

The background of the slide is a vibrant blue watercolor wash. It features a mix of deep, dark blue and lighter, turquoise-blue tones, with soft, organic edges that blend into each other. The texture is visible, giving it a painterly feel. The watercolor is applied over a white background, with the blue being most concentrated on the left and top, fading towards the right and bottom.

PROPOSED NATIONWIDE PERMITS

Background and Issues to Watch

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WHAT DOES THE CLEAN WATER ACT SAY ABOUT NATIONWIDE PERMITS?

Section 404(e) authorizes the Army Corps to issue “general permits,” but only when strict conditions are satisfied:

“[T]he Secretary may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall (A) be based on the guidelines described in subsection (b)(1) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.

“No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modified by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.”

“SIMILAR IN NATURE”



Several NWPs
authorize very
dissimilar activities.

“MINIMAL ... ADVERSE EFFECT”

- NWP's typically have no limits on the number of times a permit can be used, even in a given watershed.
- Corps bases its assessment of impacts on prior use of each NWP, including required mitigation, but many NWP's have substantial un-mitigated predicted impacts.
- Corps does not consider historic use of NWP's in assessing “cumulative” impacts.
- Reliance on Division regional conditions & District review of PCNs to minimize impacts without factual basis. Corps has not undertaken review of effectiveness of actions taken to reduce harm.



The screenshot shows the Merriam-Webster website interface. At the top, there is a navigation bar with the Merriam-Webster logo, a search bar containing the word "minimal", and links for "Dictionary", "Thesaurus", "Games", and "Word of the Day". Below the navigation bar, the word "minimal" is displayed as an adjective. The pronunciation is given as "min-i-mal" and "'mi-nə-məl". A red banner highlights the "Definition" section. To the left of the definition, there is a sidebar with links for "Synonyms", "Example Sentences", "Word History", "Phrases Containing", "Entries Near", and "Show More". At the bottom of the sidebar is a "Save Word" button with a bookmark icon. The definition itself is listed as "1 : relating to or being a **minimum**: such as" followed by three examples: "a : the least possible" with the example "a victory won with *minimal* loss of life", "b : barely adequate" with the example "a *minimal* standard of living", and "c : very small or slight" with the example "a *minimal* interest in art".



“ON THE ENVIRONMENT”

- Corps’ assessment of impacts focuses exclusively on aquatic environment, but Clean Water Act requires consideration of whole environment.
- Consequently, Corps ignores harms from activities fast-tracked by permits, such as oil spills or climate impacts.

“BASED ON THE GUIDELINES DESCRIBED IN SUBSECTION (B)(1) OF THIS SECTION””

- NWPs contain insufficient conditions to ensure impacts to water bodies are minimized and avoided.
- Record contains no evidence that amount of expected mitigation is adequate to offset loss of function to impacted areas.
- NWPs do not require demonstration that impacts to “special aquatic sites” like wetlands are water-dependent, despite 404(b)(1) guidelines presumption that non-water-dependent activities have available alternatives.



COMPLIANCE WITH ESA & NEPA

- Corps fails to conduct required ESA consultation on issuance of NWPs, even though one-third of T&E species live only in wetlands and half use wetlands at some point in their lives.
 - NEPA analysis suffers from similar failures as Corps' conclusions about "minimal environmental impacts" and lack of programmatic assessment.
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“LINEAR” PROJECTS, ESPECIALLY NWP 12

- NWPs have significant loophole for “linear” projects – although individual water crossings have no independent utility, they are typically treated as stand-alone projects for purposes of assessing whether acreage thresholds, etc. apply.
- Allows for unlimited number of crossings as part of pipeline project, for instance.
- Applies to NWPs 12 (oil & gas pipelines), 14 (linear transportation projects), 57 (electric utility line & telecom activities) & 58 (utility line activities for water & other substances).
- NWP 12 is longstanding concern to environmental community. Corps considered revising/revoking in 2022 and took comments (received nearly 50K) but now proposes no meaningful changes.





WHAT THE HECK ABOUT *SACKETT*?

- Decision is not mentioned once in Federal Register notice proposing NWP.
 - Corps has previously acknowledged importance of using available authorities to protect waters not covered by CWA.
 - The loss of federal protections should bear heavily on the policy approach included in the NWP package.
 - It should also inform Corps' assessments of impacts, but no indication it did.
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BASIS FOR ESTIMATES OF IMPACTS

- The Corps only provides an estimate of the number of expected uses of each NWP, the acreage of waters anticipated to be impacted, and the acreage of mitigation likely to be required.
- No explanation of these figures. Also doesn't account for regional conditions (or lack thereof). Commenters should demand evidence for estimates & review proposed regional conditions to assess adequacy (<https://www.regulations.gov/docket/COE-2025-0002/document?sortBy=postedDate>).





THANK YOU!

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