



# Corps To Reissue and Modify Nationwide Permits

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Prepared by the Environmental and Natural Resources Section of Balch & Bingham LLP

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With 20 attorneys in Alabama, Georgia and Mississippi focused exclusively on environmental law, and another dozen extensively engaged in environmental litigation, the Environmental and Natural Resources Section of **BALCH & BINGHAM** is one of the largest full-time environmental practice groups in the country.

## Contact us:

For more information, please contact:

### Atlanta: David M. Moore

(404) 962-3530

[dmoore@balch.com](mailto:dmoore@balch.com)

### Birmingham: Steve McKinney

(205) 226-3496

[smckinney@balch.com](mailto:smckinney@balch.com)

### Gulfport: Teri Wyly

(228) 214-0413

[twyly@balch.com](mailto:twyly@balch.com)

On February 16, 2011, the Corps of Engineers provided notice of a 60 day comment period for the proposed reissuance of 48 of the 49 existing nationwide wetlands dredge and fill permits (NWP) to replace the current versions of the permits when they expire on March 18, 2012. The Corps proposes modifying existing NWPs and definitions and issuing two new NWPs. The Corps also proposes to amend certain general conditions (GCs) and to add two new GCs. The Corps will not reissue NWP 47: Pipeline Safety Program Designated Time Sensitive Inspections and Repairs. Comments are due **April 18, 2011**.

New NWPs include Proposed NWP A for construction, expansion, or modification of land-based renewable energy production facilities, and Proposed NWP B for the construction, expansion, and modification of hydrokinetic or wind energy generation pilot projects and their attendant features. The new GCs proposed are GC 23 requiring impoundment safety design consistent with 33 CFR § 320.4(k) and GC 14 addressing artifacts discovered during construction of the authorized activity.

Proposed modifications to NWP 3 Maintenance include clarification that stream channel excavation immediately adjacent to the structure or fill being maintained is authorized under NWP 3(a) and does not require a pre-construction notification and that an activity does not need to include the placement of new or additional riprap in order to qualify for the NWP.

Many of the proposed GCs include modifications, such as requiring bottomless culverts where practicable under GC 2, revising the mitigation language in GC 22 to more closely match the Corps mitigation regulations at 33 CFR part 332, and clarifying the waiver provisions under GC 29. The Corps also proposes splitting the definition of “Single and Complete Project” into “Single and Complete Linear Projects” and “Single and Complete Non-Linear Projects” to clarify how the “independent utility” test applies to non-linear projects.