
From: Jason.Pappani@deq.idaho.gov
Sent: Friday, November 13, 2020 9:12 AM
To: nationwidepermits2020; CENWW-RD-2020NWPs
Cc: Michelle.Dale@deq.idaho.gov; bujak.charissa@epa.gov
Subject: [Non-DoD Source] Docket Number COE-2020-0002; Comments to proposed reissuance of Nationwide Permits and proposed regional conditions
Attachments: Comment Letter - Draft 2020 United States Army Corps of Engineers (USACE....pdf

To Whom it May Concern:

Thank you for the opportunity to comment on the proposed 2020 Nationwide permits and the draft regional conditions for the State of Idaho. Attached are Idaho DEQ's comments for your consideration.

Thanks again,

Jason Pappani | Surface Water Bureau Chief
Idaho Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706
Office: (208) 373-0515

Cell: (208) 850-5056
Blocked<http://www.deq.idaho.gov/> <Blocked<http://www.deq.idaho.gov/>>

Our mission is to protect human health and the quality of Idaho's air, land, and water.



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, ID 83706 • (208) 373-0502
www.deq.idaho.gov

Brad Little, Governor
Jess Byrne, Director

November 13, 2020

By e-mail: nationwidepermits2020@usace.army.mil;
CENWW-RD-2020NWPs@usace.army.mil

U.S. Army Corps of Engineers
Attn: CECW-COR
441 G Street NW
Washington, DC, 20314-1000

Walla Walla District – Regulatory Division
720 E. Park Blvd, Suite 245
Boise, Idaho, 83712

Subject: Docket Number COE-2020-0002; Comments to proposed reissuance of Nationwide Permits and proposed regional conditions

To Whom It May Concern:

Idaho DEQ appreciates the opportunity to provide comments on the proposed revisions to the United States Army Corps of Engineers (USACE) Nationwide Permits (NWPs) and regional conditions for the State of Idaho.

Through its Clean Water Act Section 401 Certification authority, DEQ works closely with local USACE staff to ensure that activities authorized by the NWP program do not cause degradation or impairment of Idaho's water resources. Based on our review of the proposed NWPs and regional conditions, DEQ has the following comments and recommendations for consideration.

Removal of linear limits for NWP activities and PCN thresholds

DEQ would like the USACE to reconsider the removal of the 300 foot linear foot limit for losses of stream bed for NWPs 21, 29, 39,40, 42, 43, 44, 50, 51, and 52, and to consider the addition of a 300 foot linear limit for losses of stream bed for NWP E. In addition, DEQ would like the USACE to reconsider the removal of the 500 linear foot threshold for PCN for NWP 12 and consider adding that threshold to the PCN requirements for proposed NWPs C and D. DEQ does not believe that relying on an area-based limit (e.g., ½ acre) is sufficient for ensuring that no

permanent degradation would occur in smaller streams throughout Idaho, the West, or the United States.

For example, the median bankfull width measured from 48 wadeable Idaho streams monitored in 2010 as part of DEQ's Beneficial Use reconnaissance Program (BURP) was 19.7 feet. A loss of ½ acre at this stream width would correspond to 1,105 linear feet of loss, or the equivalent of 0.2 miles of stream.

Furthermore, according to data summarized in the Federal Register notice of proposed rulemaking to reissue and modify the NWP, the ½ acre limit would, on average, equate to a loss of approximately 3,470 linear feet of a first order stream, or 2,540 linear feet of a second order stream¹.

Losses of stream lengths of that magnitude would result in permanent loss of stream function, and permanent degradation of Idaho's water resources. DEQ believes that the linear limits for activities or thresholds for PCNs are necessary to continue to ensure that the NWPs do not cause permanent degradation of the water resources of the United States.

Exemption of federal agencies from PCN requirements

DEQ does not support the USACE exempting federal agencies from pre-construction notification (PCN) requirements. While DEQ respects the expertise of federal agencies' environmental staff, we do not believe it is reasonable to expect those staff to fully consider cumulative impacts over time and across multiple projects or to understand the intricacies of Idaho water quality standards.

In contrast, USACE district staff has worked closely with DEQ staff to ensure an understanding of state water quality standards, including Idaho's antidegradation provisions, and to coordinate with DEQ staff when reviewing projects requiring PCN. While DEQ is confident that federal agencies' environmental staff is capable of ensuring that projects comply with federal environmental regulations, we do not have confidence that they will have the knowledge or experience necessary to consider cumulative impacts or to ensure that they comply with Idaho water quality standards and the conditions of the Section 401 certification of the NWPs. Therefore, DEQ recommends that the PCN requirements for all NWPs continue to apply to all applicants, including federal agencies.

Regional conditions

In the event that the USACE does not adopt DEQ's recommendations, we recommend that the Walla Walla District consider adopting these recommendations as regional conditions for the State of Idaho.

¹ United States Army Corps of Engineers, "Proposal to Reissue and Modify Nationwide Permits." 85(179) Fed. Reg. 57298 (September 15, 2020).

DEQ supports the Walla Walla District's intention to remove NWP-specific conditions and instead apply those conditions to all NWPs in the State of Idaho. We believe that this change reduces confusion and adds consistency.

Thank you for considering our comments to the proposed 2020 Nationwide Permits and regional conditions for the State of Idaho. DEQ looks forward to continued coordination with USACE staff on implementation of the NWP program in Idaho.

Sincerely,



Mary Anne Nelson, PhD

Surface and Wastewater Division Administrator

c: Jason Pappani, Surface Water Bureau Chief, DEQ
Michelle Dale, Senior Water Quality Standards Scientist, DEQ
Charissa Bujak, EPA