

# **Reference: RGL 83-07**

## **Subject: GENERAL PERMITS (SPGP)**

### **Title: GENERAL PERMITS FOR REDUCING DUPLICATION (STATE PROGRAM GENERAL PERMITS)**

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**Originator: DAEN-CWO-N**

#### **Description: GUIDANCE, CONDITIONS, AND PROCEDURES FOR ESTABLISHING STATE PROGRAM GENERAL PERMITS.**

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1. Regulatory Guidance Letter 81-10 (September 1981) specified three types of general permits: regional, nationwide, and statewide. The July 22, 1982, regulations provided for general permits under two categories:

a. those that cover specified activities that are similar in nature and cause only minimal individual and cumulative environmental impacts; and

b. those that are developed to reduce duplication with another governmental regulatory agency and the environmental consequences of which are individually and cumulatively minimal.

Either category of permits can be developed at the OCE, division, or district level and may be applicable on a nationwide, regional, or state-local basis respectively.

2. Both categories of general permits can serve as a means of reducing the regulatory burden on the public while protecting the public interest. This letter is concerned primarily with the development of general permits which build on existing regulatory programs at the state or local level when these programs are substantially similar to the Corps' regulatory program. These types of general permits are presently referred to as "state program general permits" or "SPGP's."

3. Because of the language of Section 404(e) of the Clean Water Act, the concept of similarity has been raised in many discussions as a limiting factor in developing SPGP's covering Section 404 discharges. We expect the activities covered by SPGP's to fall into certain well-defined categories by virtue of specification in enabling state legislation and state implementing regulations. We further expect that in reaching decisions on SPGP's, the district engineer will be aware of and fully consider the category of activities to be included. We did not nor do we intend in the future to require the issuance of separate permits for each specific type of activity. Such an exercise would result in volumes of

paperwork without providing any additional protection to the aquatic resources. It is important in any public notice, however, to contemplate the nature of activities which the state program regulates and to include a general description of such activities and their anticipated impact on the aquatic environment in the administrative record for the SPGP.

4. Corps Field Operating Agencies (FOA's), in evaluating state and local regulatory programs, need to consider the following factors during the development of SPGP's:

a. To what extent do the geographic scope, type of activities regulated, and standards (or factors) considered in the evaluation coincide with the Federal program?

b. Is there effective enforcement?

c. Is there adequate public involvement?

5. General permits developed under this concept are intended to be self-contained, that is, they will not normally require extra effort by the state or local agency or affect operation of the state or local program in any detrimental way. They are intended to acknowledge existing programs which reach essentially the same decisions that the Corps' regulatory program does and to eliminate the duplication and delay involved in two agencies following similar processes to reach the same decision. In most circumstances the efficiency of an SPGP will be enhanced by state/local agency involvement and cooperation. FOA's will ensure that the state/local agencies understand clearly that any active involvement beyond their present procedures is purely voluntary.

6. Most state/local regulatory efforts are not, nor need they be, identical to the Corps' program. FOA's have the latitude to tailor the general permit through appropriate conditioning to best utilize those facets of the state/local program that duplicate Federal requirements while continuing to address those factors which the state/local program does not adequately address. The fundamental principle which must underlie each general permit is that the legislatively mandated Federal evaluation requirements are being applied. The FOA's must ensure that this is accomplished without increasing the burden on the state/local regulatory agency.

7. Each SPGP must have a mechanism which allows the district commander to pull-out applications for individual processing if it is appropriate to do so. The design of this "kickout" mechanism and specific form of interaction of the other Federal agencies in this procedure is best determined by each FOA. Generally, FOA's should review applications submitted to the state/local permitting agency to determine if the activity qualifies for the SPGP unless the projects are of such a minor nature that the district would not require reporting since the activity has been covered by an activity specific general permit (Paragraph 1.a.). In determining whether to exercise discretionary authority, the district engineer will consult with other federal agencies as necessary. However, the district engineer must retain the final authority to determine when and how a kickout should occur.

8. Certain activities such as those requiring an environmental impact statement and/or those that may result in more than minimal individual or cumulative environmental effects cannot be permitted by general authority because of limitations established in the regulations (see 33 CFR 322.2(f)(2) and 323.2(n)(2)). The FOA must also determine which other activities are inappropriate for general authorization and specifically exclude them from the SPGP.

9. FOA's must maintain the ability to describe the overall effectiveness of the general permit and to evaluate its cumulative effects. There are many mechanisms available and FOA's are encouraged to use their management initiative to develop those most suitable for their areas.

10. Districts should continue to involve the other Federal agencies and the state/local permitting authority in formulation of the general permit after they have developed preliminary details of how the general permit will work. Experience indicates that providing these agencies with a rational and well thought-out mechanism and providing specific details in the public notices will minimize conflict and increase support. Information on the extent of jurisdiction, excluded activities, kickout mechanisms and public notice and comment procedures should be made available to the agencies as early as possible and be included in public notices. If substantive changes are made in the general permit subsequent to its initial public notice, the FOA should publish a second notice with suitable comment period prior to preparing the statement of findings.

11. FOA's may not issue any type of general permit for activities covered by nationwide permits (NWP) when the result would be to further restrict the activity. Also, FOA's are not authorized to issue a general permit that duplicates an existing NWP. If an FOA determines that an activity covered by a nationwide permit within a certain region or waterbody should be further regulated, then it must follow the procedures established at 33 CFR 330.7.

12. FOA's must provide two different submittals to DAEN-CWO-N: 1) two copies each of the public notice and summary of comments at the conclusion of the comment period for each proposed general permit which is designed to reduce duplication with another governmental agency; and 2) a copy (and confirm receipt) of the proposed SPGP and the associated statement of findings at least 15 days before issuance. The second submittal is for information purposes only. Therefore, the FOA need not delay issuance past the 15-day period in expectation of a confirmatory statement.

FOR THE COMMANDER: