



**US Army Corps
of Engineers
Alaska District**

Public Notice

Date:
September 26, 2006
Identification No:
SPN 2006-216 Nationwide Permit Reissuance

Regulatory Branch (1145b)
Post Office Box 6898
Anchorage, Alaska 99506-0898

In reply refer to above Identification Number
Expiration Date: November 9, 2006

SPECIAL PUBLIC NOTICE 2006-216

NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS

On September 26, 2006, the U.S. Army Corps of Engineers published in the Federal Register its proposal to reissue its Nationwide Permits (NWP).

NWPs are general permits issued on a nationwide basis to streamline the authorization of activities that result in minimal individual and cumulative adverse effects on the aquatic environment. Many of the proposed NWPs require notification to the District Engineer before commencing the work, to ensure that the activities authorized by those NWPs have minimal individual and cumulative adverse impacts on the aquatic environment.

National Issues Concerning the Proposed NWPs: The Federal Register notice is the public's opportunity to comment on the proposed NWPs, general conditions, and definitions. Comments on national issues relating to these NWPs should be submitted to docket number COE-2006-0005 at www.regulations.gov. Instructions for submitting comments are provided in the September 26, 2006, Federal Register notice. Comments on the proposed NWPs are due by November 24, 2006.

Regional Issues Concerning the Proposed NWPs, Including Regional Conditioning: Division Engineers are authorized to add regional conditions specific to the needs and/or requirements of a particular region or state. Regional conditions are important mechanisms to ensure that impacts to the aquatic environment authorized by the NWPs are minimal, both individually and cumulatively. Division Engineers may also suspend or revoke specific NWPs in certain geographic areas (e.g., states or watersheds) or high-value aquatic systems where impacts authorized by those NWPs may be more than minimal. An enclosure for this public notice (Enclosure 1) lists the proposed regional conditions currently under consideration by the Pacific Ocean Division for Alaska. The Alaska District is seeking comments on the proposed regional conditions and seeking comments on the need for additional regional conditions to help ensure that impacts authorized by the proposed NWPs are minimal. The Alaska District proposes to modify the existing regional conditions A - V and issue these modifications as regional conditions A - I as found on Enclosure 1. Unless otherwise noted, all proposed regional conditions listed on this enclosure are applicable for activities in Alaska. Comments on regional issues relating to the proposed NWPs and regional conditions are to be sent to the attention of Dave Casey, U.S. Army Corps of Engineers, Kenai Field Office, Benco Building, 805 Frontage Road, Suite 200C, Kenai, Alaska 99611-7755, or by e-mail to nwpmailbox@poa02.usace.army.mil. Comments relating to regional conditions are due by November 9, 2006. Similar public notices proposing regional conditions in other regions or States are being published concurrently by other division or district offices.

In conjunction with the Federal Register notice, Corps Districts will be announcing proposed regional conditions for these NWP's for public comment. When the final NWP's are issued, the final regional conditions will be issued at the same time so that the States and Tribes can make their Clean Water Act Section 401 water quality certification and Coastal Zone Management Act (CZMA) consistency determination decisions. The 401/CZMA decisions must be made within 60 days of the Federal Register notice announcing the issuance of the NWP's. After that 60-day period, the NWP's and the regional conditions will become effective.

Draft decision documents, which include environmental documentation required by the National Environmental Policy Act, have been prepared by Corps Headquarters. The decision documents will address compliance of the NWP's with the requirements for issuance under general permit authority. These documents, as well as the proposed NWP's, are available for viewing at the Alaska District U.S. Army Corps of Engineers, Regulatory Branch, located at 2204 3rd Street, Elmendorf Air Force Base, Alaska or on the Internet at the www.regulations.gov site (docket ID number COE-2006-0005). Final decision documents will be prepared for those NWP's that are issued. In addition, supplemental decision documents will be issued by division engineers to address their determinations concerning regional conditions for the NWP's.

Enclosure 2 is an index of the proposed NWP's and conditions. Anyone wishing to provide comments may obtain a full text copy of the NWP's through www.regulations.gov (docket ID number COE-2006-0005), the Corps home page or the Federal Register address listed below.

Internet addresses:

Copies of the Federal Register notice and the draft decision documents will also be available at http://www.regulations.gov in docket ID number COE-2006-0005.

The Corps home page is: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/
As an alternate, internet users can access the Federal Register through the Government Printing Office (GPO) at http://www.gpoaccess.gov/fr/index.html .

District Engineer
U.S. Army, Corps of Engineers

Attachments

PROPOSED REGIONAL CONDITIONS
ENCLOSURE 1

REGIONAL CONDITION A - Bank Stabilization Projects

This Regional Condition applies to all proposals for a nationwide permit that involve bank stabilization.

For projects in fish streams, a PCN is required when the proposed methods and techniques are not included in Streambank Revegetation and Protection: A Guide for Alaska Revised 2005 (Walter, Hughes and Moore, April 2005) (Guide) or its future revisions.

The Guide is available at <http://www.sf.adfg.state.ak.us/sarr/restoration/techniques/techniques.cfm>

Applicants that do not propose projects with a bioengineered design shall also provide an alternative analysis consisting of the bioengineered methods that were considered and rationale as to why these alternatives are not in the applicant's preferred alternative.

REGIONAL CONDITION B - Agency Coordination

This Regional Condition establishes geographic and habitat areas that will require agency coordination for projects that are less than 1/2 acre.

Except as described below, for projects requiring a Pre-Construction Notification (PCN) and occurring within the following geographic/habitat areas, the Corps will conduct agency coordination with the appropriate agencies according to General Condition No. 26, regardless of the amount of loss of waters of the U.S.

- 1) The Municipality of Anchorage.
- 2) Areas designated as "A" or "B" wetlands in the Juneau Wetlands Management Plan.
- 3) Anadromous fish streams, including but not limited to, those identified in the *Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes* (available at <http://www.sf.adfg.state.ak.us/SARR/FishDistrib/anadcat.cfm>)
- 4) Jurisdictional areas within 100 feet (measured from OHW or HTL) of anadromous fish streams as identified above.
- 5) Eelgrass beds

Applicants may choose to conduct agency coordination for projects in the above geographic areas having less than 1/2 acre loss of waters of the U.S. The documentation of agency coordination shall be supplied with the PCN and if the Corps determines the applicant's proposal adequately addresses agency concerns, the project will not be coordinated again.

The Corps (or applicant, as described above) will coordinate such projects with the Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service and State Historical Preservation Officer or Tribal Historical Preservation Officer. Additionally, project coordination will occur with the State of Alaska's Department of Natural Resources, Office of Project Management and Permitting for projects that are within the coastal zone or when outside the coastal zone, coordination will occur with the Department of Environmental Conservation, Department of Fish and Game and the State of Alaska's Department of Natural Resources, Office of Habitat Management and Permitting.

REGIONAL CONDITION C - Wood Preservatives

This Regional Condition applies to all NWP's that include wooden structures.

In fresh or marine waters, no pentachlorophenol preservatives may be used on wooden structures. In fresh waters, no creosote may be used on wooden structures. In fresh and marine waters, any preservative on wooden structures must be applied by pressure injection using a method that prevents leaching (such as those approved by the Western Wood Preservers Institute).

REGIONAL CONDITION D - Activities Involving Trenching

The trench cannot be constructed or backfilled in such a manner as to drain waters of the U.S. (e.g., backfilling with extensive gravel layers, creating a french drain effect). Ditch plugs or other methods shall be used to prevent this situation.

Except for material placed as minor trench over-fill or surcharge necessary to offset subsidence or compaction, all excess materials shall be removed to a nonwetland location. The backfilled trench shall achieve the original surface condition within a year of disturbance unless climatic conditions warrant additional time and is approved by the Corps.

REGIONAL CONDITION E - Site Restoration for Projects with Ground Disturbing Activities

Disturbed areas shall be stabilized immediately after construction and revegetated as soon as conditions allow. Native vegetation and soils removed for project construction shall be stockpiled separately and used for site rehabilitation. If soil and/or organic materials are not available from the project site for rehabilitation, other locally-obtained native materials may be used. Other topsoil or organic materials (including seed) may be used only if identified in the PCN and approved in the NWP verification. Species to be used for seeding and planting shall follow this order of preference: 1) species native to the site; 2) species native to the area; 3) species native to the state.

REGIONAL CONDITION F - Equipment Standards

Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures (e.g. ice roads, compacted snow, low psi ground bearing weight, etc) must be taken to prevent soil disturbance.

REGIONAL CONDITION G- Seasonal Docks

Small, seasonal docks shall not extend more than 50 feet waterward of the ordinary high water mark or mean high water mark, or exceed more than 25 percent of the width of the waterbody, whichever is less.

REGIONAL CONDITION H – Agricultural Activities

The following activities are not covered by NWP 40: Drain tiles, ditches, or levees; or mechanized land clearing and land leveling in wetlands adjacent to anadromous waters.

REGIONAL CONDITION I - Mining

Placer mining activities are excluded from coverage by NWP 44 (Mining Activities). Placer mining may be authorized by Regional General Permit 88-02P. In Alaska, NWP 44 will only authorize the following activities:

1. Hard rock mining, not including trenching and drilling, or access road construction. Applicable to Section 404 only.
2. Temporary stockpiling of sand and gravel in waters of the U.S., limited to seasonally dewatered unvegetated sand/gravel bars. Stockpiles shall be completely removed and the area restored to pre-project contours within one year, in advance of seasonal ordinary high water events, and/or prior to equipment being removed from site, whichever comes first.

Index of Proposed Nationwide Permits, Conditions, and Definitions

Enclosure 2

Proposed Nationwide Permits

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Operations
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities

- 44. Mining Activities
 - A. Emergency Repair Activities
 - B. Discharges into Ditches and Canals
 - C. Pipeline Safety Program Designated Time Sensitive Inspections and Repairs
 - D. Commercial Shellfish Aquaculture Activities
 - E. Coal Remining Activities
 - F. Underground Coal Mining Activities

Proposed Nationwide Permit General Conditions

- 1. Navigation
- 2. Aquatic Life Movements
- 3. Spawning Areas
- 4. Migratory Bird Breeding Areas
- 5. Shellfish Beds
- 6. Suitable Material
- 7. Water Supply Intakes
- 8. Adverse Effects from Impoundments
- 9. Management of Water Flows
- 10. Fills Within 100-Year Floodplains
- 11. Equipment
- 12. Soil Erosion and Sediment Controls
- 13. Removal of Temporary Fills
- 14. Proper Maintenance
- 15. Wild and Scenic Rivers
- 16. Tribal Rights
- 17. Endangered Species
- 18. Historic Properties
- 19. Designated Critical Resource Waters
- 20. Mitigation
- 21. Water Quality
- 22. Coastal Zone Management
- 23. Regional and Case-by-Case Conditions
- 24. Use of Multiple Nationwide Permits
- 25. Transfer of Nationwide Permit Verifications
- 26. Compliance Certification
- 27. Pre-Construction Notification

Proposed Nationwide Permit Definitions

Best management practices (BMPs)
Compensatory mitigation
Currently serviceable
Enhancement
Ephemeral stream
Establishment (creation)
Independent utility
Intermittent stream
Loss of waters of the United States

Non-tidal wetland
Open water
Perennial stream
Practicable
Pre-construction notification
Preservation
Re-establishment
Rehabilitation
Restoration
Riffle and pool complex
Riparian areas
Single and complete project
Stormwater management
Stormwater management facilities
Stream bed
Stream channelization
Structure
Tidal wetland
Vegetated shallows
Waterbody