

Regional Conditions for the 2007 Nationwide Permits (NWP)

NWP 5 Scientific Measurement Devices

Condition for Construction or Installation of Subaqueous Turbines

Notification is required if a project proponent proposes the construction or installation of subaqueous turbines, because this work may have more than minimal impacts and the work will need to be coordinated with the resource agencies.

NWP 7 Outfall Structures and Associated Intake Structures

Conditions for Intakes in Anadromous Fish Waters

When an intake is proposed in designated anadromous fish waters, the following design parameters will be incorporated as permit conditions to protect the sensitive life stages of anadromous fish.

- 1) Screening over the mouth of the intake with mesh size that does not exceed 1mm.
- 2) Intake velocities that do not exceed 0.25 feet per second.
- 3) Intake must be positioned such that an unimpeded flow of water parallel to the screen surface occurs along the entire surface of the screen to take advantage of sweeping velocity.

NWP 10 Mooring Buoys

Condition for Sufficient Mooring Depths

Water depths in the mooring areas should be sufficient that vessels moored float at all stages of the tide. Boats should not hit bottom during low water conditions.

NWP 11 Temporary Recreational Structures

Condition for Sufficient Mooring Depths

Water depths in the mooring areas should be sufficient that structures moored float at all stages of the tide or stoppers must be utilized to prevent the structures from resting on the bottom, so as to not damage the underlying benthic communities. Structures should not hit bottom during low water conditions.

NWP 12 Utility Line Activities

Conditions Specific to NWP 12

1. Construction of access roads is limited to 1/3 acre of impacts to waters of the United States.
2. Notification is required for discharges associated with the construction of utility line substations that result in the loss of greater than 5000 square feet of waters of the United States.
3. For utility activities requiring notification the permittee shall submit the following information:
 - a. A map of the entire utility corridor including a delineation of all wetlands and waters of the United States within the corridor. Aquatic resource information shall be submitted using the Cowardin Classification System mapping conventions (e.g. PFO, PEM, POW, etc.).
 - b. An alternatives analysis, which specifically addresses the following:
 - i. Selection of an alignment, which avoids and minimizes wetland impacts to the maximum extent practicable. The utility line should make a direct or perpendicular crossing of a stream. Directional drilling is the preferred method of installation when possible, especially in tidal waters.
 - ii. Selection of an alignment, which avoids fragmenting large tracts of forested wetlands by routing utility lines outside of forested tracts or on the edges of forested tracts.
 - iii. Minimizing clearing of wetlands. Grubbing shall be limited to the permanent easement for underground utility lines. Outside of the permanent easement, wetland vegetation shall be removed at or above the ground surface unless written justification is provided and the impacts are reviewed and approved by the Corps.
 - iv. For overhead utility lines, allow natural succession to restore and maintain the corridor in scrub-shrub wetlands except for a minimum corridor needed for access, to the maximum extent practicable.
 - v. For buried utility lines allowing natural succession to restore the area to tree and scrub/shrub except for a 20-foot wide access corridor, to the maximum extent practicable.
4. For all submerged utility lines across navigable waters of the United States, a location map and cross-sectional view showing the utility line crossing from bank to bank is required. In addition, the location and depth of the Federal Project Channel shall be

shown in relation to the proposed utility line. In general, all utility lines shall be buried at least 6 feet below the authorized bottom depth of Federal project channel and at least 3 feet below the bottom depth in all subaqueous areas. When circumstances prevent the placement of at least three feet of cover over the line (outside of the Federal Project Channel), then written justification and an alternative method must be provided with the notification and the deviation must be reviewed and approved by the Corps.

5. Whenever possible, excavated material shall be placed on an upland site. However, when this is not feasible, temporary stockpiling is hereby authorized provided that:
 - a. All excavated material stockpiled in a vegetated wetland area is placed on filter cloth, mats, or some other semi-permeable surface. The material will be stabilized with straw bales, filter cloth, etc. to prevent reentry into the waterway.
 - b. All excavated material must be placed back into the trench to the original contour and all excess excavated material must be completely removed from the wetlands within 30 days after the pipeline has been laid through the wetlands area. Permission must be granted by the District Engineer or his authorized representatives if the material is to be stockpiled longer than 30 days.
6. When open-cut trenching in designated anadromous fish areas or hydrostatic testing of a pipeline involving water withdrawals from tidal waters are proposed, the Corps will coordinate with the National Marine Fisheries Service and/or the Virginia Department of Game and Inland Fisheries. In most cases, the following time-of-year restrictions will apply:
 - James River, below Rt. 17 bridge: No TOYR
 - James River, at Jamestown Island (Gray's Creek) downstream to Rt. 17 bridge: Feb. 15-June 15
 - James River, at Jamestown Island upstream to Boshers's Dam: Feb. 15-June 30
 - James River, above Boshers's (including Rivanna River): March 15-June 30
 - Rappahannock River, below Route 360 bridge: Feb. 15-June 15
 - York River, below Route 33 bridge: Feb. 15-June 15
 - Nansemond River: Feb. 15-June 15
 - Elizabeth River: No TOYR until further data are collected on fish movements and spawning.
 - Unless otherwise noted, Feb. 15-June 30

NWP 23 Approved Categorical Exclusions

Conditions Specific to NWP 23

1. The use of this Nationwide Permit applies to the entire project addressed in the Categorical Exclusion prepared by another Federal agency. This nationwide permit cannot be used separately at individual crossings/impact areas of a single project.

However, multiple crossings/impact areas of a single project can be authorized by this nationwide permit provided the combined impacts of all crossings/impact areas do not exceed the thresholds described below. This nationwide permit cannot be used in combination with other nationwide permits for a single project.

2. The discharge does not cause a combined loss due to the entire project of greater than ½ acre of wetlands.
3. The permittee must notify the District Engineer if there is a discharge in special aquatic sites, including wetlands, and/or resulting in combined impacts to more than 300 linear feet of streambed due to the entire project (send notification to the Norfolk District Corps of Engineers, Regulatory Branch, 803 Front St., Norfolk, VA 23510-1096). Written verification from this office must be received before performing the proposed work. The notification must be in writing and include the following information (the Joint Permit Application may also be used; the Virginia Department of Transportation may use their application form):
 - Name, address, and telephone number of the prospective permittee.
 - Location of the proposed project.
 - Vicinity map and project drawings on 8.5-inch by 11-inch paper (plan view, profile, & cross section).
 - Brief description of the proposed project and the project purpose.
 - A delineation of wetlands.

When we receive all required information, the Corps will notify the prospective permittee within 45 days either that the project may proceed under the nationwide permit or that an individual permit is required. If, after reviewing the notification, the District Engineer determines that the proposed activity would have more than a minimal individual or cumulative adverse impact on the aquatic environment or otherwise may be contrary to the public interest, then he will either condition the nationwide permit authorization to reduce or eliminate the adverse impacts, or notify the prospective permittee that the activity is not authorized by the nationwide permit and will provide the permittee with instructions on how to seek authorization under an individual permit. If the permittee is not notified otherwise within the 45-day period, the permittee may presume the activity is authorized under this NWP.

4. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the United States to ensure that those losses result in minimal adverse effects to the aquatic environment and a statement describing how losses of waters of the United States will be avoided and minimized to the maximum extent practicable. Compensation will be required for any single impact to a stream of greater than 300 linear feet. For projects where the combined impacts to streams due to the entire project exceed 300 linear feet, but no single impact exceeds 300 linear feet, the Corps will determine on a case-by-case basis whether compensation for stream impacts is required.

The following conditions are applicable to multiple NWP's.

1. Waters Containing Submerged Aquatic Vegetation (SAV) Beds

This condition applies to: NWP's 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 22, 23, 25, 27, 28, 31, 32, 33, 35, 36, 37, 38, 45, and 48.

Notification is required if work will occur in areas that contain submerged aquatic vegetation (SAVs). Information about SAVs can be found at the Virginia Institute of Marine Science's website <http://www.vims.edu/bio/sav/>. Additional avoidance and minimization measures, such as relocating a structure or time of year restrictions may be required to reduce impacts to SAVs.

2. Designated Critical Resource Waters, which include National Estuarine Research Reserves

Notification is required for work under NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38 in the Chesapeake Bay National Estuarine Research Reserve in Virginia. This multi-site system along a salinity gradient of the York River includes Sweet Hall Marsh, Taskinas Creek, Catlett Island, and Goodwin Islands. More information can be found at: <http://www.vims.edu/cbnerr/reservesites/index.htm>.

NWP's 7, 12, 14, 16, 17, 31, and 35 do not apply in the Chesapeake Bay National Estuarine Research Reserve in Virginia.

3. Waters with federally listed endangered or threatened species, waters federally designated as Critical Habitat, and one mile upstream (including tributaries) of any such waters

Notification is required for work in the areas listed below for NWP's 3, 4, 5, 6, 7, 12, 13, 14, 16, 17, 18, 19, 21, 23, 25, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, and 50 for the Counties of Lee, Russell, Scott, Tazewell, Wise, and Washington in Southwestern Virginia within the following specific waters and reaches:

- 1) Powell River - from the Tennessee-Virginia state line upstream to the Route 58 bridge in Big Stone Gap and one mile upstream of the mouth of any tributary adjacent to this portion of the River.
- 2) Clinch River - from the Tennessee-Virginia state line upstream to Route 632 at Pisgah in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the River, the Little River to its confluence with Maiden Spring Creek, and one mile upstream of the mouth of any tributary adjacent to this portion of Little River.
- 3) North Fork Holston River - from the Tennessee-Virginia state line upstream to the Smyth County/Bland County line and one mile upstream of any tributary adjacent to this portion of the River.

- 4) Copper Creek - from its junction with the Clinch River upstream to the Route 58 bridge at Dickensonville in Russell County and one mile upstream of any tributary adjacent to this portion of the Creek.
- 5) Indian Creek - from its junction with the Clinch River upstream to the fourth Norfolk and Western Railroad bridge at Van Dyke in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek.
- 6) Middle Fork Holston River - from the Tennessee-Virginia state line to its junction with Walker Creek in Smyth County near Marion, Virginia.
- 7) South Fork Holston River - from its junction with Middle Fork Holston River upstream to its junction with Beech Creek in Washington County.

This NWP requires notification to work in Lee, Russell, Scott, Smyth, Tazewell, Washington or Wise Counties. For any work in Lee, Russell, Scott, or Wise Counties, please submit the notification to the Norfolk District Corps of Engineers, Clinch Valley Field Office, PO Box 338, Abingdon, Virginia 24212. For any work in Smyth, Tazewell, or Washington Counties please submit the notification to the Norfolk District Corps of Engineers, Virginia Highlands Field Office, PO Box 1295, Abingdon, Virginia 24212-1295. Written verification from these offices would be required prior to performing the proposed work. It is recommended that the prospective permittees first contact the field offices by telephone at (276) 623-5259 (Clinch Valley) or (276) 676-4807 (Virginia Highlands) to determine if the notification procedures would apply. The notification must be in writing and include the following information (the Joint Permit Application may also be used - be sure to mark it with the letters PCN at the top of the first page):

- Name, address, and telephone number of the prospective permittee.
- Location of the proposed project.
- Vicinity map and project drawings on 8.5-inch by 11-inch paper (plan view, profile, & cross section).
- Brief description of the proposed project and the project purpose.
- Where required by the terms of the nationwide permit, a delineation of affected special aquatic sites, including wetlands.

When all required information is received by the appropriate field office, the Corps will notify the prospective permittee within 45 days whether the project may proceed under the nationwide permit or whether an individual permit is required. If, after reviewing the notification, the District Engineer determines that the proposed activity would have more than a minimal individual or cumulative adverse impact on the aquatic environment or otherwise may be contrary to the public interest, then he will either condition the nationwide permit authorization to reduce or eliminate the adverse impacts, or notify the prospective permittee that the activity is not authorized by the nationwide permit and provide the permittee with instructions on how to seek authorization under an individual permit.

Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, 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 designated

critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. 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. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.

4. Designated Trout Waters

Notification is required for work in the areas listed below for NWPs 3, 4, 5, 6, 7, 12, 13, 14, 16, 17, 18, 19, 21, 23, 25, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, and 50.

This condition applies to activities occurring in two categories of waters; Class V (Put and Take Trout Waters) and Class VI (Natural Trout Waters), as defined by the Virginia State Water Control Board Regulations, Water Quality Standards (VR-680-21-00), dated January 1, 1991, or the most recently updated publication. The Virginia Department of Game and Inland Fisheries (VDGIF) designated these same trout streams into six classes. Classes I-IV are considered wild trout streams. Classes V and VI are considered stockable trout streams. Information on designated trout streams can be obtained via their Virginia Fish and Wildlife Information Service's (VAFWIS's) Cold Water Stream Survey database. Basic access to the VAFWIS is available via <http://vafwis.org/wis/asp/default.asp>.

The waters, occurring specifically within the mountains of Virginia, are within the following river basins:

- 1) Potomac-Shenandoah
- 2) James
- 3) Roanoke
- 4) New
- 5) Tennessee and Big Sandy
- 6) Rappahannock

This condition applies to the following counties and cities: Albemarle, Allegheny, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Bristol, Buchanan, Buena Vista, Carroll, Clarke, Covington, Craig, Dickenson, Floyd, Franklin, Frederick, Giles, Grayson, Greene, Henry, Highland, Lee, Loudoun, Madison, Montgomery, Nelson, Page, Patrick, Pulaski, Rappahannock, Roanoke City, Roanoke Co., Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth, Staunton, Tazewell, Warren, Washington, Waynesboro, Wise, and Wythe.

Any discharge of dredged and/or fill material authorized by the nationwide permits listed above, which would occur in the designated waterways or adjacent wetlands of the specified counties, requires notification to the appropriate Corps of Engineers field office, and written approval from that office prior to performing the work. We recommend that prospective permittees first contact

the appropriate field office by telephone to determine if the notification procedures would apply. The notification must be in writing and include the following information (the standard Joint Permit Application may also be used):

- Name, address, and telephone number of the prospective permittee.
- Location of the proposed project.
- Vicinity map and project drawings on 8.5-inch by 11-inch paper (plan view, profile, & cross section).
- Brief description of the proposed project and the project purpose.
- Where required by the terms of the nationwide permit, a delineation of affected special aquatic sites, including wetlands.

When all required information is received by the appropriate field office, the Corps will notify the prospective permittee within 45 days whether the project can proceed under the NWP or whether an individual permit is required. If, after reviewing the notification, the District Engineer determines that the proposed activity would have more than minimal individual or cumulative adverse impacts on the aquatic environment or otherwise may be contrary to the public interest, then he will either condition the nationwide permit authorization to reduce or eliminate the adverse impacts, or notify the prospective permittee that the activity is not authorized by the nationwide permit and provide with instructions on how to seek authorization under an individual permit. If the permittee is not notified otherwise within the 45-day period the permittee may begin the activity.

5. Conditions Pertaining to Countersinking of Pipes and Culverts in Nontidal Waters

This condition applies to: NWPs 3, 7, 12, 14, 17, 18, 21, 23, 25, 27, 29, 32, 33, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, and 50.

NOTE: The countersinking requirement does not apply in tidal waters.

- a. Following consultation with the Virginia Department of Game and Inland Fisheries (DGIF), the Norfolk District has determined that fish and other aquatic organisms are most likely present in any stream being crossed, in the absence of site-specific evidence to the contrary. Although permittees have the option of providing such evidence, extensive efforts to collect such information is not encouraged, since countersinking will in most cases be required except as outlined in the conditions below.
- b. All pipes: All pipes and culverts placed in streams will be countersunk at both the inlet and outlet ends, unless indicated otherwise by the Norfolk District on a case-by-case basis (see below). Pipes that are 24" or less in diameter shall be countersunk 3" below the natural stream bottom. Pipes that are greater than 24" in diameter shall be countersunk 6" below the natural stream bottom. The countersinking requirement does not apply to bottomless pipes/culverts or pipe arches. All single pipes or culverts (with bottoms) shall be depressed (countersunk) below the natural streambed at both

the inlet and outlet of the structure. In sets of multiple pipes or culverts (with bottoms) at least one pipe or culvert shall be depressed (countersunk) at both the inlet and outlet to convey low flows.

- c. Exemption for extensions and certain maintenance: The requirement to countersink does not apply to extensions of existing pipes or culverts that are not countersunk, or to maintenance to pipes/culverts that does not involve replacing the pipe/culvert (such as repairing cracks, adding material to prevent/correct scour, etc.).
- d. Floodplain pipes: The requirement to countersink does not apply to pipes or culverts that are being placed above ordinary high water, such as those placed to allow for floodplain flows. The placement of pipes above ordinary high water is not jurisdictional (provided no fill is discharged into wetlands).
- e. Hydraulic opening: Pipes should be adequately sized to allow for the passage of ordinary high water *with the countersinking and invert restrictions taken into account*.
- f. Pipes on bedrock: Different procedures will be followed for pipes or culverts to be placed on bedrock, depending on whether the work is for replacement of an existing pipe/culvert or a new pipe/culvert:
 - i. Replacement of an existing pipe/culvert: Countersinking is not required provided the elevations of the inlet and outlet ends of the replacement pipe/culvert are no higher above the stream bottom than those of the existing pipe/culvert. Documentation (photographic or other evidence) must be maintained in the permittee's records showing the bedrock condition and the existing inlet and outlet elevations. That documentation will be available to the Norfolk District upon request, but notification or coordination with the Norfolk District is not otherwise required.
 - ii. A pipe/culvert is being placed in a new location: If the prospective permittee determines that the bedrock prevents countersinking, they should evaluate the use of a bottomless pipe/culvert, bottomless utility vault, span (bridge) or other bottomless structure to cross the waterway, and also evaluate alternative locations for the new pipe/culvert that will allow for countersinking. If the prospective permittee determines that neither a bottomless structure nor an alternative location is practicable, then they must submit a Pre-Construction Notification to the Norfolk District in accordance with General Condition #27 of the Nationwide Permits. In addition to the information required by General Condition #27, the prospective permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. Options that must be considered include partial countersinking (such as less than 3" of countersinking, or countersinking of one end of the pipe), and constructing stone step pools, low rock weirs downstream, or other measures to provide for the movement of

aquatic organisms. The PCN must also include photographs documenting site conditions. The prospective permittee may find it helpful to contact their regional fishery biologist for the Virginia Department of Game and Inland Fisheries (DGIF), for recommendations about the measures to be taken to allow for fish movements. When seeking advice from DGIF, the prospective permittee should provide the DGIF biologist with all available information such as location, flow rates, stream bottom features, description of proposed pipe(s), slopes, etc. Any recommendations from DGIF should be included in the PCN. The Norfolk District will notify the prospective permittee whether the proposed work qualifies for the nationwide permit within 45 days of receipt of a complete PCN. NOTE: Blasting of stream bottoms through the use of explosives is not acceptable as a means of providing for countersinking of pipes on bedrock.

- g. Pipes on steep terrain: Pipes being placed on steep terrain (slope of 5% or greater) must be countersunk in accordance with the conditions above and will in most cases be non-reporting. It is recommended that on slopes greater than 5% the permittee install larger pipe than required for passage of ordinary high water in order to increase the likelihood that natural velocities can be maintained. There may be situations where countersinking both the inlet and outlet may result in a slope in the pipe that results in flow velocities that cause excessive scour at the outlet and/or prohibit some fish movement. This type of situation could occur on the side of a mountain where falls and drop pools occur along a stream. Should this be the case, or should the prospective permittee not want to countersink the pipe/culvert for other reasons, they must submit a Pre-Construction Notification to the Norfolk District in accordance with General Condition #27 of the Nationwide Permits. In addition to the information required by General Condition #27, the prospective permittee must provide documentation of measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. The prospective permittee should design the pipe to be placed at a slope as steep as stream characteristics allow, countersink the inlet 3-6", and implement measures to minimize any disruption of fish movement. These measures can include constructing a stone step/pool structure, preferably using river rock/native stone rather than riprap, constructing low rock weirs to create a pool or pools, or other structures to allow for fish movements in both directions. Stone structures should be designed with sufficient-sized stone to prevent erosion or washout and should include keying-in as appropriate. These structures should be designed both to allow for fish passage and to minimize scour at the outlet. The quantities of fill discharged below ordinary high water necessary to comply with these requirements (i.e., the cubic yards of stone, riprap or other fill placed below the plane of ordinary high water) must be included in project totals. The prospective permittee may find it helpful to contact their regional fishery biologist for the Virginia Department of Game and Inland Fisheries (DGIF), for recommendations about the measures to be taken to allow for fish movements. When seeking advice from DGIF, the prospective permittee should provide the DGIF biologist with all available information such as location, flow rates, stream bottom features, description

of proposed pipe(s), slopes, etc. Any recommendations from DGIF should be included in the PCN. The Norfolk District will notify the prospective permittee whether the proposed work qualifies for the nationwide permit within 45 days of receipt of a complete PCN.

- h. Problems encountered during construction: When a pipe/culvert is being replaced, and the design calls for countersinking at both ends of the pipe/culvert, and during construction it is found that the streambed/banks are on bedrock, then the permittee must stop work and contact the Norfolk District (contact by telephone and/or email is acceptable). The permittee must provide the Norfolk District with specific information concerning site conditions and limitations on countersinking. The Norfolk District will work with the permittee to determine an acceptable plan, taking into consideration the information provided by the permittee, but the permittee should recognize that the Norfolk District could determine that the work will not qualify for a nationwide permit.
- i. Emergency pipe replacements: In the case of an emergency situation, such as when a pipe/culvert washes out during a flood, a permittee is encouraged to countersink the replacement pipe at the time of replacement, in accordance with the conditions above. However, if conditions or timeframes do not allow for countersinking, then the pipe can be replaced as it was before the washout, but the permittee will have to come back and replace the pipe/culvert and countersink it in accordance with the guidance above. In other words, the replacement of the washed out pipe is viewed as a temporary repair, and a countersunk replacement should be made at the earliest possible date. The Norfolk District must be notified of all pipes/culverts that are replaced without countersinking at the time that it occurs, even if it is an otherwise non-reporting activity, and must provide the permittee's planned schedule for installing a countersunk replacement (it is acceptable to submit such notification by email). The permittee should anticipate whether bedrock or steep terrain will limit countersinking, and if so, should follow the procedures outlined in (f) and/or (g) above.