

**Public Notice Announcement of the U.S. Army Corps of Engineers  
Approved 401 Water Quality Certification and  
Coastal Zone Management Act Consistency Determinations Conditions  
for 16 Nationwide Permits in Alabama.**

On January 13, 2021 the U.S. Army Corps of Engineers (Corps) published the notice in the *Federal Register* (86 FR 2744) announcing the reissuance of 12 existing nationwide permits (NWP) and issuance of 4 new NWP, as well as the reissuance of NWP general conditions and definitions with some modifications. The Mobile District and Nashville District have proposed no regional conditions for use of the 16 NWP in the State of Alabama. The Alabama Department of Environmental Management (ADEM) is responsible for providing Section 401 Water Quality Certification (WQC) and Coastal Zone Management Act (CZMA) consistency determinations for projects requiring a Corps permit. The following 16 NWP will go into effect on March 15, 2021 and will expire on March 15, 2026:

- NWP 12 – Oil or Natural Gas Pipeline Activities
- NWP 21 – Surface Coal Mining Activities
- NWP 29 – Residential Developments
- NWP 39 – Commercial and Institutional Developments
- NWP 40 – Agricultural Activities
- NWP 42 – Recreational Facilities
- NWP 43 – Stormwater Management Facilities
- NWP 44 – Mining Activities
- NWP 48 – Commercial Shellfish Mariculture Activities
- NWP 50 – Underground Coal Mining Activities
- NWP 51 – Land-Based Renewable Energy Generation Facilities
- NWP 52 – Water-Based Renewable Energy Generation Pilot Projects
- NWP 55 – Seaweed Mariculture Activities
- NWP 56 – Finfish Mariculture Activities
- NWP 57 – Electric Utility Line and Telecommunications Activities
- NWP 58 – Utility Line Activities for Water and Other Substances

There are 40 existing NWP that were not reissued or modified by the January 13, 2021 final rule. Those 40 NWP were published in the January 6, 2017, issue of the *Federal Register* (82 FR 1860) and those NWP remain in effect until the Corps issues a final rule reissuing those NWP or March 18, 2022, whichever comes first. The 40 2017 NWP that remain in effect are NWP 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 41, 45, 46, 49, 53, and 54 (at this time, NWP 26 and 47 are reserved).

Both the Mobile District and Nashville District have approved the below ADEM Section 401 Water Quality Certification (WQC) conditions that are applicable to all 16 approved NWP. Mobile District has approved the ADEM Coastal Zone Management Act (CZMA) consistency determination conditions developed for NWP 12, 48, 57, and 58. ADEM

requires individual CZMA consistency determinations for the remaining 12 NWP's (NWP's: 21, 29, 39, 40, 42, 43, 44, 50, 51, 52, 55, and 56).

Section 401 WQC conditions - applicable to all 16 NWP's in Alabama.

1. During project implementation, the applicant shall ensure compliance with applicable requirements of ADEM. Admin. Code Chapter 335-6-6 [National Pollutant Discharge Elimination System (NPDES)], Chapter 335-6-10 Water Quality Criteria, and Chapter 335-6-11 Water Use Classifications for Interstate and Intrastate Waters).
2. ADEM permit coverage may be required prior to commencing and/or continuing certain activities/operations relating to or resulting from the project. If an applicant has any questions regarding ADEM regulated activity or the need for NPDES permit coverage, the applicant can contact ADEM's Water Division at (334) 271-7823. If an applicant has any questions regarding ADEM regulated activity or the need for air permit coverage, the applicant can contact ADEM's Air Division at (334) 271-7869. If the applicant has any questions regarding ADEM regulated activity or the need for hazardous, toxic, and/or solid waste permit coverage, the applicant can contact ADEM's Land Division at (334) 271-7730.
3. Upon the loss or failure of any treatment facility, Best Management Practice (BMP), or other control, the applicant shall, where necessary to maintain compliance with this certification, suspend, cease, reduce or otherwise control work/activity and all discharges until effective treatment is restored. It shall not be a defense for the applicant in a compliance action that it would have been necessary to halt or reduce work or other activities in order to maintain compliance with the conditions of this certification.
4. The applicant shall retain records adequate to document activities authorized by this certification for a period of at least three years after completion of work/activity authorized by the certification. Upon written request, the applicant shall provide ADEM with a copy of any record/information required to be retained by this paragraph.
5. The applicant shall conduct or have conducted, at a minimum, weekly comprehensive site inspections until completion of the proposed activity to ensure that effective BMP's are properly designed, implemented, and regularly maintained (i.e. repair, replace, add to, improve, implement more effective practice, etc.) to prevent/minimize to the maximum extent practicable discharges of pollutants in order to provide for the protection of water quality.
6. The applicant shall implement a project-specific or a detailed general BMP Plan prepared by an ADEM recognized qualified credentialed professional (QCP) applicable to and commensurate with activities of the type proposed. Effective BMP's shall be implemented and continually maintained for the prevention and

control of turbidity, sediment, and other sources of pollutants, including measures to ensure permanent revegetation or cover of all disturbed areas, during and after project implementation.

7. The applicant shall implement a Spill Prevention Control and Countermeasures (SPCC) Plan for all temporary and permanent onsite fuel or chemical storage tanks or facilities consistent with the requirements of ADEM Admin. Code R. 335-6-6-.12(r), Section 311 of the Federal Water Pollution Control Act, and 40 CFR Part 112. The applicant shall maintain onsite or have readily available sufficient oil & grease absorbing material and flotation booms to contain and clean-up fuel or chemical spills and leaks. The applicant shall immediately notify ADEM after becoming aware of a significant visible oil sheen in the vicinity of the proposed activity. In the event of a spill with the potential to impact groundwater or other waters of the State, the applicant should immediately call the National Response Center at 1-800-424-8802 and the Alabama Emergency Management Agency at 1-800-843-0699. The caller should be prepared to report the name, address and telephone number of person reporting spill, the exact location of the spill, the company name and location, the material spilled, the estimated quantity, the source of spill, the cause of the spill, the nearest downstream water with the potential to receive the spill, and the actions taken for containment and cleanup.
8. Additional, effective BMPs shall be fully implemented and maintained on a daily basis as needed to prevent to the maximum extent possible potential discharges of pollutants from activities authorized by this certification, directly to or to a tributary or other stream segment, that have the potential to impact a State water currently considered impaired [waterbody is identified on the Alabama 303(d) list, a total maximum daily load (TMDL) has been finalized for the waterbody, and/or the waterbody is otherwise considered a Tier 1 water pursuant to ADEM Admin. Code Ch. 335-6-10]. The applicant shall inspect all BMPs as often as is necessary (daily if needed) for effectiveness, need for maintenance, and the need to implement additional, effective BMPs. Additional effective BMPs shall immediately be implemented as needed to ensure full compliance with ADEM requirements and the protection of water quality in the impaired waterbody.
9. All construction and worker debris (e.g. trash, garbage, etc.) must be immediately removed and disposed in an approved manner. If acceptable offsite options are unavailable, effective onsite provisions for collection and control of onsite worker toilet wastes or gray waste waters (i.e. port-o-let, shower washdown, etc.) must be implemented and maintained. Soil contaminated by paint or chemical spills, oil spills, etc. must be immediately cleaned up or be removed and disposed in an approved manner. Also, the applicant shall manage and dispose of any trash, debris, and solid waste according to applicable state and federal requirements.
10. All materials used as fill, or materials used for construction of structures in a waterbody, must be non-toxic, non-leaching, non-acid forming, and free of solid waste or other debris. This requirement does not preclude the use of construction

materials authorized by the COE that are typically utilized in marine or other aquatic applications.

11. The applicant shall implement appropriate measures to minimize the potential for a decrease of instream dissolved oxygen concentrations as a result of project implementation. In addition, the applicant shall ensure that the activities authorized by this certification do not significantly contribute to or cause a violation of applicable water quality standards for instream dissolved oxygen.
12. The applicant shall implement appropriate, effective BMPs, including installation of floating turbidity screens as necessary, to minimize downstream turbidity to the maximum extent practicable. The applicant shall visually monitor or measure background turbidity. The applicant must suspend operations should turbidity resulting from project implementation exceed background turbidity by more than 50 NTUs. Operations may resume when the turbidity decreases to within acceptable levels.
13. The applicant shall evaluate, characterize, and as necessary, conduct regular analysis of any material proposed to be dredged/removed/disturbed in order to ensure that potential pollutants are not present in concentrations that could cause or contribute to a violation of applicable water quality standards. Information regarding the evaluation, characterization, or detailed results of any analyses shall be made available to ADEM upon request.
14. If upland disposal areas are utilized, the applicant shall be responsible for the condition of the disposal area, including the structural integrity of any embankments, until the disposal area is permanently reclaimed or adequately stabilized, to ensure that sediment and/or turbidity in the return water and/or stormwater runoff will not cause substantial visible contrast with the receiving waters, or result in an increase of 50 NTUs above background turbidity levels in the receiving waters.
15. For proposed activities associated with new or updated docks, marinas, multiple boat slips, floating docks, large or multiple piers, etc. or that increase the number of berthing areas, the applicant shall ensure that these facilities are equipped with appurtenances (i.e. trash receptacles, receptacles for fish offal and carcasses, SPCC for fueling facilities, and a sewage pump out system where appropriate) as needed to protect water quality.
16. The applicant is encouraged to consider additional pollution prevention practices, low impact development (LID), and other alternatives to assist in complying with applicable regulatory requirements and possible reduction/elimination of pollutant discharges. LID is an approach to land development or re-development that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat

stormwater as a resource rather than a waste product. There are many practices that have been used to implement these sustainable ideas such as bio-retention facilities, rain gardens, vegetated rooftops, rain barrels, and permeable pavements. By implementing LID principles and practices, water can be managed in a way that reduces the impact of built areas and promotes the natural movement of water within an ecosystem or watershed.

17. The applicant is encouraged to consider and implement a site design plan/strategy for post-construction hydrology to mimic pre-construction hydrology to the extent feasible, and for post-construction stormwater runoff peak flows and total stormwater volume to minimize potential downstream channel and stream bank erosion.
18. In recognition that projects are site specific in nature and conditions can change during project implementation, ADEM reserves the right to require the submission of additional information or require additional management measures to be implemented, as necessary on a case-by-case basis, in order to ensure the protection of water quality. Liability and responsibility for compliance with this certification are not delegable by contract or otherwise. The applicant shall ensure that any agent, contractor, subcontractor, or other person employed by, under contract, or paid a salary by the applicant complies with this certification. Any violations resulting from the actions of such person may be considered violations of this certification.
19. Issuance of a certification by ADEM neither precludes nor negates an operator/owner's responsibility or liability to apply for, obtain, or comply with other ADEM, federal, state, or local government permits, certifications, licenses, or other approvals. This certification does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, trespass, or any infringement of Federal, State, or local laws or regulations, and in no way purports to vest in the applicant title to lands now owned by the State of Alabama, nor shall it be construed as acquiescence by the State of Alabama of lands owned by the State of Alabama that may be in the applicant's possession.

CZMA consistency determination conditions - applicable to NWP 12, 48, 57, and 58 in the coastal zone of Alabama.

#### NWP 12 Utility Line Activities

- a. The permittee must submit a copy of the Pre-Construction Notification (PCN) required by the Corps to the ADEM Mobile-Coastal office.
- b. Activities authorized under Nationwide Permit 12 must not be located within or in close proximity to existing submersed grassbeds or natural oyster reefs and shall not result in adverse impacts to those resources.

- c. The permittee must demonstrate avoidance and minimization of wetland impacts to the maximum extent practicable. Wetland impacts may be considered only after utilization of all available uplands.
- d. The permittee must undertake restoration of any wetland areas or State waterbottoms temporarily impacted as a result of activities authorized under Nationwide Permit 12. Disturbed areas must be returned to preproject elevations and wetland areas must be revegetated.
- e. The permittee must provide compensatory mitigation for any authorized permanent wetland impacts and must submit supporting documentation (e.g. certificate of credit purchase) to the ADEM Mobile - Coastal office for verification.

On January 25, 2021, ADEM clarified this condition: The intent of this correspondence is to clarify that the mitigation condition (e) associated with NWP 12 (Oil or Natural Gas Pipeline Activities) shall be consistent with the compensatory mitigation conditions contained in the federal rules which state that compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction 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 pre-construction 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.

- f. The permittee must obtain all appropriate authorizations required by the ADCNR-SLD prior to commencement of activities that would impact or be located over State-Owned Submerged Lands.

#### NWP 48. Commercial Shellfish Aquaculture Activities

- a. Activities and structures authorized under Nationwide Permit 48 must not be located within or in close proximity to existing wetlands, submersed grassbeds, or natural oyster reefs and shall not result in adverse impacts to those resources. The permittee may be required to submit a submersed grassbed survey to the ADEM Mobile-Coastal office prior to commencement of work.
- b. There must be no placement or addition of fill onto State-Owned Submerged Lands.
- c. The permittee must obtain all appropriate authorizations required by the ADCNR-SLD prior to commencement of activities that would impact or be located over State-Owned Submerged Lands.

### NWP 57 (NWP C) Electric Utility Line and Telecommunications Activities

- a. The permittee must submit a copy of the PCN required by the Corps to the ADEM Mobile-Coastal office.
- b. Activities and structures authorized under NWP C must not be located within or in close proximity to existing submersed grassbeds or natural oyster reefs and shall not result in adverse impacts to those resources.

### NWP 58 (NWP D) Utility Line Activities for Water or Other Substances.

- a. The permittee must submit a copy of the PCN required by the Corps to the ADEM Mobile-Coastal office.
- b. Activities and structures authorized under NWP C must not be located within or in close proximity to existing submersed grassbeds or natural oyster reefs and shall not result in adverse impacts to those resources.

The Corps has issued final decision documents for the 16 new and reissued NWPs that are available at [www.regulations.gov](http://www.regulations.gov) at docket number COE-2020-0002. The NWP documents are available at: <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/Nationwide-Permits/>. The full text of the ADEM 401 water quality certification letter and ADEM CZMA consistency determination letter are available for viewing at the Mobile District Regulatory Division website at: <https://www.sam.usace.army.mil/Missions/Regulatory/NWP.aspx>.

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