOW) In-Water Work Restrictions, unless the applicant receives advanced written approval from the DOW, notifies the District Engineer in accordance with Nationwide Permit General Condition 32 and Regional General Condition 6, and receives written approval from the Corps:

#### Statewide In-Water Work Restriction Periods and Locations

##### 1. Salmonid Locations Restriction Period: September 15 – June 30

Arcola Creek (entire reach)  
 Ashtabula Harbor  
 Ashtabula River (Hadlock Rd. to mouth)  
 Aurora Branch (Chagrin River (RM 0.38 to mouth))  
 Big Creek (Grand River (Girdled Road to mouth))  
 Black River (entire reach)  
 Chagrin River (Chagrin Falls to mouth)  
 Cold Creek (entire reach)  
 Conneaut Creek (entire reach)  
 Conneaut Harbor  
 Corporation Creek (Chagrin River (entire reach))  
 Cowles Creek (entire reach)  
 Ellison Creek (Grand River (entire reach))  
 Euclid Creek (entire reach)  
 Fairport Harbor  
 Grand River (Dam at Harpersfield Covered Bridge Park to mouth)  
 Gulley Brook (Chagrin River (entire reach))  
 Huron River (East Branch-West Branch confluence to mouth)  
 Indian Creek (entire reach)  
 Kellogg Creek (Grand River (entire reach))  
 Mill Creek (Grand River (entire reach))  
 Paine Creek (Grand River (Paine Falls to mouth))  
 Rocky River (East Branch-West Branch confluence to mouth)  
 Smokey Run (Conneaut Creek (entire reach))  
 Turkey Creek (entire reach)  
 Vermilion River (dam at Wakeman upstream of the US 20/SR 60 bridge to mouth)  
 Ward Creek (Chagrin River (entire reach))  
 Wheeler Creek (entire reach)  
 Whitman Creek (entire reach)

## 2. Other Locations Restriction Period: March 15 – June 30

All other perennial streams not listed above as salmonid.  
Also includes Lake Erie and bays not listed above as salmonid.

Note: This condition does not apply to Ohio Department of Transportation projects that are covered under the “Memorandum of Agreement Between The Ohio Department of Transportation, The Ohio Department of Natural Resources, and The United States Fish and Wildlife Service For Interagency Coordination For Projects Which Require Consultation Under the Endangered Species Act, Impact State Listed Species, and/or Modify Jurisdictional Waters 2016 Agreement Number: 19394” or subsequent amendments to this Ohio Department of Transportation memorandum of agreement.

**5. Waters of Special Concern:** PCN in accordance with NWP General Condition 32 and Regional General Condition 6 is required for regulated activities in the following resources:

- a. **Threatened and Endangered Species:** Due to the potential presence of federally threatened or endangered species or their habitats, PCN in accordance with NWP General Conditions 18 and 32 and Regional General Condition 6 is required for any regulated activity under the NWPs in Ohio that includes:
  - i. The removal of trees  $\geq$  three (3) inches diameter at breast height. These trees may provide suitable roosting, foraging, or traveling habitat for the federally listed endangered Indiana bat and the federally-listed threatened northern long-eared bat; and/or
  - ii. Regulated activities that impact a sand, gravel, and/or cobble beach (landform between the low and high water marks affected by waves) and/or mud flat (areas affected by natural seiche effect) on the Lake Erie shoreline; and/or
  - iii. Regulated activities in the waterway or township of the corresponding counties listed in Appendix 1.

**Note 1:** Applicants must ensure they are referencing the latest version of Appendix 1 by contacting their nearest U.S. Army Corps of Engineers district office and visiting the online resources identified in General Condition 18(f) of these NWPs, since federally listed species are continuously listed, proposed for listing, and/or de-listed.

**Note 2:** As mentioned in General Condition 18, federal applicants should follow their own procedures for complying with the requirements of the Endangered Species Act (ESA). Federal applicants, including applicants that have received federal funding, must provide the District Engineer with the appropriate documentation to demonstrate compliance with ESA requirements.

- b. **Critical Resource Waters:**

- i. In Ohio, two (2) areas have been designated critical habitat for the piping plover (*Charadrius melodus*) and are defined as lands 0.62 mile inland from normal high water line. Unit OH-1 extends from the mouth of Sawmill Creek to the western property boundary of Sheldon Marsh State Natural Area, Erie County, encompassing approximately two (2) miles. Unit OH-2 extends from the eastern boundary line of Headland Dunes Nature Preserve to the western boundary of the Nature Preserve and Headland Dunes State Park, Lake County, encompassing approximately 0.5 mile.
    - ii. In Ohio three (3) areas have been designated critical habitat for the rabbitsfoot mussel (*Quadrula cylindrica cylindrica*). Unit RF26 includes 17.5 river kilometers (rkm) (10.9 river miles [rimi]) of the Walhonding River from the convergence of the Kokosing and Mohican Rivers downstream to Ohio Highway 60 near Warsaw, Coshocton County, Ohio. Unit RF27 includes 33.3 rkm (20.7 rmi) of Little Darby Creek from Ohio Highway 161 near Chuckery, Union County, Ohio, downstream to U.S. Highway 40 near West Jefferson, Madison County, Ohio. Unit RF29 includes 7.7 rkm (4.8 rmi) of Fish Creek from the Indiana and Ohio State line northwest of Edgerton, Ohio, downstream to its confluence with the St. Joseph's River north of Edgerton, Williams County, Ohio.
    - iii. Old Woman Creek National Estuarine Research Preserve.
  - c. **Oak Openings:** Wetland activities conducted in the Oak Openings Region of Northwest Ohio located in Lucas, Henry and Fulton Counties. For a map of the Oak Openings Region, visit <https://www.google.com/maps/d/viewer?mid=1JADupaZXJzO6AUDvnUaV18GVjG7yfBim&usp=sharing>
  - d. **Category 3 Wetlands:** As determined through use of the latest approved version of the Ohio Environmental Protection Agency's Ohio Rapid Assessment Method wetland evaluation form.
  - e. **Ohio Stream Designations:** Exceptional Warmwater Habitat, Cold Water Habitat, Seasonal Salmonid, or any equivalent designation; or water bodies with an antidegradation category of Superior High Quality Water, Outstanding National Resource Water, or Outstanding State Waters as determined by the Ohio Environmental Protection Agency except for NWP 1, 2, 3, 9, 10, 11, 27, 28, 32, and 35 or maintenance activities covered under NWPs 7 and 12. The current list of these rivers and tributaries can be found on the Ohio Environmental Protection Agency web-site at: [http://www.epa.ohio.gov/dsw/rules/3745\\_1.aspx](http://www.epa.ohio.gov/dsw/rules/3745_1.aspx). These designations can be found under the aquatic life use of the rivers and tributaries within its basin and under the "Anti-deg Rule #05."
6. **PCN Submittals:** In addition to the information required under NWP General Condition 32, the following information must be provided with the PCN:

- a. **Threatened and Endangered Species:** Section 7(a)(2) of the Endangered Species Act (ESA) states that each federal agency shall, in consultation with the Secretary, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the ESA, called "Interagency Cooperation," is the mechanism by which federal agencies ensure the actions they take, including those they fund or authorize, do not jeopardize the continued existence of any federally or proposed federally listed species. Consistent with NWP General Condition 18, information for federally threatened and endangered species must be provided in the PCN to determine the proposed activity's compliance with NWP General Condition 18 and to facilitate project-specific coordination with the USFWS. All relevant information obtained from the USFWS must be submitted with the PCN.
- b. **Cultural Resources:** Under the National Historic Preservation Act (NHPA), the Corps must ensure no federal undertaking, including a Corps permit action, which may affect historic resources, is commenced before the impacts of such action are considered and the Advisory Council on Historic Preservation and the State Historic Preservation Office (SHPO) are provided an opportunity to comment as required by the NHPA, 36 CFR 800, and 33 CFR 325, Appendix C. Consistent with NWP General Condition 20, historic properties information must be provided in the PCN if the proposed undertaking might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. All relevant information obtained from the SHPO must be submitted with the PCN.
- c. **National Wild and Scenic Rivers:** The following waterways are components of the National Wild and Scenic River System and require PCN to the Corps:

**Big and Little Darby Creeks**

- Big Darby Creek from Champaign-Union County line downstream to the Conrail railroad trestle and from the confluence with the Little Darby Creek downstream to the Scioto River;
- Little Darby Creek from the Lafayette-Plain City Road bridge downstream to within 0.8 mile from the confluence with Big Darby Creek; and
- Total designation is approximately 82 miles.

**Little Beaver Creek**

- Little Beaver Creek main stem, from the confluence of West Fork with Middle Fork near Williamsport to mouth;
- North Fork from confluence of Brush Run and North Fork to confluence of North Fork with main stem at Fredericktown;

- Middle Fork from vicinity of Co. Rd. 901 (Elkton Road) bridge crossing to confluence of Middle Fork with West Fork near Williamsport;
- West Fork from vicinity of Co. Rd. 914 (Y-Camp Road) bridge crossing east to confluence of West Fork with Middle Fork near Williamsport; and
- Total designation is 33 miles.

#### **Little Miami River**

- Little Miami River - St. Rt. 72 at Clifton to the Ohio River;
- Caesar Creek - lower two (2) miles of Caesars Creek; and
- Total designation is 94 miles.

- d. **Temporary Fills or Structures:** When a PCN is required for temporary fills or structures, the PCN must specify how long the temporary fills or structures will remain and include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-construction contours and elevations. Native, non-invasive vegetation must be used unless otherwise authorized by a Corps NWP verification.

7. **Invasive Species:** No area for which grading has been completed will be unseeded or unmulched for longer than 14 days. All disturbed areas will be seeded and/or revegetated with native species and approved seed mixes (where practicable) after completion of construction activities for stabilization and to help preclude the establishment of non-native invasive species.

| <b>APPENDIX 1 TO REGIONAL GENERAL CONDITION 5 (a)</b> |   |  |
|---|---|--|
| <b>County</b>   | <b>Waterway</b>   | <b>Township</b>  |
| Adams   | Ohio River, Scioto Brush Creek, South Fork Scioto Brush Creek |  |
| Ashtabula   | Grand River, Pymatuning Creek                                 | Andover, Austinburg, Cherry Valley, Colebrook, Dorset, Hartsgrove, Harpersfield, Morgan, New Lyme, Orwell, Richmond, Rome, Trumbull, Wayne, Williamsfield, Windsor |
| Athens  | Ohio River  |  |
| Brown   | East Fork Little Miami River, Ohio River                      |  |
| Butler  | Great Miami River   | Lemon, Liberty   |
| Champaign   |   | Mad River, Union, Urbana   |
| Clark   | Little Miami River  | Bethel, Moorfield, Pleasant, Springfield   |
| Clermont  | East Fork Little Miami River, Little Miami River,             |  |

| <b>APPENDIX 1 TO REGIONAL GENERAL CONDITION 5 (a)</b> |   |  |
|---|---|--|
| <b>County</b>   | <b>Waterway</b>   | <b>Township</b>  |
|   | Ohio River  |  |
| Clinton   |   | Chester, Richland, Wayne   |
| Columbiana  |   | Butler, Fairfield, Hanover, Knox, Unity                                |
| Coshocton   | Killbuck Creek,<br>Muskingum River,<br>Walhonding River |  |
| Crawford  |   | Auburn, Bucyrus, Cranberry, Dallas,<br>Holmes, Whetstone               |
| Darke   | Stillwater River  |  |
| Defiance  | St. Joseph River  | Milford  |
| Delaware  | Mill Creek, Olentangy<br>River                          |  |
| Erie  |   | Margaretta   |
| Fairfield   |   | Walnut   |
| Fayette   |   | Concord, Green, Jasper, Union  |
| Franklin  | Big Darby Creek, Little<br>Darby Creek, Scioto River    |  |
| Fulton  | Swan Creek  |  |
| Gallia  | Ohio River  |  |
| Greene  | Little Miami River                                      | Bath, Beaver Creek, Spring Valley, Sugar<br>Creek                      |
| Hamilton  | Great Miami River, Little<br>Miami River, Ohio River    |  |
| Hancock   | Blanchard River   |  |
| Hardin  | Blanchard River   | Blanchard, Dudley, Hale, Jackson,<br>McDonald, Roundhead               |
| Hocking   |   | Benton, Laurel   |
| Holmes  |   | All townships  |
| Huron   |   | New Haven, Richmond  |
| Lake  | Grand River   | Madison  |
| Lawrence  | Ohio River  |  |
| Licking   |   | Licking, Union   |
| Logan   | Great Miami River                                       | Perry, Richland, Stokes, Washington,<br>Zane                           |
| Lucas   | Swan Creek  | All townships  |
| Madison   | Big Darby Creek, Little<br>Darby Creek                  |  |
| Mahoning  |   | Beaver, Boardman, Canfield, Green,<br>Poland, Springfield              |
| Marion  | Tymochtee Creek   | Big Island, Bowling Green, Grand, Green<br>Camp, Montgomery, Salt Rock |

| <b>APPENDIX 1 TO REGIONAL GENERAL CONDITION 5 (a)</b> |   |  |
|---|---|--|
| <b>County</b>   | <b>Waterway</b>   | <b>Township</b>  |
| Meigs   | Ohio River  |  |
| Miami   | Great Miami River,<br>Stillwater River  |  |
| Montgomery  | Great Miami River,<br>Stillwater River  | Mad River, Wayne   |
| Morgan  | Muskingum River   |  |
| Muskingum   | Muskingum River   |  |
| Ottawa  |   | All townships  |
| Perry   |   | Thorn  |
| Pickaway  | Big Darby Creek, Scioto<br>River  |  |
| Pike  | Scioto River  |  |
| Portage   |   | Aurora, Atwater, Charlestown, Deerfield,<br>Edinburg, Franklin, Freedom, Mantua,<br>Nelson, Palmyra, Paris, Randolph,<br>Ravenna, Rootstown, Streetsboro |
| Preble  |   | Dixon, Gasper, Israel, Jackson, Lanier,<br>Monroe, Somers, Twin, Washington  |
| Richland  |   | Plymouth   |
| Ross  | Salt Creek, Scioto River  |  |
| Sandusky  |   | All townships  |
| Scioto  | Ohio River, Scioto Brush<br>Creek, Scioto River, South<br>Fork Scioto Brush Creek | Nile, Rush, Union  |
| Shelby  | Great Miami River   |  |
| Stark   |   | Lexington, Marlboro  |
| Summit  |   | Hudson, Tallmadge, Twinsburg   |
| Trumbull  | Pymatuning Creek  | All townships  |
| Union   | Big Darby Creek, Little<br>Darby Creek, Mill Creek,<br>Treacle Creek              | Allen, Darby, Washington   |
| Warren  | Great Miami River, Little<br>Miami River  | Clear Creek, Deerfield, Massie, Turtle<br>Creek, Union, Washington, Wayne  |
| Washington  | Muskingum River, Ohio<br>River  |  |
| Wayne   |   | All townships  |
| Williams  | Fish Creek, St. Joseph<br>River   | Bridgewater, Center, Florence, Jefferson,<br>Madison, Northwest, St. Joseph, Superior  |
| Wyandot   | Tymochtee Creek   | Antrim, Marseilles, Mifflin, Pitt  |



## HELPFUL INFORMATION FOR COMPLIANCE WITH THE NWP GENERAL CONDITIONS:

DISCLAIMER: The below information is intended to provide helpful contact information and other submittal recommendations. Contact the appropriate local, state, or federal agency for the most updated links to ensure compliance with the NWP General Conditions.

### **General Condition 1 (Navigation)**

#### ***List of Section 10 Navigable Waters of the U.S.:***

Buffalo District –

[https://www.lrb.usace.army.mil/Portals/45/docs/regulatory/DistrictInfo/waterway\\_oh.pdf](https://www.lrb.usace.army.mil/Portals/45/docs/regulatory/DistrictInfo/waterway_oh.pdf)

Huntington District – <https://www.lrh.usace.army.mil/Missions/Regulatory/Section-10-Streams/>

Louisville District –

<https://www.lrl.usace.army.mil/Portals/64/docs/Regulatory/Public%20Notices/Limits%20of%20Jurisdiction%20Public%20Notice-revised.pdf?ver=2013-02-13-120705-203>

Pittsburgh District –

<https://www.lrp.usace.army.mil/Portals/72/docs/regulatory/RegulatoryBoundaries/PN12-2.pdf>

#### ***Navigation Charts:***

Buffalo District – <https://www.lrb.usace.army.mil/Library/Maps-and-Charts/>

Huntington District – <https://www.lrh.usace.army.mil/Missions/Regulatory/Section-10-Streams/>

Louisville District –

<https://www.lrl.usace.army.mil/Portals/64/docs/Ops/Navigation/Charts/Ohio/OhioRiverCharts102-122.pdf>

Pittsburgh District – <https://www.lrp.usace.army.mil/Missions/Navigation/Navigation-Charts/>

#### ***Locks and Dams:***

Buffalo District – <https://www.lrb.usace.army.mil/Library/Maps-and-Charts/>

Huntington District – <https://www.lrh.usace.army.mil/Missions/Civil-Works/Locks-and->

Dams/

Louisville District – <https://www.lrl.usae.army.mil/Missions/Civil-Works/Navigation/Locks-and-Dams/>

Pittsburgh District – <https://www.lrp.usace.army.mil/Missions/Navigation/Locks-and-Dams/#:~:text=Locks%20and%20Dams%20%20%20Allegheny%20River%20,Locks%20%26%20Dam%20%205%20more%20rows%20>

***Notice to Navigation Interests Request Sheets:***

Huntington District – <https://www.lrh.usace.army.mil/Portals/38/docs/navigation/Notice%20Info%20sheet.pdf>

Louisville – <https://www.lrl.usace.army.mil/Portals/64/docs/Regulatory/Forms/Notice%20to%20Navigation%20Interests%20Data%20Form%202019.pdf?ver=2019-07-22-101251-297>

Pittsburgh District – <https://www.lrp.usace.army.mil/Portals/72/docs/regulatory/NavNoticeRequestForm.pdf>

**General Condition 5 (Shellfish Beds)**

Shellfish beds in Ohio include concentrations of freshwater mussels. All native mussels are protected in the State of Ohio (Section 1533.324 of the Ohio Revised Code). In addition, 10 federally listed species occur in the state and are protected by the ESA (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). All rivers and tributaries that contain mussels or potential mussel habitat must be surveyed prior to any proposed streambed disturbance. Currently accepted protocol and supporting materials can be found on the Ohio Department of Natural Resources' website:

<https://ohiodnr.gov/wps/portal/gov/odnr/buy-and-apply/special-use-permits/collecting-research/ohio-mussel-surveyor>

**General Condition 7 (Water Supply Intakes)**

Locations of drinking water source protection areas associated with public water supply intakes, including the name of the public water supply, can be found at the following link:

<https://oepa.maps.arcgis.com/apps/webappviewer/index.html?id=3b39e11ba7fc43c3b41801e3580e6d21>

Contact information for public water suppliers can be obtained from Ohio EPA by contacting the Division of Drinking and Ground Waters at whp@epa.ohio.gov or 614-644-2752.

**General Condition 10 (Fills Within 100-year Floodplains)**

The following website provides a statewide listing of Floodplain Managers in Ohio:  
<https://ohiodnr.gov/wps/portal/gov/odnr/discover-and-learn/safety-conservation/about-ODNR/water-resources/floodplains/>

**General Condition 16 (Wild and Scenic Rivers)**

Prior to submitting a PCN for work in a National Wild and Scenic River System, it is recommended that the applicant contact the National Park Service Regional Wild and Scenic Rivers Specialist, at the Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska 68102, for assistance in complying with NWP General Condition 16. Any determination provided by the National Park Service should be submitted with the PCN. The following website provides information on National Wild and Scenic Rivers within Ohio:

<https://www.rivers.gov/ohio.php>

**General Condition 18 (Endangered Species)**

To obtain the most up to date information on federally threatened and endangered species applicants are encouraged to utilize the USFWS's Information for Planning and Consultation System (IPaC) found at <https://ecos.fws.gov/ipac/>

Prior to the submittal of a PCN, applicants may also contact the USFWS, Ohio Ecological Services Field Office at:

Address: 4625 Morse Road, Suite 104  
Columbus, Ohio 43230

Email: [ohio@fws.gov](mailto:ohio@fws.gov)

Phone: (614) 416-8993

The Ohio Mussel Survey Protocol may be found at the following link:

<https://ohiodnr.gov/wps/portal/gov/odnr/buy-and-apply/special-use-permits/collecting-research/ohio-mussel-surveyor>

**General Condition 4 (Migratory Bird Breeding Areas) and General Condition 19 (Migratory Birds and Bald and Golden Eagles)**

Prior to the submittal of a PCN, information to assist in complying with NWP General Conditions 4 and 19 may be obtained from the USFWS, Ohio Ecological Services Field Office at:

Address: 4625 Morse Road, Suite 104  
Columbus, Ohio 43230

Email: [ohio@fws.gov](mailto:ohio@fws.gov)

Phone: (614) 416-8993

The Ohio Division of Natural Resources Division of Wildlife may be contacted at (800) 945-3543.

### **General Condition 20 (Historic Properties)**

The Ohio National Register of Historic Places can be found at the following link:  
<https://www.ohiohistory.org/preserve/state-historic-preservation-office/nationalregister>

When reviewing a PCN, the Corps will scope appropriate historic property identification efforts and, if applicable, work with the applicant to take into account the effect of the proposed activity on historic properties. In these instances, information and coordination may include:

- Requesting comments directly from the Ohio History Connection SHPO on the effect the proposed regulated activity may have on historic properties. The Ohio History Connection SHPO may be contacted at:

Address: Ohio History Center  
800 E. 17th Ave., Columbus, Ohio 43211  
Phone: (614) 297-2300  
Email: [info@ohiohistory.org](mailto:info@ohiohistory.org)

- To identify potential historic properties that may be affected by a proposed project, the following information may be reviewed and/or provided with the PCN when applicable:
  - A detailed description of the project site in its current condition (i.e. prior to construction activities) including information on the terrain and topography of the site, the acreage of the site, the proximity of the site to major waterways, and any known disturbances within the site.
  - A detailed description of past land uses in the project site.
  - Photographs and mapping showing the site conditions and all buildings or structures within the project site and on adjacent parcels are useful. Photographs and maps supporting past land uses should be provided as available.
  - Information regarding any past cultural resource studies or coordination pertinent to the project area, if available.
  - U.S. Geological Survey (USGS) 7.5' series topographic maps;
  - Ohio History Connection SHPO files including:

- Ohio Archaeological Inventory (OAI) files;
  - Ohio Historic Inventory files (OHI);
  - Ohio SHPO Cultural Resources Management (CRM)/contract archaeology files;
  - NRHP files including Historic Districts; and
  - County atlases, histories and historic USGS 15' series topographic map(s).
- When needed to evaluate effects to historic properties, the applicant is encouraged to consult with professionals meeting the Professional Qualification Standards as set forth in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716) during this data gathering process. These professionals can assist with compiling the project information discussed above and should provide recommendations as to whether the proposal has the potential to affect historic properties and if further effort is needed to identify or assess potential effects to historic properties. These professionals can also compile preliminary review information to submit to the District Engineer as part of the PCN.

### **General Condition 23 (Mitigation)**

Information pertaining to mitigation can be found at the following link:  
<https://www.lrh.usace.army.mil/Missions/Regulatory/Mitigation.aspx>

### **General Condition 25 (Water Quality)**

The Ohio Environmental Protection Agency may be contacted at:

Address: Lazarus Government Center  
 50 W Town St. Suite 700  
 Columbus, Ohio 43215

Phone: (614) 644-2001

Information pertaining to the Ohio Environmental Protection Agency water quality certification (WQC) program, including the Section 401 Clean Water Act WQC application form, can be obtained at the following link:  
<https://www.epa.state.oh.us/dsw/#113292723-programs>

### **General Condition 32 (Pre-Construction Notification)**

The nationwide permit pre-construction notification form (Form ENG 6082) may be obtained at the following link:

[https://www.publications.usace.army.mil/Portals/76/Eng\\_Form\\_6082\\_2019Oct.pdf?ver=2019-10-22-081550-710/](https://www.publications.usace.army.mil/Portals/76/Eng_Form_6082_2019Oct.pdf?ver=2019-10-22-081550-710/)

A checklist of information that must be provided in a pre-construction notification can be obtained at the following link:

<https://www.lrh.usace.army.mil/Missions/Regulatory/How-to-Apply-for-a-Permit/Nationwide-Permits/>

### **Electronic Submittal:**

- PCNs should be saved as a PDF document, and then submitted as an attachment in an email to the appropriate Regulatory Office:

**Buffalo District** – LRB.Ohio.RegActions@usace.army.mil

**Huntington District** – [LRH.permits@usace.army.mil](mailto:LRH.permits@usace.army.mil)

**Louisville District** – CELRL.Door.To.The.Corps@usace.army.mil

**Pittsburgh District** – Regulatory.Permits@usace.army.mil

- Electronic documents must have sufficient resolution to show project details. The PCN and supporting documents submitted electronically must not exceed 10 megabytes (10MB) per email. Multiple emails may be required to transmit documents to ensure the 10MB limit is not exceeded. Alternatively, use of the Department of Defense Secure Access File Exchange (DoD SAFE) service to transfer large files may be requested in your email.
- For tracking and processing purposes, the email should include the following:
  - **Email Subject Line:** include the name of the applicant, type of PCN request, and location (County and State). Example: RE: Doe, John, PCN and Section 401 WQC Request, Summit County, Ohio;
  - **Email Body:** 1) Brief description of the proposed project, 2) contact information (phone number, mailing address, and email address) for the applicant and/or their agent, and 3) the project location: Address and Latitude/Longitude in decimal degrees (e.g. 42.92788° N, 88.36257° W).
- If you do not have internet access, information may be submitted through the U.S. Postal Service to the appropriate Regulatory Office:

U.S. Army Corps of Engineers, Buffalo District  
 ATTN: Regulatory Branch  
 1776 Niagara Street  
 Buffalo, New York 14207  
 Phone: (716) 879-4330  
 Fax: (716) 879-4310

U.S. Army Corps of Engineers, Huntington District  
ATTN: Regulatory Division  
502 Eighth Street  
Huntington, West Virginia 25701-2070  
Phone: (304) 399-5210  
Fax: (304) 399-5805

U.S. Army Corps of Engineers, Pittsburgh District  
ATTN: Regulatory Division  
William S. Moorhead Federal Building  
1000 Liberty Avenue  
Pittsburgh, Pennsylvania 15222-4186  
Phone: (412) 395-7155  
Fax: (412) 644-4211

U.S. Army Corps of Engineers, Louisville District  
ATTN: CELRL-RD, Room 752  
600 Dr. Martin Luther King Jr. Place  
Louisville, Kentucky 40202-0059  
Phone: (502) 315-6733  
Fax: (502) 315-6677

**COMPLETION OF WORK FORM**

Permit: LRH-2025-00047-SCR-UNT Alum Creek  
NCHP Phase 3B Project

Name of Permittee: Scott Brown  
NiSource, Inc.  
101 Stoney Ridge Drive  
Monaca, Pennsylvania 15061

Date of Issue: March 24, 2025

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

Huntington District  
U.S. Army Corps of Engineers  
502 8<sup>th</sup> Street  
Huntington, WV 25701-2070  
Attn: Rachel A. McCarty RDE

Please note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by above referenced permit has been completed in accordance with the terms and conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

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Signature of Permittee

Date



**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**6/30/2025 1:08:29 PM**

**in**

**Case No(s). 24-1126-GA-BLN, 25-0523-GA-BNR, 25-0653-GA-BNR**

Summary: Correspondence of Columbia Gas of Ohio, Inc. regarding project permits electronically filed by Ms. Melissa L. Thompson on behalf of Columbia Gas of Ohio, Inc..