



**US Army Corps  
of Engineers**  
Philadelphia District

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Philadelphia, PA 19107-3390  
ATTN: CENAP-OP-R

# Public Notice

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Public Notice No. <b>CENAP-OP-R-SPN 09-02</b>	Date <b>15 July 2009</b>
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Application No. <b>Proposed Suspension and Modification of Nationwide Permit 21</b>	File No.
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In Reply Refer to:  
**REGULATORY BRANCH**

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## **PROPOSED SUSPENSION AND MODIFICATION OF NATIONWIDE PERMIT NUMBER 21 IN THE APPALACHIAN REGION OF KENTUCKY, OHIO, PENNSYLVANIA, TENNESSEE, VIRGINIA, AND WEST VIRGINIA**

In the 15 July 2009 (Vol. 74, No. 134) issue of the Federal Register (copy enclosed), the U.S. Army Corps of Engineers (Corps) published a proposal to take two actions concerning Nationwide Permit (NWP) 21 which authorizes discharges of dredged or fill material into waters of the United States for surface coal mining activities. First, the Corps proposes to modify NWP 21 to prohibit its use to authorize discharges of dredged or fill material into waters of the United States for surface coal mining activities in the Appalachian region of the following states: Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. Second, the Corps is proposing to suspend NWP 21 to provide an interim means of requiring individual permit reviews in Appalachia, while we evaluate the longer-term measure of modifying NWP 21 to prohibit its use to authorize discharges of dredged or fill material into waters of the United States associated with surface coal mining activities in the Appalachian region of these six states. The suspension of NWP 21 will provide immediate environmental protection while the Corps evaluates the comments received in response to the proposal to modify NWP 21.

The application of NWP 21 to surface coal mining activities in the rest of the United States would not be affected by the proposed modification or suspension of this NWP.

On June 11, 2009, the Corps, the U.S. Department of the Interior, and the U.S. Environmental Protection Agency signed a Memorandum of Understanding (MOU) implementing an Interagency Action Plan on Appalachian surface coal mining. A copy of this MOU is available at: <http://www.usace.army.mil/CECW/Pages/moumoas.aspx>. The MOU includes an Interagency Action Plan (IAP) that was developed to reduce the adverse environmental impacts of surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, while assuring that future mining remains consistent with the Clean Water Act and the Surface Mining Control and Reclamation Act. The IAP is intended to provide greater emphasis on protecting the aquatic and terrestrial environment of the Appalachian region. To accomplish this, the IAP lists several short-term actions to reduce the harmful environmental consequences of Appalachian surface coal mining in these six states. One of the short-term actions commits the Corps to issue a public notice proposing to modify NWP 21 to prohibit its use to authorize discharges of dredged or fill material into waters of the United States in conjunction with surface coal mining activities in the Appalachian region described above.

In accordance with the suspension and modification procedures provided in the NWP regulations, public comment is invited, and a public hearing may be requested. After evaluating all comments pertaining to the proposed suspension and modification that are received in response to this notice and any public hearings, the Corps expects to publish its decisions concerning the NWP 21 suspension and modification in separate Federal Register notices. If the Corps decides to suspend NWP 21, the suspension cannot occur until the effective date, which would be specified in the Federal Register notice announcing the suspension decision. If NWP 21 is suspended, the suspension will remain in effect until NWP 21 is modified or expires, or until the suspension is lifted.

If NWP 21 is suspended for surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia, district engineers cannot issue NWP 21 verifications for those activities or accept NWP 21 PCNs for surface coal mining activities in the Appalachian region of those six states that are received after the effective date of the suspension. If the NWP 21 suspension goes into effect, requests for Department of the Army authorization for these activities will be processed through the individual permit process.

For more information, including instructions for submitting comments, please see the attached Federal Register notice.

Frank J. Cianfrani  
Chief, Regulatory Branch

Enclosure

## DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

RIN 0710-ZA04

**Proposed Suspension and Modification of Nationwide Permit 21**

**AGENCY:** United States Army Corps of Engineers, Department of Defense.  
**ACTION:** Notice.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) is proposing to take two actions concerning Nationwide Permit (NWP) 21, which authorizes discharges of dredged or fill material into waters of the United States for surface coal mining activities. First, the Corps proposes to modify NWP 21 to prohibit its use to authorize discharges of dredged or fill material into waters of the United States for surface coal mining activities in the Appalachian region of the following states: Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia until it expires on March 18, 2012. The proposed modification would enhance environmental protection of aquatic resources by requiring surface coal mining projects in the affected region to obtain individual permit coverage under the Clean Water Act (CWA), which includes increased public and agency involvement in the permit review process, including an opportunity for public comment on individual projects. The application of NWP 21 to surface coal mining activities in the rest of the United States would not be affected by this proposed modification.

Second, the Corps is proposing to suspend NWP 21 to provide an interim means of requiring individual permit reviews in Appalachia, while proposing to undertake the longer-term measure of modifying NWP 21 to prohibit its use to authorize discharges of dredged or fill material into waters of the United States associated with surface coal mining activities in the Appalachian region of these six States. The Corps is also proposing to suspend NWP 21 to provide immediate environmental protection while it evaluates the comments received in response to the proposal to modify NWP 21.

In accordance with the suspension and modification procedures provided in the NWP regulations, public comment is invited, and a public hearing may be requested. After evaluating all comments pertaining to the proposed suspension and modification that are received in response to this notice and any public hearings, the Corps will publish its

decisions concerning the NWP 21 suspension and modification in the Federal Register. If NWP 21 is suspended, the suspension would remain in effect until NWP 21 is modified or expires, or until the suspension is lifted.

**DATES:** Written comments, including requests for a public hearing, must be submitted on or before August 14, 2009.

**ADDRESSES:** You may submit comments, identified by docket number COE-2009-0032, by any of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Mail:* U.S. Army Corps of Engineers, Attn: CECW-CO (Attn: Ms. Desiree Hann), 441 G Street, NW., Washington, DC 20314-1000.

*Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

We will not accept e-mailed or faxed comments. We will post all comments on <http://www.regulations.gov> under docket number COE-2009-0032.

*Instructions:* When submitting comments via <http://www.regulations.gov>, direct your comments to docket number COE-2009-0032. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment.

If you submit an electronic comment by sending a CD-ROM to Corps Headquarters, we recommend that you submit those comments via overnight mail to ensure timely receipt. We also recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

**FOR FURTHER INFORMATION CONTACT:** Ms. Desiree Hann or Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC. Ms. Hann can be reached at 202-761-4560 and Mr. Olson can be reached at 202-761-4922.

**SUPPLEMENTARY INFORMATION:** Nationwide permit (NWP) 21 was first issued in 1982, pursuant to section 404(e) of the Clean Water Act, to authorize structures, work, and discharges associated with surface coal mining activities, provided those activities were authorized by the Department of the Interior, Office of Surface Mining, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Each time since 1982 that the Corps reissued its NWPs, it also reissued NWP 21, often with modifications that were made after considering comments received in response to the various proposals to reissue that NWP.

The current NWP 21 was published in the March 12, 2007, edition of the Federal Register (72 FR 11092) after going through public notice and comment and interagency review. This NWP authorizes "discharges of dredged or fill material into waters of the United States associated with surface coal mining and reclamation operations provided the activities are already authorized, or are currently being processed as part of an integrated permit processing procedure, by the Department of Interior (DOI), Office of Surface Mining (OSM), or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977." This NWP is currently scheduled to expire on March 18, 2012.

Since NWP 21 was first issued in 1982, surface coal mining practices have changed, and surface coal mining activities in the Appalachian region of Kentucky, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia have become more prevalent and have resulted in greater environmental impacts. Mountaintop surface coal