

Questions and Answers
Nationwide Permits Renewal/Revision
September 2007

Why are you issuing Nationwide Permits (NWP) now?

A: The Clean Water Act of 1977 requires the Corps to reissue nationwide permits every five years. The current nationwide permits will expire in March 2007, so we are seeking public comments before renewing them.

Q. How do the NWP impact mitigation?

A. Some of the nationwide permits, particularly NWP 21, Surface Coal Mining, will require stringent mitigation. In general, the Corps will require mitigation for wetland losses in excess of 1/10 acre to ensure minimal impacts and support its programmatic goal of “no net loss” of wetlands on an acreage basis.

Q. How do the new NWP protect endangered species?

A. General Condition 17 relates directly to endangered species. The Corps is proposing to modify this general condition to clarify the NWP requirements applicable to the Endangered Species Act. The Corps would make “may effect” or “no effect” determinations on covered species within 45 days of receipt of a complete application for NWP authorization, and notify the permittees of those determinations.

Q. How do the NWP relate to the Regulatory Guidance Letter (RGL) on compensatory mitigation (RGL 02-02)?

A. This RGL establishes general guidelines which relate to mitigation for all permitted actions, whether they are minimal impacts as permitted with a nationwide or other general permit, or more substantial impacts covered with an individual permit. General Condition 20 contains more specific mitigation requirements.

Q. How do Nationwide Permits address cumulative effects to the aquatic environment?

A. The Corps’ district engineers are required to evaluate cumulative adverse effects that occur as a result of activities authorized by the NWP. To comply with the requirements of NEPA and Section 404(e) of the Clean Water Act, the Corps evaluates potential cumulative impacts when it issues the NWP. Division engineers can suspend or revoke an NWP if the cumulative impacts of that NWP in a district or other geographic area (such as a watershed) would be more than minimal. The mitigation requirements for the NWP help ensure that cumulative impacts are minimal.

Q. How do you measure mitigation?

A. Mitigation should compensate for lost functions and values resulting from permitted activities, so the Corps determines mitigation requirements and other permit conditions accordingly. The Mitigation may be measured on an acreage or linear foot basis, or through the assessment of wetland or stream functions. The Corps is currently upgrading its internal databases to better track impacts and mitigation success.

Q. How do the proposed nationwide permits protect streams?

A. Several of the proposed nationwide permits limit the length of stream that can be filled or excavated to 300 linear feet. The 300 linear foot limit currently applies only to

perennial and intermittent streams, and the Corps is proposing to apply that limit to those ephemeral features that are deemed jurisdictional.

Q. What are the differences between perennial streams, intermittent streams and ephemeral features?

A. Perennial streams flow 365 days a year in a normal year. Intermittent streams flow for a substantial portion of a normal year, but may not have flowing water during dry periods of the year. Ephemeral features flow only during, and a short time after, rainfall events and snowmelt. All three features can be important ecologically, even though they may provide different ecological functions.

Q. Is the Corps relaxing protections of 100-year floodplains?

A. The Corps is proposing to require that all NWP activities comply with state and local floodplain management requirements that have been approved by the Federal Emergency Management Agency (FEMA). FEMA is the lead Federal agency for floodplain management and the proposed changes to the floodplain general condition will reduce duplication between the Corps and FEMA.

Q: You say that the NWPs are for activities that have minimal impacts to the aquatic environment yet you have NWP 21 which permits surface coal mining. Why?

A: This CWA authority regulates the impact of the overburden (that is, the dirt and stone removed to gain access to the seams of coal) on waters and wetlands. The Corps review process helps ensure that surface coal mining activities result in minimal impacts on the aquatic environment, and we are seeking the public's views on whether more restrictive acreage limits or other types of limits should be imposed by NWP 21.

Q. Has the Corps coordinated these changes with other federal agencies?

A. Yes. USACE coordinated with the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Department of Transportation, Office of Management and Budget, the President's Council on Environmental Quality, and others.