

Reference: RGL 81-10

Subject: GENERAL PERMITS-GENERAL

Title: GENERAL PERMITS

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Description: GUIDANCE ON GENERAL PERMITS INCLUDING INNOVATIVE APPROACHES, ON COE PROJECTS, PROCESSING TIMES, REGIONAL AREAS

1. **PURPOSE.** The Purpose of this RGL is to clarify several features of the general permit program.

2. **TERMINOLOGY.** Because of the Clean Water Act Amendments of 1977, which for the first time legislatively endorsed our general permit program, we changed our terminology to be compatible with the language of Section 404(e) of the statute. There are now two types of general permits--"regional" and "nationwide." A third type provided for in the law is "statewide," a type we expect and encourage for the future. All types can, of course, be referred to as "general permits." Regional permits, developed by the districts (although there is no reason a division could not develop one), can be referred to as "regional permits," "regional general permits," or "general permits" as the situation indicates.

3. **NEED.** We have no better tool for reducing duplications, delays, paper-work, and resource demands than general permits. Sections 101(f) and 404(q) of the Clean Water Act, Section 3505(1) of the Paperwork Reduction Act of 1980, Executive Order 12291---"Federal Regulation," regulatory relief goals of the new administration, recommendations of the Chief's Environmental Advisory Board, and impending budget and personnel cuts make it mandatory that we expand and strengthen the general permit program. District and division commanders should review published reports on regional permits for ideas on regional permits issued in other districts and to judge if a district is lagging in regional permit development. We frequently hear of failures in developing regional permits because of "objections" or "controversy" These should not be treated as restrictions any differently than they are for an individual permit. Interestingly, in the six years since initiation of the general permit program, not one general permit case has been referred to OCE for resolution. District and division commanders should work with regional offices of EPA, Fish and Wildlife Service, and National Marine Fisheries Service to identify candidate activities for regional or statewide general permits.

4. INNOVATIVE APPROACHES.

- a. The general permit issued this year by the Wilmington District for certain activities receiving prior approval from the State of North Carolina is an interesting concept in dovetailing state and Federal regulatory roles.
- b. The use of general permits for special area management planning is starting to catch on. Jacksonville District's Sanibel Is. permit (issued) and South Florida/East Everglades (processed) are examples. NPD is considering regional permit developments in three special areas (Grays Harbor in Seattle District, Coos Bay in Portland District, and Prudhoe Bay/North Slope in Alaska District).
- c. We have heard of at least one division which has expressed an interest in developing a statewide general permit.

5. THE NUMBERS GAME. We sense some districts are reluctant to expand regional permits for fear OCE pays too much attention to the "numbers" (applications received/processed) as a reflection of workload and thus equated to resource requirements. We fully recognize that efficient program management involves far more than processing individual applications. Our goal is a continual reduction of individual permits processed as we continue our efforts to avoid duplications and unnecessary Federal controls. Districts reducing individual permit processes because of regional permit processes will be appropriately recognized.

6. GENERAL PROCESSING vs GENERAL PERMITS. We have observed many cases where "a general permit has been issued" but an individual "authorization" is later required for all activities covered by that "general permit." This is not a correct procedure. If there is a need to regulate or "authorize" on an individual basis but a way is found to reduce or eliminate certain standard procedures (e.g., to avoid separate public notices or state certifications), then we have saved some time and paperwork (which is good:); but we have not issued a general permit.

7. APPLICABILITY OF GENERAL PERMITS TO CORPS PROJECTS.

Understandably, much confusion has existed on whether or not general permits, particularly nationwide general permits, apply to Corps projects and thus provide relief from most 404 compliance procedures applicable to civil works activities of the Corps. The present nationwide permits are found in Parts 322 and 323. 33 CFR 322.3(c), 33 CFR 323.3(d), and 33 CFR 324.3(b)(1) exclude the Corps civil works projects from the procedures specified in those parts. However, guidance has been issued through planning channels to the effect that Corps projects can take advantage of nationwide permits. Logically, the decision that certain non-Corps activities could be "deregulated" through nationwide permits following a complete public interest review should be equally applicable to identical activities undertaken by the Corps. When the permit regulation revisions are published in final form within the next few months, the nationwide permits will be removed from Parts 322 and 323 and placed in new Part 330. Part 330 will not contain the non-applicability to Corps projects language now found in Parts 322-324. The

final fix will come when the revised planning guidance under the Regulation Reform Action Program takes effect. In the meantime, Corps projects should be considered eligible for nationwide permits.

8. This guidance is effective through 31 December 1983, unless sooner revised or rescinded.

FOR THE COMMANDER: