

MEMORANDUM

Nationwide Section 404 Permit for
FHWA Categorical Exclusions

DEC 24 1987

HEV-11

Director, Office of Environmental Policy
Washington, D.C. 20590

Regional Federal Highway Administrators
Direct Federal Program Administrator

The issuance of the revised FHWA environmental impact procedure regulation, effective November 27, 1987, has necessitated a change in the Corps of Engineers (Corps) nationwide Section 404 permit process for FHWA categorical exclusions. Because the new FHWA categorical exclusions cover a broader range of actions than were covered under the old regulation, the Corps has decided to review most individual projects to determine whether or not the nationwide permit is appropriate. The new procedure is explained below. This memorandum will be included in the next update to the Environmental Guidebook, replacing the procedure established in 1983.

The Corps implements regulatory procedures by means of regulatory guidance letters. Attached is regulatory guidance letter 87-10, "Use of Nationwide Permit No. 23 for New Federal Highway Administration (FHWA) Categorical Exclusions." The regulatory guidance letter is largely self-explanatory: for projects listed in the categories enumerated, the project sponsor should contact the Corps district to verify that the project will have only minimal adverse impacts on the aquatic environment. If the Corps responds that the project has only minimal adverse impacts or, if it fails to respond within 20 days, then the project qualifies for the nationwide permit.

The State highway agency (or local transportation agency in the case of local projects) or the FHWA can contact the Corps. This can be done anytime after FHWA determines that the project is categorically excluded. It should be done early enough so that the project will not be delayed should the Corps determine that an individual permit is required. The level of detail to be provided to the Corps must be sufficient to allow a decision regarding the severity of impacts to aquatic resources, but typically would not approach the detail contained in final plans. Corps districts may elect to coordinate by telephone on some projects. We encourage the divisions and SHAs to work out mutually acceptable procedures with their local Corps districts.

In utilizing nationwide permit No. 23, the divisions and SHAs should keep in mind that water quality and coastal zone management (CZM) agencies in some States have given blanket water quality certifications and CZM consistency determinations, and others have not. The Corps districts can inform the divisions and SHAs of the situation in a given State. If applicable State

agencies have neither issued a blanket water quality certification and CZM consistency determination, nor waived issuing them, then a project-by-project review will be needed. The nationwide permit will take effect on qualifying projects once the water quality certification and CZM consistency determination have been obtained.

For projects/activities that are covered by more than one nationwide permit, the SHA has the option of applying the permit that is least onerous procedurally. For example, a project that qualifies for nationwide permit No. 14, "Minor Road Crossing Fills," and nationwide permit No. 23, "Categorical Exclusions" should be processed with nationwide permit No. 14 since there is no requirement that the Corps review the project. The SHAs should also be aware that statewide and Regional general permits may offer similar procedural advantages over nationwide permit No. 23 on certain projects.

We would appreciate feedback on the transition to the new procedure. In particular, we would like to know about problems that come up and about local arrangements developed to expedite coordination with the Corps.

/S/
Ali F. Sevin

Attachment