



**US Army Corps
of Engineers**
Philadelphia District

Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390
ATTN: CENAP-OP-R

Public Notice

Public Notice No.
SPECIAL PUBLIC NOTICE

Date: FEBRUARY 17, 2004

Application No.

File No.

In Reply Refer to:
Regulatory Branch

SPECIAL PUBLIC NOTICE FOR REGIONAL CONDITION CHANGES

On 14 November 2003, the Philadelphia District issued a public notice requesting comments on a proposed modification to the regional conditions for nationwide permits 39 and 42 (NWP39 and NWP42).

Department of the Army regulations provide for the development and approval of regional conditions for any or all nationwide permit authorizations as a mechanism to provide added protection to the aquatic environment, by assuring that the NWPs authorize only those activities with minimal adverse effects on the aquatic environment. Regional conditions can offer added protection for particular high value waters within a District or specific region. The enclosed regional conditions, which reflect a modification to the regional conditions for NWP39 and NWP42, have been approved for the States of New Jersey and Delaware and hereby replace the regional conditions previously approved for these NWPs and advertised in our public notice dated 29 March 2002.

The modification to the regional conditions for these NWPs specifically addresses the **regional conditions**, which limit these NWPs to 300 linear feet of stream impact under any circumstances. As noted in our previous public notice dated November 14, 2003, we believe that this restriction has unnecessarily restricted the use of these NWPs in upland drainage ditches, which have been identified as waters of the United States. It should be noted that NWP39 and NWP42 are restricted to 300 linear feet of impact in perennial stream habitat, and this limitation is unaffected by this regional condition change. The revised regional conditions for these NWPs would read as follows:

Activities associated with this NWP shall not cause the loss of more than 300 linear feet of streambed, except for man-made ditches constructed in uplands which are determined by the Corps of Engineers to be waters of the United States, and which are determined to be intermittent or ephemeral.

These regional conditions become effective on the date of this public notice. Unless otherwise noted, these regional conditions are applicable for NWP activities in the States of New Jersey and Delaware. These regional conditions are also posted on the Philadelphia District Internet home page at the following URL address: <http://www.nap.usace.army.mil/cenap-op/regulatory/regulatory.htm>.

Additional information concerning the nationwide permit regional condition changes within the States of New Jersey and Delaware can be obtained by contacting Mr. Edward Bonner at (215) 656-5932, by writing to the Philadelphia District at the address listed above, or by reviewing the Philadelphia district Internet Home Page at:

<http://www.nap.usace.army.mil/cenap-op/regulatory/regulatory.htm>.

Frank J. Cianfrani
Chief, Regulatory Branch

REGIONAL CONDITIONS FOR NEW JERSEY AND DELAWARE

REGIONAL GENERAL CONDITION - 1(G-1).

This regional condition is applicable to all nationwide permits (NWP) where a preconstruction notification (PCN) is submitted to the District Engineer. This includes the following: (a) those NWPs requiring notification to the District Engineer pursuant to the nationwide permit general conditions (conditions #13 and #25), (b) those NWPs requiring notification to the District Engineer pursuant to a regional condition, and (c) any other preconstruction notifications to the District Engineer where an applicant has voluntarily requested verification of an NWP authorization. The NWPs that require a PCN include NWPs *3, *5, 7, 8, *10, *11, 12, *13, 14, *15, 17, *18, *19, 21, *22, 23, *25, 27, 28, 29, *30, 31, 33, 34, 35, *36, 37, 38, 39, *40 and 42. *These NWP activities require notification under certain circumstances. Review the NWP authorization, general conditions, or regional conditions to identify these circumstances.

Condition G-1: All preconstruction notifications (PCNs) to the District Engineer shall describe all activities that the applicant plans to undertake that are reasonably related to the same project. All PCNs to the District Engineer shall include the following information, where applicable, in addition to the information specified in the nationwide permit general conditions:

Plan(s) of the proposed work on 8-1/2 by 11 inch paper and full-sized scaled engineering drawings, if available; a location map; longitude and latitude; formal property identification such as lot and block or tax parcel number, representative photographs of the project site; a delineation of areas within Federal jurisdiction, including wetlands, for the entire project area; existing water depths; depth of any cables or pipelines below mean low water; height of any cables, pipelines or other structures above mean high water; the maximum distance that any structure(s) would extend channelward of the mean high water line or ordinary high water in non-tidal areas; the maximum distance that any fill would extend channelward of the high tide line or ordinary high water in non-tidal areas; the width of the waterway at the project site; the location of any mapped floodplain areas; the location of any dredged material disposal area; the distance from the edge of any navigation channel; the location of any temporary work, structures, vessels, or fills required for the construction; a copy of any previous Federal or State approvals; and, the location and nature of any submerged aquatic vegetation (e.g., eel grass Zostera, marina) or shellfish beds. All work in areas of Federal jurisdiction shall be identified on a scaled plan of the project site. Further, at the discretion of the District Engineer, the Corps may consider a PCN incomplete if it is determined that field verification of a wetland delineation is required.

The PCN shall also include the following information:

(1) Documentation that the applicant has already contacted and received a response from the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) concerning any Essential Fish Habitat (EFH) and any federally listed Threatened and Endangered Species that may be affected by the proposed activity. The information provided to USFWS and NMFS should include the information described above in this condition and any other information specifically requested by the federal agencies to conduct their evaluation for threatened and endangered species and essential fish habitat. The addresses for these agencies are provided below. (See Special Note 3 below)

(2) Documentation from the State agency(s) indicating whether the proposed project is located within a State Natural Heritage site, or National Estuarine Research Reserve. This documentation shall also indicate whether the project is located on a property listed or eligible for listing on the National Register of Historic Places. The appropriate addresses for these programs are also provided below (See **Special Note 3 below**). (For further information see NWP general condition 25)

(3) A written statement that clearly describes the following: (1) what measures have been taken to avoid impacts on aquatic resources, (2) what measures have been taken to avoid and/or minimize any discharges into wetlands or waters of the United States, and (3) what measures have been developed to compensate for any impacts to wetlands or waters of the United States.

REGIONAL GENERAL CONDITION - 2(G-2).

This regional condition is applicable to those nationwide permit activities that require coordination by the District Engineer with the Federal and State resource agencies. This would include any PCN for NWP34, or any other NWP activities where the loss of wetlands or waters of the United States would exceed 0.5 acres.

Condition G-2: As a part of the PCN to the District Engineer, the applicant shall provide evidence that a duplicate copy of the PCN has been submitted to and received by the other concerned Federal and State resource agencies (e.g., copy of certified/registered mail receipt). The addresses for these agencies are provided below. (**See Special Note 4 below.**)

REGIONAL GENERAL CONDITION - 3(G-3).

This regional condition is applicable to all nationwide permit activities located in waters of the United States that are a component of the National Wild and Scenic River System, or have been officially designated as a "study river" for possible inclusion in the system.

REGIONAL CONDITIONS FOR NEW JERSEY AND DELAWARE

Condition G-3: The applicant shall provide written notification to the National Park Service prior to performing the activity, and shall not begin work until notified by the National Park Service in writing that the proposed activity will not adversely effect the Wild and Scenic River designation, or study status. A copy of this approval from the National Park Service shall be forwarded to the District Engineer. All notifications to the National Park Service required by this regional general condition shall include the information identified in regional condition G-1 above. The appropriate addresses for the National Park Service are provided below.

(i) For all projects, the applicant shall notify the National Park Service, Philadelphia Support Office, Stewardship and Partnership Team, Conservation Assistance Group, 200 Chestnut Street, Third Floor, Philadelphia, Pennsylvania 19106.

(ii) If the proposed project is located in the Upper Delaware River, notification shall also be sent to Mr. Don Hamilton, Upper Delaware National Scenic and Recreational River, R.R. 2, Box 2428, Beach Lake, Pennsylvania, 18405-9737.

The following list includes the waterway locations that are currently subject to this regional condition.

(1) Upper Delaware River; from the confluence of the East and West Branches (below Hancock, New York) downstream to Cherry Island near Millrift in Westfall Township, Pike County (Sparrow Bush, New York), approximately five miles above Port Jervis).

(2) Delaware Water Gap National Recreation Area; Pennsylvania and New Jersey; within the boundaries of the National Recreation Area, beginning approximately four miles below Port Jervis, extending downstream approximately to the boundary between Monroe and Northampton Counties in Pennsylvania (just below the Interstate 80 bridge).

(3) Lower Delaware River; Pennsylvania and New Jersey; from the town of Washington Crossing in Bucks County, Pennsylvania, upstream to Upper Mount Bethel Township in Northampton County, Pennsylvania, plus Tinicum, Paunacussing, and Tohickon Creeks (tributaries). The towns of Belvidere, Phillipsburg, and Easton, as well as existing power plants, water supply intakes and wastewater outfalls are not included in the designated area.

(4) Great Egg Harbor River; New Jersey; from the mouth of Patcong Creek upstream approximately 40 miles plus several tributaries, in Atlantic, Cape May, Gloucester and Camden Counties. This includes Patcong Creek extending upstream from its confluence with Great Egg Harbor River to the Garden State parkway bridge, approximately 2.8 miles.

(5) Maurice River; New Jersey; the Maurice River, from Shell Pile approximately 17 miles upstream to the Millville sewage treatment plant, and portions of Menantico Creek, Manumuskin River and Muskee Creek, in Cumberland and Atlantic Counties.

(6) White Clay Creek; Pennsylvania and Delaware; from the headwaters in Pennsylvania to the confluence with the Christina River in Delaware and all tributaries, including the East, West and Middle Branches, Middle Run, Pike Creek, Mill Creek, and other main branches and tributaries.

REGIONAL GENERAL CONDITION - 4(G-4).

This regional condition is applicable to any nationwide permit (NWP) activities where a preconstruction notification (PCN) is not required or submitted to the District Engineer.

Condition G-4: The applicant shall contact the U.S. Fish and Wildlife Service prior to conducting the proposed work to verify compliance with NWP general condition 11 (Threatened and Endangered Species). The NWPs that do not require a PCN to the District Engineer include NWPs 1, 2, *3, 4, *5, 6, 9, *10, *11, *13, *15, 16, *18, *19, 20, *22, 24, *25, *30, and *36. *These NWP activities require notification to the District Engineer under certain circumstances. Review the NWP authorization, general conditions, or regional conditions to identify these circumstances. The appropriate addresses for the US Fish and Wildlife Service are provided below. **(See Special Note 3 below.)**

REGIONAL CONDITIONS FOR NWP (3) MAINTENANCE

Condition (a): Any PCN to the DE must clearly describe any activity proposing the use of a bulldozer or other bladed equipment to move material from or across a stream channel. (See Regional General Condition G-1 for further information.)

Condition (b): Any discharges or excavation associated with the removal of accumulated sediments and/or debris in the vicinity of, and within, existing structures shall not extend farther than 50 feet in any direction from the structure.

REGIONAL CONDITIONS FOR NEW JERSEY AND DELAWARE

Condition (c): All structures, including piers and docks (piles, stringers, whalers and decking), boat lifts, mooring piles, breakwaters, and replacement bulkheads must be constructed with non-polluting material, such as plastic, natural cedar or other untreated wood, polymer coated pressure-treated wood, concrete or other inert products in those cases where the proposed activity would occur in designated shellfish habitat, as defined in State of New Jersey Department of Environmental Protection "Coastal Permit Program Rules" N.J.A.C. 7:7E-3.2(a)(1-4). Creosote and pressure-treated lumber (i.e. preservative treatment such as CCA-C, ACZA, CC, ACQ, etc.)(wolmanized) which is susceptible to leaching are considered polluting materials and are not acceptable for the purpose of this permit. This condition is not applicable in the State of Delaware.

REGIONAL CONDITION FOR NWP (7) OUTFALL STRUCTURES:

Condition (a): Any proposed intake structures must include "wedge wire" screening with mesh opening sizes of 2 millimeters (mm) or less and intake velocities equal to or less than 0.5 feet per second.

Condition (b): Any excavation, including dredging, shall be limited to 50 cubic yards.

REGIONAL CONDITION FOR NWP (8) OIL AND GAS STRUCTURES.

Condition (a): At least 90 days prior to initiation of any regulated activity, within 1000 meters of an established fairway or traffic separation scheme within the jurisdictional boundaries of the First or Fifth Coast Guard Districts, the permittee must send copies of project plans, by certified mail, showing size, location and identification markings of the proposed structures to the following agencies:

District Commander
U.S. Army Corps of Engineers
Wanamaker Building
100 Penn Square East
Philadelphia, Pennsylvania 19107-3390
ATTN: Regulatory Branch

Commander (oan)
First Coast Guard District
408 Atlantic Avenue
Boston, Massachusetts 02110-2209
(617) 223-8555
or
Commander (oan)
Fifth Coast Guard District
431 Crawford Street
Portsmouth, Virginia 23704-5004
(757) 398-6230

REGIONAL CONDITIONS FOR NWP (11) TEMPORARY RECREATIONAL STRUCTURES.

Condition (a): This nationwide permit is applicable only to structures associated with discrete or specific recreational events.

Condition (b): A PCN shall be submitted to the District Engineer for activities proposed on any waterway containing an authorized Federal or State navigation channel (See Regional General Condition G-1).

REGIONAL CONDITIONS FOR NWP (12) UTILITY LINES.

Condition (a): This nationwide permit is not applicable to activities on the following waterways: (1) Delaware River south of the Penn-Central Railroad Bridge in Trenton, New Jersey; (2) Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania; (3) Chesapeake and Delaware Canal; (4) Cape May Canal; (5) Point Pleasant Canal; and (6) Lewes and Rehoboth Canal.

Condition (b): A PCN shall be submitted to the DE for any activities in waters of the United States under the terms of this NWP. (See Regional General Condition G-1.)

Condition (c): Any PCN to the District Engineer, which proposes a permanent access or maintenance road, must justify, to the satisfaction of the District Engineer, that any such permanent fills are necessary, and that temporary access roads are not practicable.

Condition (d): This NWP does not authorize stockpiling excavated material in wetlands for longer than 30 days.

Condition (e): Any excavated or stockpiled materials shall be stabilized with straw bales, silt fence, or other acceptable methods to prevent reentry into any waterway or wetland.

REGIONAL CONDITIONS FOR NEW JERSEY AND DELAWARE

Condition (f): Utility lines installed below the plane of ordinary high water of any stream or waterway shall be constructed under dry conditions, using stream diversions other than earthen cofferdams, unless it is demonstrated to the satisfaction of the District Engineer to be impracticable.

Condition (g): Where a utility line is constructed parallel to a stream corridor, a buffer shall be maintained between the utility and the waterway to avoid or minimize potential future impacts to waters of the United States. These disturbances would include such issues as sewer line leaks or failures, future stream channel meandering, stream bank instability and failure, and right-of-way maintenance. Measures designed to satisfy this condition must be described in any PCN to the District Engineer.

Condition (h): If a proposed activity would involve impacts to submerged aquatic vegetation (SAV), the applicant shall clearly document all efforts to achieve restoration of these areas. At a minimum, this shall include pre-construction surveys along the entire right-of-way to map all existing SAV, construction schedules, and long term monitoring to assess restoration of SAV areas. This information should also be furnished to NMFS in consort with regional general condition G-1.

For Aerial Transmission Lines Across Navigable Waters:

Condition (i): The following minimum clearances are required. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances, which would be required by the U.S. Coast Guard for new fixed bridges in the vicinity of the proposed transmission line. These clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length of span, and type of supports as outlined in the National Electrical Safety Code.

Nominal System Voltage, (kv)	Minimum additional clearance (feet) above clearance required for bridges
115 and below	20 feet
136	22 feet
161	24 feet
230	26 feet
350	30 feet
500	35 feet
700	42 feet
750 – 765	45 feet

Condition (j): Clearances for communication lines, stream gauging cables, ferry cables, and other aerial crossings must be a minimum of ten (10) feet above clearances required for bridges, unless specifically authorized otherwise by the District Engineer.

Condition (k): Within 60 days of completion of the work, the permittee shall furnish the Corps and the National Oceanic and Atmospheric Administration, Nautical Data Branch, N/CS26, Station 7230, 1315 East-West Highway, Silver Spring, Maryland 20910-3282, with certification that the aerial wire has been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, which clearly shows the minimum clearance of the aerial wires above the mean high water line at the time of the survey. The certification shall also include a statement by the permittee that the clearance of the wires, at maximum sag conditions, shall never be less than the clearance shown on the approved plans.

For Buried Cables and Pipelines Across Navigable Waters:

Condition (l): The top of the cable or pipeline shall be located a minimum of 4 feet below the existing bottom elevation and shall be backfilled with suitable heavy material to the preconstruction bottom elevation.

Condition (m): Within 60 days after completion of the work, the permittee shall furnish the Corps and National Oceanic and Atmospheric Administration, NOS, N/CS261, Marine Chart Division, Nautical Data Branch, Station 7317, 1315 East-West

REGIONAL CONDITIONS FOR NEW JERSEY AND DELAWARE

Highway, Silver Spring, Maryland 20910-3282, with certification that the cable or pipeline has been installed in compliance with the approved plans. The certification shall include a survey conducted by a licensed surveyor, or a "drawing of record" if installation is conducted by directional drilling, which clearly shows the elevations and alignment of the cable or pipeline across the waterway. Any discrepancies shall be clearly noted.

Condition (n): There shall be no stockpiling or double handling of any excavated/dredged materials within any waterway, unless specifically reviewed and approved by the District Engineer as a part of any PCN. Further, all excess or unsuitable dredged or excavated material not used as backfill over any cable or pipeline shall be disposed at a disposal site approved by the District Engineer.

For Buried Cables or Pipelines Across Federal Navigation Channels:

Condition (o): The top of the cable or pipeline crossing the Federal project channel shall be located a minimum of 6 feet below the authorized project channel depth and shall be backfilled with suitable heavy materials to the adjacent river bottom elevation. In areas outside the Federal project channel, the top of cable or pipeline shall be located a minimum of 4 feet below existing river bottom elevation and shall be backfilled with suitable material to the adjacent river bottom elevation.

REGIONAL CONDITION FOR NWP (13) BANK STABILIZATION

Condition (a): It is encouraged that bank stabilization efforts be accomplished through the use of non-structural measures such as rip-rap and/or vegetation. As such, any PCN to the District Engineer that does not include such measures shall include an analysis demonstrating that such measures were not practicable and/or appropriate.

Condition (b): All structures or bulkheads proposed for bank stabilization, such as piles, whalers, sheathing, or any other associated materials, must be constructed with non-polluting material, such as plastic, natural cedar or other untreated wood, polymer coated pressure-treated wood, concrete or other inert products in those cases where the proposed activity would occur in designated shellfish habitat, as defined in State of New Jersey Department of Environmental Protection "Coastal Permit Program Rules" N.J.A.C. 7:7E-3.2(a)(1-4). Creosote and pressure-treated lumber (i.e. preservative treatment such as CCA-C, ACZA, CC, ACQ, etc.) (wolmanized) which is susceptible to leaching are considered polluting materials and are not acceptable for the purpose of this permit. This condition is not applicable in the State of Delaware.

REGIONAL CONDITION FOR NWP (14) LINEAR TRANSPORTATION CROSSINGS

Condition (a): A PCN shall be submitted to the District Engineer for any activity proposing a discharge into waters of the United States under the terms of this NWP. . (See Regional General Condition G-1.)

Condition (b): Any activity proposing a crossing of a stream or open water shall be designed to maintain continuity of existing benthic habitats and to maintain existing stream flow patterns. This can be achieved through the use of elevated structures, bottomless culverts, or by depressing culverts below the stream bottom. This design requirement must include a site-specific evaluation of the particular stream or waterbody to determine if it is experiencing erosion or sedimentation rates, that would alter the bottom elevation. Where a series of culverts are used, only those cells or culverts, which carry the base stream flow, shall be depressed. The bottom of any other culverts or cells shall be raised to pass and maintain existing and expected high flows.

Condition (c): For **public** linear transportation projects where the prospective permittee is proposing a new crossing, proposing the replacement of an existing bridge structure with a culvert, or proposing the dualization of an existing facility, the permittee shall include an on-site alternatives analysis that considers the impact of various size and type structures (i.e. bridges, culverts, pipes, and bottomless culverts) on the following:

- (1) Wetland functions, values, acreage
- (2) Wildlife corridor
- (3) Floodplain functions, including, but not limited to, flood storage and nutrient uptake
- (4) Existing or proposed hiker/biker trails and equestrian trails
- (5) Fish passage
- (6) Fisheries habitat and food chain support
- (7) Threatened and Endangered species
- (8) Stream morphology
- (9) Hydraulic analysis
- (10) Cost
- (11) Consistency with Master Plans
- (12) Movement of debris

REGIONAL CONDITIONS FOR NEW JERSEY AND DELAWARE

REGIONAL CONDITIONS FOR NWP (23) CATEGORICAL EXCLUSIONS

Condition (a): A PCN shall be submitted to the District Engineer for any activity under the terms of this NWP (See Regional General Condition G-1. Also see Regional Condition G-2, if applicable.)

Condition (b): Activities associated with this NWP shall not cause the loss of more than one acre of waters of the United States, including wetlands.

REGIONAL CONDITIONS FOR NWP (27) STREAM and WETLAND RESTORATION ACTIVITIES

Condition (a): A PCN shall be submitted to the District Engineer for any activity proposing a discharge into waters of the United States under the terms of this NWP. (See Regional General Condition G-1.)

REGIONAL CONDITION FOR NWP (28) MODIFICATIONS OF EXISTING MARINAS.

Condition (a): A PCN shall be submitted to the District Engineer for any proposed activity under the terms of this NWP (See Regional General Condition G-1).

Condition (b): This NWP is only applicable to those projects, which have been previously reviewed and approved by the District Engineer through the individual permit process.

REGIONAL CONDITIONS FOR NWP (29) SINGLE-FAMILY HOUSING

At the request of the Governor of Delaware, NWP 29 is being suspended within the State of Delaware. The regional conditions described for this NWP are applicable for the State of New Jersey only. (See Regional General Condition G-1.)

Condition (a). The total area of non-tidal waters of the United States, including wetlands, lost as a result of the discharge shall not exceed 40% of the total lot area or 0.25 acres, except for those lots which are less than 0.25 acres in size, in which case the loss of non-tidal waters of the United States, including wetlands shall not exceed 0.10 acres. In no circumstances may the loss of non-tidal waters of the United States including wetlands resulting from a discharge authorized by this NWP exceed 0.25 acres. Loss is defined to include any filled area previously permitted, the proposed fill area, and any other waters of the United States including wetlands that are adversely affected by flooding, excavation, or drainage as a result of the project. The following table provides examples of the permit authorization acreage limitations in effect where the lot size is equal to or greater than 0.25 acres.

Total Acreage Of Lot	40% of Lot	Maximum Loss Area Authorized
0.25 acre	X 0.40	= 0.10 acre
0.33 acre	X 0.40	= 0.13 acre
0.50 acre	X 0.40	= 0.20 acre
0.625 acre	X 0.40	= 0.25 acre
>0.625 acre		= 0.25 acre

Condition (b). This NWP may be used only once by an individual.

Condition (c). This NWP may only be used for a single-family home for a personal residence by an individual who purchased the lot prior to November 21, 1991.

Condition (d). This NWP may only be used on residential lots with access to a central sewage system which is in place and operational at the time of notification, except in instances where the discharge is for expansion of an existing residence.

Condition (e): This NWP does not authorize the discharge of fill into waters of the United States, including wetlands, for the purpose of installing or expanding an on-lot sewage disposal system.

REGIONAL CONDITIONS FOR NEW JERSEY AND DELAWARE

Condition (f). This NWP does not authorize the discharge of dredged or fill material in wetlands located within a 100-year floodplain. Absent any established maps or other information to the contrary, the 100-year floodplain is assumed to extend fifty (50) feet landward from the top of the stream bank.

Condition (g). Any notification to the District Engineer shall include a sketch plan depicting the proposed footprint of fill. The sketch plan shall also include the property dimensions, building setbacks, wetland boundaries, acreage of the proposed wetland loss, location and acreage of any previously permitted wetland fills, location(s) of any streams, drainage courses, and floodplain limits, location of proposed house, driveway, and utilities.

Condition (h). Individuals who wish to use this NWP may be required to compensate for the loss of waters of the United States including wetlands by one of the following, where the loss of waters of the United States would be greater than 0.05 acres:

- a.) construct a replacement wetland in accordance with a plan approved by the Corps of Engineers;
- b.) participate in a wetland mitigation bank approved by the Corps of Engineers.
- c.) participate in an "in lieu fee" program approved by the Corps of Engineers.

REGIONAL CONDITIONS FOR NWP (34) CRANBERRY PRODUCTION ACTIVITIES.

Condition (a): Any PCN submitted to the District Engineer for activities in the State of New Jersey shall include the following information: an analysis of the proposed project which satisfies the provisions of Sections I, II, and III of the New Jersey Department of Environmental Protection and Energy, Regulatory Element, Guidance Memorandum #22, entitled Standards for Reviewing Applications for Expansion of Cranberry Farms in the Pinelands Area.

Condition (b): A copy of any PCN to the District Engineer must be forwarded to the other Federal and State resource agencies for any activity under the terms of this NWP (See Regional Conditions G-1 and G-2). The appropriate addresses for the Federal and State agencies are provided below. **(See Special Notes 3 and 4 below.)**

REGIONAL CONDITIONS FOR NWP (35) MAINTENANCE DREDGING OF EXISTING BASINS.

Condition (a): This nationwide permit is **not** applicable to activities on the following waterways: (1) Delaware River south of the Penn-Central Railroad Bridge in Trenton, New Jersey; (2) Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania; (3) Chesapeake and Delaware Canal; (4) Cape May Canal; (5) Point Pleasant Canal; and (6) Lewes and Rehoboth Canal.

Condition (b): A PCN shall be submitted to the District Engineer for activities on all other waterways **not** listed above (See **Regional General Condition G-1**).

Condition (c): This NWP is only applicable to those projects, which have been previously reviewed and approved by the District Engineer through the individual permit process.

REGIONAL CONDITION FOR NWP (36) BOAT RAMPS.

Condition (a): This nationwide permit is **not** applicable to activities on the following waterways: (1) Delaware River south of the Penn-Central Railroad Bridge in Trenton, New Jersey; (2) Schuylkill River downstream of Fairmount Dam in Philadelphia, Pennsylvania; (3) Chesapeake and Delaware Canal; (4) Cape May Canal; (5) Point Pleasant Canal; and (6) Lewes and Rehoboth Canal.

REGIONAL CONDITIONS FOR NWP (39) RESIDENTIAL, COMMERCIAL & INSTITUTIONAL ACTIVITIES.

Condition (a): A PCN shall be submitted for any activity proposing a discharge into waters of the United States. (See Regional Condition G-1)

Condition (b): Under the terms of this NWP, any wetlands that are located within the platted lot lines of any residential, commercial, or institutional development will be considered an adverse affect on waters of the United States, unless the wetlands are protected by conservation easement, deed conveyance or covenants, or any other real estate mechanism that can demonstrate to the District Engineer that these areas will be protected and/or preserved in perpetuity.

REGIONAL CONDITIONS FOR NEW JERSEY AND DELAWARE

Condition (c): The discharge of fill for the construction or expansion of a single-family residential structure, including any attendant features or structures, is not authorized by this NWP. This type of activity may be eligible for authorization under the terms and conditions of NWP 18 or NWP 29.

Condition (d): This NWP does not authorize construction of ponds or storm-water management basins in waters of the United States.

Condition (e): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

Condition (f): Activities associated with this NWP shall not cause the loss of more than 300 linear feet of streambed, except for man-made ditches constructed in uplands which are determined by the Corps of Engineers to be waters of the United States, and which are determined to be intermittent or ephemeral.

Condition (g): This NWP is not applicable for activities located within the geographic boundaries of the Hackensack Meadowlands District.

REGIONAL CONDITION FOR NWP (40) AGRICULTURAL ACTIVITIES.

Condition (a): Except as noted below, a PCN shall be submitted to the DE for any proposed activity in waters of the United States, including wetlands, under the terms of this NWP. (See Regional General Condition G-1)

Condition (b): This NWP does not authorize any activities located in any perennial stream.

These regional conditions are not applicable to activities authorized by paragraph "a" of this NWP.

REGIONAL CONDITIONS FOR NWP (41) RESHAPING EXISTING DRAINAGE DITCHES.

This NWP is suspended within the States of Delaware and New Jersey.

REGIONAL CONDITIONS FOR NWP (42) RECREATIONAL FACILITIES.

Condition (a): A PCN shall be submitted to the District Engineer for any activity proposing a discharge into waters of the United States under the terms of this NWP. (See Regional General Condition G-1)

Condition (b): This NWP does not authorize any support facilities or buildings such as parking facilities, storage or maintenance buildings, rental buildings or office buildings. In addition, the NWP does not authorize fill for the construction or expansion of golf courses or ski areas.

Condition (c): This NWP does not authorize construction of ponds or storm-water management basins in waters of the United States.

Condition (d): This NWP does not authorize construction of sewage disposal systems in waters of the United States.

Condition (e): Activities associated with this NWP shall not cause the loss of more than 300 linear feet of streambed, except for man-made ditches constructed in uplands which are determined by the Corps of Engineers to be waters of the United States, and which are determined to be intermittent or ephemeral.

Condition (f): This NWP is not applicable for activities located within the geographic boundaries of the Hackensack Meadowlands District.

REGIONAL CONDITIONS FOR NWP (43) STORMWATER MANAGEMENT FACILITIES.

This NWP is suspended within the States of Delaware and New Jersey.

REGIONAL CONDITIONS FOR NEW JERSEY AND DELAWARE

REGIONAL CONDITIONS FOR NWP (44) MINING ACTIVITIES.

This NWP is suspended within the States of Delaware and New Jersey.

SPECIAL NOTES:

(1) Where the State has denied 401 WQC and/or not concurred with the Corps' CZM consistency determination for a NWP authorization, the prospective permittee should contact the State to obtain an activity specific review and approval by the State prior to submitting any required preconstruction notification to the Corps of Engineers.

(2) Effective March 2, 1994, the State of New Jersey assumed the Federal Section 404 permit program from the U. S. Army Corps of Engineers. As such, these nationwide permits including all regional conditions developed for waters of the United States within the State of New Jersey are only effective for those waters which have **not** been assumed by the State of New Jersey.

(3) The following addresses shall be used for contacting the appropriate Federal and State agencies to obtain information relating to threatened and endangered species, state natural heritage sites, or historic resources, that are required by **Regional General Conditions G-1** above.

FOR PROJECTS IN NEW JERSEY:

Field Supervisor
U.S. Fish and Wildlife Service
927 North Main Street (Building D)
Pleasantville, New Jersey 08232

National Marine Fisheries Service
Habitat Conservation Division
74 Magruder Road, Sandy Hook
Highlands, New Jersey 07732

New Jersey Natural Heritage Program
Office of Natural Lands Management
4 Station Plaza
22 S. Clinton Street
Trenton, New Jersey 08625

New Jersey Department of Environmental Protection
Historic Preservation Office
5 Station Plaza
501 East State Street, 4th. Floor
Trenton, New Jersey 08625

FOR PROJECTS IN DELAWARE:

Field Supervisor
U.S. Fish and Wildlife Service
177 Admiral Cochrane Drive
Annapolis, Maryland 21401

National Marine Fisheries Service
Habitat Conservation Division
904 South Morris Street
Oxford, Maryland 21654

Delaware Department of Natural Resources
and Environmental Control
Division of Water Resources
Wetlands and Subaqueous Lands
89 Kings Highway
Dover, Delaware 19901

Delaware Natural Heritage Program
4876 Hay Point Landing Road
Smyrna, Delaware 19977
ATTN: Karen Bennett

Delaware State Historic Preservation Office
21 The Green, Suite A
Dover, DE 19901-3611
ATTN: Ms. Faye Stocum

REGIONAL CONDITIONS FOR NEW JERSEY AND DELAWARE

(4) The following addresses shall be used for notification to those Federal and State agencies, where the review of the PCN must be coordinated by the District Engineer. These addresses are required for **Regional General Conditions G-2. The US Fish and Wildlife Service addresses listed below should be used for any notification required by Regional General Condition G-4, if condition G-4 is applicable.**

FOR PROJECTS IN NEW JERSEY:

Field Supervisor
U.S. Fish and Wildlife Service
927 North Main Street (Building D)
Pleasantville, New Jersey 08232

U.S. Environmental Protection Agency, Region II
Water Programs Branch
290 Broadway
New York, New York 10007-1866

National Marine Fisheries Service
Habitat Conservation Division
74 Magruder Road, Sandy Hook
Highlands, New Jersey 07732

Administrator
Land Use Regulation Program
NJ Department of Environmental Protection
5 Station Plaza
501 East State Street, 2nd. Floor
Trenton, New Jersey 08625

NJ Department of Environmental Protection
Historic Preservation Office
5 Station Plaza
501 East State Street
Trenton, New Jersey 08625

FOR PROJECTS IN DELAWARE:

Field Supervisor
U.S. Fish and Wildlife Service
177 Admiral Cochrane Drive
Annapolis, Maryland 21401

U.S. Environmental Protection Agency, Region III
Wetlands and Marine Policy Section, 3ES30
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

National Marine Fisheries Service
Habitat Conservation Division
904 South Morris Street
Oxford, Maryland 21654

Delaware Department of Natural Resources
and Environmental Control
Division of Water Resources
Wetlands and Subaqueous Lands Section
89 Kings Highway
Dover, Delaware 19901

Delaware State Historic Preservation Office
15 The Green
Dover, Delaware 19901
ATTN: Ms. Faye Stocum

Delaware Department of Natural Resources
and Environmental Control
Division of Soil and Water Conservation
Coastal Zone Program
89 Kings Highway
Dover, Delaware 19901